

H-1B PETITIONS AND EXPORT CONTROL COMPLIANCE**Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the U.S.**

U.S. Citizenship and Immigration Services requires employers of H-1B and certain other foreign workers to certify their compliance with the U.S. 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 U.S. 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 certify that it has reviewed the Export Administration Regulations (EAR) and 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 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.

The Office of International Students and Scholars is working with other campus officials to ensure compliance. We have attached our "Export Control Screening Tool" and certification form for your review and completion. The forms must be completed by the visa applicant's supervisor and returned to OISS. They will then be reviewed for certification by the Office of Research and/or University Counsel. This review must take place each time an H-1B petition is processed, including initial, extension, concurrent, and amended petitions. The petition cannot be filed until the export control certification has been received by OISS.

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 of 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 Office of Research/University Counsel 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, UNO has received the required license or other authorization to release such data. If a license is required, it may take many months to obtain.
3. The lists of controlled technologies are long, detailed, and complicated. This may increase the time to prepare the H-1B petition.

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 to acquire the license. The estimated processing time for deemed export licenses is two to four months, but it can take longer. Further guidance regarding compliance for positions and foreign nationals requiring a license will be provided.
5. As a reminder, H-1B sponsoring departments are required to inform OISS of changes in the terms of H-1B employment, including changes in duties, work location, job titles, and salary. Departments must now also notify OISS 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 OISS so it may be determined 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:

<http://www.pmdtc.state.gov>

<http://www.bis.doc.gov/index.php/policy-guidance/deemed-exports>

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.pmdtc.state.gov/regulations_laws/itar.html.

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