

# THE DEEMED EXPORT RULE IN A NUTSHELL

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The deemed export rule is designed to restrict the transfer of controlled technology within the United States, in some cases by imposing licensing requirements. The rule "deems" or treats the release of U.S.-origin technology to a foreign national within the U.S., as the legal equivalent of exporting that technology to the foreign national's country. A release of technology occurs in a number of ways including visual inspection by foreign nationals of U.S.-origin equipment and facilities. It is key to classify all technology which could be released so that the company knows whether a license is required, whether the goods qualify for a license exception, or is EAR99. If a license is required to export the technology to the foreign national's country, then a license is required before sharing the technology with the foreign national. A foreign national, within the meaning of the rule, is anyone other than an U.S. citizen, permanent resident (green card holder), political refugee, or political asylum holder. All other foreign nationals in the U.S. on a temporary visa, including student visas, work visas, and visiting scholars, are subject to this rule.

The rule affects companies that hire foreign nationals, such as scientists, engineers, or software developers, for their technological expertise. However, complying with the rule may be difficult. If an export license is required, it may be difficult to segregate the foreign person from the technology as required under the license. In addition, U.S. law prohibits questioning employees about their citizenship or country of origin. The Bureau of Industry and Security suggests that employers obtain the information from other sources, such as background checks and resumes.

## "Deemed Export" Questions and Answers Bureau of Industry and Security U.S. Department of Commerce (Dec. 2003)

### 1. What is the "deemed export" rule?

An export of technology or source code (except encryption source code) is "deemed" to take place when it is released to a foreign national within the United States. See §734.2(b)(2)(ii) of the Industry and security Regulations (EAR). For brevity, these questions and answers refer only to "technology" but apply equally to source code.

### 2. What is a "release" of technology?

Technology is "released" for export when it is available to foreign nationals for visual inspection (such as reading technical specifications, plans, blueprints, etc.); when technology is exchanged orally; or when technology is made available by practice or application under the guidance of persons with knowledge of the technology. See §734.2(b)(3) of the Industry and security Regulations (EAR).

### 3. What is "technology"?

Per Part 772 of the Industry and security Regulations (EAR), "technology" is specific information necessary for the "development," "production," or "use" of a product. The General Technology Note 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 listed on the Commerce Control List.

### 4. When do I need to apply for an export license for technology under the "deemed export" rule?

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" rule 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.

## FOREIGN NATIONALS

### 5. How do I know if a foreign national would be subject to the "deemed export" rule?

Any foreign national is subject to the "deemed export" rule 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 rule may be triggered, this does not necessarily mean that a license is required. For example, the technology may be EAR99 or license exception eligible.

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

As noted above in Question 5, if the individual is a naturalized citizen or permanent resident of the United States, the "deemed export" rule does 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 7 through 11 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-users 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.

*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.?*  
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.

*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?*  
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.

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

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

*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.*  
As a general principle, the last citizenship obtained governs. As is clear in response to Question 10 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.

*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 Opportunities Commission (EEOC) rules. How do I get that information?*  
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 nor regulated by the Industry and security Regulations (EAR). The EAR does not regulate employment matters. The justification for the "deemed export" rule 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. Our web page guidance[PDF] is designed to assist you in pointing out the types of relevant information that BIS examines in connection with the license application review.

*13. What is a "deemed re-export"?*  
The term "deemed re-export" is often used to indicate the transfer of controlled U.S. technology to a third-country national overseas. As an example, a U.S. exporter transfers its controlled proprietary technology to a firm in country A. The firm in country A, in turn, will employ an individual from country B who is not a permanent resident of country A, nor of the United States, and who will need the controlled proprietary technology to perform his or her assigned duties. If the U.S. exporter intends to transfer the controlled technology to the country B national who is now an employee of the country A firm, the U.S. exporter is responsible for obtaining any required deemed export license, as if it were transferring the technology to country B. If the country A firm intends to transfer the controlled technology that it received from the United States to the country B national, then the country A firm is responsible for obtaining any required deemed re-export license from BIS. Please see §734.2(b)(4) of the Industry and security Regulations (EAR).

## **TECHNOLOGY**

*14. What technologies are subject to the Commerce Department controls?*  
Generally, technologies subject to the Industry and security 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 is under the jurisdiction of the Energy Department. Still other technologies do not require any authorization because they are already "publicly available." These include patent applications; publicly available technology and software (other than software and technology controlled as encryption items) that are already published or will be published; technology which arises during or as a result of fundamental research; or technology which is educational. See Part 734 of the EAR for details.

*15. Is software considered "technology" and is it similarly controlled?*  
The Industry and security 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.

**16. What technologies are considered "fundamental research"?**

"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. 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 literature, 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, technological or otherwise, that is publicly available is not subject to the Industry and security Regulations (EAR) (except for encryption object code and source code in electronic form or media) 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.

**17. Are cryptographic technology and software source code "deemed exports" handled the same way as other technology and software source code?**

No, they are not. The encryption regulation published on January 14, 2000, changed the deemed export rule for encryption technology. The authorization for encryption technology was updated to allow some encryption technology under License Exception ENC. ENC is now also allowed for foreign employees of U.S. companies coming to the United States to work. However, ENC would not cover employees of a Romanian firm, for example, working at a U.S. company. These foreign nationals are not "employees" of the U.S. company. As far as encryption source and object code are concerned, while in the United States, foreign nationals may use any type of encryption source code and object code. The only deemed export authorization required for encryption relates to encryption technology and when a U.S. person intends to provide technical assistance to foreign nationals using source code. (Please note that Industry and security Regulations (EAR) licensing requirements may apply for transfers of encryption software in the United States to an embassy or affiliate of a foreign country.) See our related deemed export encryption chart for more guidance.

**MORE DIRECT HYPOTHETICAL SITUATIONS**

**18. At our Canadian subsidiary, we develop semiconductor manufacturing technologies that are controlled by ECCN 3E001. If we transfer those technologies to a Chinese national in that facility, do we require U.S. authorization? What about transferring the same Canadian developed technologies to PRC nationals at our PRC facility?**

You may require a license if the technologies are considered to be of U.S. origin. If the technologies developed in your Canadian facility are commingled with or drawn from controlled U.S.-origin technology, you must decide the extent of the mix to determine if U.S. re-export controls apply. Depending on the percentage of the controlled-U.S. technology component, a license may be required for the transfer of that technology to the Chinese national, whether he or she is at your Canadian or PRC facilities. Please see §734.4(c)(3), (d)(3), and (e) of the Industry and security Regulations (EAR). Also, the EAR (Supp. 2 to 734, (b)) requires that you file a one-time review of your technology before you can use the de minimis exclusion. We strongly suggest that you consult with BIS on this question.

**19. We have several foreign national employees in our firm, which has several divisions and an administrative area. Two of the divisions, the Research and Development (R&D) division and the Advanced Manufacturing/Processing (ADMP) division, work with technical data for advanced materials used in electronic and jet engine manufacturing which is controlled under ECCNs 2E001, 3E001, and 9E003, and we have several foreign national engineers working there. None of the other divisions work with controlled technical data, and we have some foreign national employees in them as well. The divisions are not co-located. Do I need an export license for all of the foreign national employees?**

Probably not. Your firm would likely need a license for those foreign national engineers and technical people who work in the R&D and ADMP divisions with the controlled technologies. Your firm would probably not need licenses for those individuals who do not normally come into contact with the controlled technologies, such as those in the administrative area. However, you should review the job descriptions of all your foreign national employees. For example, technical managers and technical training personnel who are NOT at the sensitive divisions may need access to the controlled technologies in order to do their jobs, and so you may need to have deemed export licenses for technology transfer to them.

**20. 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?**

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.

**21. 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 an ongoing exchange of executives and scientists from this organization for years. Do I require a license?**

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 Industry and security Regulations (EAR).

**22. Our university has several departments that are conducting research under contract with private corporations. Some of this research is controlled "development" technology. We often have researchers (visiting faculty, post-graduate fellows, and research assistants) who are foreign nationals working on controlled "development" technology research. Does the university need to apply for a deemed export license? It depends. You need to look at the research and the contract terms for release of the results of the research. If there are no conditions placed on the research, and it is the intent of the research team to publish its findings in scientific literature, then it is considered "fundamental research," and no license is required. If the contract requires that the private corporation review the findings of the research team with the intent of controlling what results are to be released in open literature, then the research is considered proprietary, and a license is required.**

**23. Our university does research under U.S. government sponsorship. We may have foreign national researchers working on this. Is a deemed export license required?**

Under the Industry and security Regulations (EAR), U.S. government sponsored research is handled very much like corporate sponsored research. It may be "fundamental research", or it may be proprietary (See Question 22). See §§ 734.8 and 734.11 of the EAR for details. In addition, some U.S. government data may be subject to separate restrictions on dissemination such as security classification.

## Guidelines for Preparing Export License Applications Involving Foreign Nationals

(Dec. 2003)

### I. Introduction

BIS 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 Industry and security 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 BIS 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. BIS 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 BIS-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 BIS- 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 BIS-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	Identify the item in Commerce Control List terms, the Export Control Classification Number (ECCN), not by trade name. List additional items on the Item Appendix, Form BIS-748P-A. Provide technical specifications, where appropriate.
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, BIS 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.

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. BIS 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, BIS 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 BIS 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.

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

The Bureau of Industry and security's (BIS) 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. BIS may attach these and other conditions to a license when approved. BIS 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/BIS. Commerce will monitor to ensure that the applicant's compliance is effective.

#### **Attachment #2 -- Standard License Conditions For Foreign Nationals**

The Bureau of Industry and security's (BIS) 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. BIS 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 ECCN5E002. 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/BIS. 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 BIS-748-P-B.
- \* Make sure you sign the application.

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