

Frequently Asked Questions (FAQs)

Licensing of Foreign Persons Employed by a U.S. Person

Q: When is a foreign person considered an employee?

A: A foreign person is considered an employee when the foreign person is a full time regular employee, directly paid, insured, hired/fired and/or promoted exclusively by the U.S. person. The employee, however, need not LIVE in the U.S. to be employed by the U.S. person. The U.S. person is liable to ensure all foreign person employees are compliant with U.S. export laws regardless of residence.

Q: If residing overseas, is the foreign person employee considered a broker?

A: If truly employed by the U.S. person, the foreign person is NOT considered a broker when performing the U.S. person's business (must be within the scope of the employment authorization) since he/she is a company employee.

Q: Should current authorizations be replaced or amended to be consistent with current guidance?

A: Currently approved authorizations are still valid. As expiration dates are reached, industry will be expected to submit the appropriate authorization as delineated in the current guidance.

Q: Can multiple employees be covered under one authorization?

A: Yes. Multiple foreign person employees can be covered under one authorization so long as they are all of the same nationality working on the same program/commodity, i.e., all French nationals working on the same radar program.

Q: How is an employee providing marketing services overseas identified in a license application?

A: If the U.S. person desires for the foreign person employee to market their products to other countries and the product is within the scope of the DSP-5,

the U.S. person should obtain a license to market a particular technology to a particular country identifying the foreign person employee as a foreign consignee. Once the marketing license is approved the foreign employee may perform his/her job duties. The case number of the employment DSP-5 should be identified in the marketing license application.

Q: What if the foreign person's place of birth is different from the country he/she now resides in and holds citizenship from?

A: This would bring into question the issue of dual nationality and whether the individual had ties to his country of birth which would indicate a degree of loyalty and allegiance to that country. The license would be considered on the basis that it could be an export to both countries. Normally, this does not present a problem unless the country of birth is proscribed under 22 CFR 126.1 in which case we have to secure additional information to confirm lack of significant ties to the country of birth.

Q: What value should be entered on the license application?

A: DDTC suggests identifying the foreign person employee's annual salary and/or value of the technical data/defense services transferred/received.

Q: How should the foreign person employee of a U.S. person be identified in the TAA or MLA?

A: The agreement holder must amend the agreement to specifically identify the foreign person employees of all U.S. signatories. The statement should be made in 22 CFR 124.7(4) with other statements regarding transfer territory. If the foreign person employees are not already identified, this statement should be included in the next amendment submitted to DDTC for approval.

Q: Who should sign the DSP-83 for the transfer of U.S. classified information?

A: The U.S. person and the foreign person employee must execute the DSP-83 when the transfer of U.S. classified information is required. DDTC may require the foreign government to execute the DSP-83 on a case-by-case basis.

Q: The NDA requires the DDTC case number to be entered. The DDTC case number is not known when executing the NDA. How should this be handled?

A: The provide NDA should be executed with a blank left for the DDTC case number to be entered by the applicant after they receive approval. The NDA in the web guidance has been updated to reflect this requirement.