

EXPORT CONTROL COMPLIANCE

Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States

Effective February 20, 2011, U.S. Citizenship and Immigration Services will require employers of H-1B and certain other foreign workers to certify their compliance with the US Department of Commerce's "deemed export" rules. Deemed export rules govern the release or transfer of technology, technical data, or know-how, to a foreign national in the United States. Transfer or release of technology is controlled based on the foreign national's home country and the nature of the technology. Where a foreign employee's job requires use of controlled technology, the employer must obtain a US government export license or other approval before the foreign employee can be given access to the technology.

The new certification on the Form I-129 for H-1B and other petitions requires that the petitioner/employer certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and determined that:

1. A license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or
2. A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

The employer is also required to acknowledge that the USCIS has the authority to verify the information in the petition, including compliance with the deemed export requirement, through audits, on-site compliance reviews, and other ways of investigation.

An LSU department wishing to sponsor a foreign national for H-1B status must complete the "**Deemed Exports Screening and Attestation Form**" found on this website. The form must be completed by the visa applicant's **supervisor** and forwarded to the export control contact, Debra Keppler, debrak@lsu.edu, with a copy to Loveness Schafer (lschaf2@lsu.edu). The export control contact will certify compliance with the deemed export requirement and forward a copy of the attestation to the International Services. This will be done each and every time the International Services prepares an H-1B petition, whether it's an initial, an extension, a concurrent, or an amended H-1B petition. An H-1B petition will not be filed with USCIS unless and until the International Services receives the attestation from the export control contact.

As an institution of higher education, we have many exemptions and exceptions to U.S. export control laws that exempt us from having to obtain licenses for most of our employees. As such, relatively few positions or foreign nationals will require a deemed export license. However, the review of the pertinent regulations and the determination as to the applicability of the license must be done for each H-1B petition.

Please note well:

1. To evaluate whether a license is or is not required for the particular position, the export control contact will need to carefully analyze the position duties, and the technology and technical data (if any) to which the employee will have access. To facilitate this process, please ensure that you provide detailed job descriptions and requirements, including names of any software the foreign national will use in their job.
2. If the export control contact in the Office of Intellectual Property determines that a license is required for the particular position and foreign national, it will be the sponsoring department's responsibility to prevent the foreign national beneficiary from gaining access to the controlled technology or technical data until, and unless, LSU has received the required license or other authorization to release such data. If a license is required, it may take many months to obtain the required license.
3. The lists of controlled technologies are long, detailed and complicated. This may increase the time required for the International Services to prepare an H-1B petition. Departments are advised to plan accordingly.
4. For positions and foreign nationals subject to the license, we advise sponsoring departments to plan for possible delays in employment start date or continuation, as the export control contact applies for the license. The estimated processing time for deemed export licenses is 2 to 4 months, but can run longer in some circumstances. Further guidance regarding compliance for positions and foreign nationals, who require a license, will be given by the export control contact.
5. As a reminder, H-1B sponsoring departments are required to inform us of changes in the terms of H-1B employment, including changes in duties, work location, job titles and salary. Departments must now also notify us of changes in the type of technology required for the H-1B foreign national's job, as an amended petition may be required before the foreign national is given access to such technology. It may also happen that when the H-1B petition was approved on behalf of the H-1B employee, their job did not require use of controlled technology. If, subsequent to the H-1B approval, the employee is required to use technology or technical data, the sponsoring department must notify the International Services which can determine whether an amended H-1B petition needs to be filed.
6. Failure to comply with export control regulations may lead to significant civil and/or criminal penalties, including civil penalties up to \$250,000 per violation; criminal

penalties up to \$1,000,000 per violation; prison term up to 20 years; denial of export privileges; and debarment from U.S government contracts.

For further information, see:

www.pmdtc.gov.

www.bis.doc.gov/deemedexports.

15 CFF Part 774, Supp. 1. See http://www.access.gpo.gov/bis/ear/ear_data.html#ccl.

22 CFR 121.1. See http://www.pmddtc.state.gov/regulations_laws/itar.html.

http://www.pmddtc.state.gov/faqs/license_foreignpersons.html.