

PLEASE READ BEFORE PROCEEDING

You are certifying that technology or technical data you will release or otherwise provide access to the foreign national as a result of the offered employment may or may not require a license. Note that this certification will be made available to the federal authorities in case of a request or an audit. Accordingly, **you are responsible for documenting** all sources of the research you used to arrive to your certification below and any correspondence you received in this regard. You **must provide this evidence** together with the attestation to IFSS. Note that IFSS will take on face value your attestation. In case of a federal request or an audit we may need to release this evidence to federal authorities.

DEEMED EXPORT CONTROL ATTESTATION

My name is _____ I am the _____ (Department Head, Principal Investigator) at the department of _____ at Texas A&M University Commerce (System member).

I have knowledge of the proposed employment of _____ as an _____ (title) for which a nonimmigrant petition is being sought. I have reviewed the duties and responsibilities for said employment and I have knowledge of the type of technology and/or technical data that will be released to the employee. In this regard, I hereby certify the following:

With respect to the technology or technical data that I will release or otherwise provide access to _____ (name of the foreign person proposed employee or employee) as a result of the employment, I certify that:

- I have reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) with regard to such technology or technical data; or
- I have reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and thereafter have contacted the Office of Sponsored Programs at Texas A&M University Commerce (System member) to further clarify potential restrictions regarding such technology or technical data

And it has been 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 above named 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 foreign person and I will prevent access to the controlled technology or technical data by the named foreign person until and unless Texas A&M University has received the required license or other authorization to release it to the named foreign person.

I hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Principal Investigator:

Department Head:

Print Name

Print Name

Signature

Signature

Date

Date

INSTRUCTIONS FOR COMPLETING THE DEEMED EXPORT CONTROL ATTESTATION FOR SPONSORSHIP OF H-1B, H-1B1 and O-1A EMPLOYEES

As the direct employer and supervisor of the foreign national employee (or proposed employee), you know the details of the position's job duties and responsibilities and whether the technology or technical data being released to the foreign national may be restricted to foreign nationals. You are also aware of the details of the instruments, equipment, methods and other technology employed to conduct the research. Accordingly, you are best suited to complete the attached attestation and provide it to IFSS before the institution can petition for the foreign national employee. However, **prior to completing and certifying the attestation**, please be aware of the following:

- We recommend that you take the Export Control TAMUS online training module 2111212 "Export Control & Embargo Training" available on TrainTraq through the Single Sign On (SSO) login at <https://sso.tamus.edu/Logon.aspx>.
- We recommend that you read the FAQs on Deemed Export Control
Note that there are four steps that the supervisor is required to take under penalty of perjury:
 - 1) **Review** the EAR and the ITAR http://www.access.gpo.gov/bis/ear/ear_data.html#ccl
http://www.pmdtc.state.gov/regulations_laws/itar.html
 - 2) **Certify** that you have reviewed the foregoing regulations
 - 3) **Make a determination**¹ that an export license is not required for the employee or individual you intend to employ to have access to Texas A&M University's technology or technical data, or that such a license is required
 - 4) **State**, in case a license is required, that you will prevent the foreign national from having access to the controlled technology or technical data until an export license has been obtained
- If you have any doubts, **you should contact the export control office** at your institution to obtain clarification prior to completing the attestation. See the below contact information for Texas A&M.
- **You must keep all the documentation** of sources used to arrive to the determination/certification that a license is not required. The supervisor must also provide the International Faculty & Scholar Services (IFSS) with a copy this documentation. This documentation will be of utmost importance in cases in which, for example, a Request for Evidence is issued by U.S. Citizenship and Immigration Services (USCIS) or an export investigation is launched by the Bureau of Industry and Security (BIS)
- The institution is relying on your attestation to file the nonimmigrant petition with USCIS.
- Because the nonimmigrant petition may be subject to a request for evidence and/or audit by the federal government, you are responsible for maintaining all documentation you used to arrive at your determination

Texas A&M University Commerce
Office of Sponsored Programs
Telephone: 903-886-5143
http://www.tamu-commerce.edu/gradschool/research/export_control.asp

¹ Deemed export equates to an export to the home country or countries of the foreign national employee or prospective employee. Accordingly, the requirement for a license will depend on the specific technology and an employee's country of nationality. As a result, the general steps you must take to arrive to such conclusion are:

(A) **Review** the EAR and ITAR regulations to identify if your specific item/technology is classified under a specific Export Control Classification Number (ECCN), and whether it is for a single or more Reason for Control

(B) **Review** the EAR Country Chart List for each Reason for Control: <http://www.access.gpo.gov/bis/ear/pdf/738.pdf>

(C) **Conclude** whether a license is required or not based on each Reason for Control, and the country of citizenship of the foreign national

Contact your export control officer at your System institution/agency for further guidance and support in arriving at this determination.

**USCIS I-129 EXPLANATION OF THE DEEMED EXPORT ATTESTATION AS IT APPEARS ON
PAGE 3-4 OF THE I-129 INSTRUCTIONS FORM**

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

U.S. Export Controls on Release of Controlled Technology or Technical Data to Foreign Persons. The Export Administration Regulations (EAR) (15 CFR Parts 770-774) and the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130) require U.S. persons to seek and receive authorization from the U.S. Government before releasing to foreign persons in the United States controlled technology or technical data. Under both the EAR and the ITAR, release of controlled technology or technical data to foreign persons in the United States—even by an employer—is deemed to be an export to that person's country or countries of nationality. One implication of this rule is that a U.S. company must seek and receive a license from the U.S. Government before it releases controlled technology or technical data to its nonimmigrant workers employed as H-1B, L-1 or O-1A beneficiaries.

Requirement to Certify Compliance with U.S. Export Control Regulations. The U.S. Government requires each company or other entity to certify that it has reviewed the EAR and ITAR and determined whether it will require a U.S. Government export license to release controlled technology or technical data to the beneficiary. If an export license is required, then the company or other entity must further certify that it will not release or otherwise provide access to controlled technology or technical data to the beneficiary until it has received from the U.S. Government the required authorization to do so. The petitioner must indicate whether or not a license is required on Page 6, Part 7 of Form I-129.

Controlled Technology and Technical Data. The licensing requirements described above will affect only a small percentage of petitioners because most types of technology are not controlled for export or release to foreign persons. The technology and technical data that are, however, controlled for release to foreign persons are identified on the EAR's Commerce Control List (CCL) and the ITAR's U.S. Munitions List (USML). The CCL is found at 15 CFF Part 774, Supp. 1. See http://www.access.gpo.gov/bis/ear/ear_data.html#ccl. The USML is at 22 CFR 121.1. See http://www.pmddtc.state.gov/regulations_laws/itar.html. The EAR-controlled technology on the CCL generally pertains to that which is for the production, development, or use of what are generally known as "dual-use" items. The ITAR-controlled technical data on the USML generally pertains to that which is directly related to defense articles.

The U.S. Department of Commerce's Bureau of Industry and Security administers the CCL and is responsible for issuing licenses for the release to foreign persons of technology controlled under the EAR. The U.S. Department of State's Directorate of Defense Trade Controls (DDTC) administers the USML and is responsible for issuing licenses for the release to foreign persons of technical data controlled under the ITAR. Information about the EAR and how to apply for a license from BIS are at www.bis.doc.gov. Specific information about EAR's requirements pertaining to the release of controlled technology to foreign persons is at www.bis.doc.gov/deemedexports. Information about the ITAR and how to apply for a license from DDTC are at www.pmddtc.state.gov. Specific information about the ITAR's requirements pertaining to the release of controlled technical data is at http://www.pmddtc.state.gov/faqs/license_foreignpersons.html.