

# Deemed Export Review Form

## Export Control Compliance

### BACKGROUND

Under U.S. export control regulations, the release of technology or technical data to a foreign national in the U.S. is deemed to be an export to the individual's home country, even though the release occurs entirely within the United States. This concept is referred to as a "deemed export." The rationale behind this rule is that a release of technology or technical data to a foreign national is permanent and the individual could apply the knowledge upon return to his/her home country.

In some cases, a U.S. government export license is required prior to the release of technology or technical data to a foreign national. The license requirement is dependent on two factors: (1) the nature of technology that will be released to the foreign national; and (2) the foreign national's home country.

U.S. export control requirements are complex, especially in an academic setting. For example, Universities may work with a wide range of technologies in various research projects. Though Universities may be able to use a "publicly available" or "public domain" exemption (e.g. under the fundamental research provision) from U.S. export control requirements, the use of such exemption may be unavailable where the project is subject to publication or other restrictions.

Further, enforcement of U.S. export control regulations continues with fines up to \$1,000,000 and 20 years imprisonment in the most egregious cases.

### NEW DEVELOPMENT

Beginning February 20, 2011, an employer who petitions for H-1B, H-1B1, L-1 or O-1A job candidate must certify that it has reviewed the U.S. Department of Commerce's Export Administration Regulations ("EAR") and the U.S. Department of State's International Traffic in Arms Regulations ("ITAR") to determine whether a deemed export license is required to release technology to the foreign national and, if an export license is required, that the relevant technology will not be released to the foreign national until a license is obtained.

More specifically, the new certification reads as follows:

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms (ITAR) and has 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 national; or
2. A license is required from the Department of Commerce and/or 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.

Many foreign nationals employed at universities either don't conduct technology-related research or conduct only "fundamental research" or work with "educational information" which is not subject to EAR or ITAR license requirements. Even though such research may be fundamental, deemed export licenses may be required in the conduct of fundamental research if controlled technology or technical data is needed to generate fundamental research results.

This review form collects information that will help determine whether a potential employee may be exposed to export controlled information in the course of his or her duties. Academic Affairs must be in receipt of this completed and fully signed form before the I-129 application for the visa types noted above will be processed.

## DEEMED EXPORT REVIEW FORM

### SECTION I. General Information

<b>Hiring Dept.</b>	
<b>Supervisor Name/Title</b>	
<b>Phone Number</b>	
<b>Email</b>	

<b>Name of New Hire</b>	
<b>Position/Title</b>	
<b>Area of Expertise</b>	
<b>Start Date</b>	

### SECTION II. Activity Review

Will the foreign national be involved in any of the following?	YES	NO
<p><b>a.</b> The design, development, or modification of any item for a military, space or weapons application?</p> <p><i>Examples include:</i></p> <p>(a) Work under a Department of Defense (DARPA, Navy, Army) or NASA related contract</p> <p>(b) Research or joint development with a private company for the design of military or satellite systems or components.</p> <p>If YES, please provide a detailed explanation below:</p>		
<p><b>b.</b> Access to <u>technical data</u> or <u>technology</u> that is considered proprietary, confidential or subject to publication restrictions?</p> <p><i>Examples include:</i></p> <p>(1) Work with technical data that is subject to a Non-Disclosure Agreement or other confidentiality or restrictive provisions</p> <p>(2) Pre-publication review to remove confidential information prior to publication</p> <p>(3) Sponsor approval of publication</p> <p>If YES, please provide a detailed explanation below:</p>		
<p><b>c.</b> Work on the design or development of equipment that will be used to conduct research activities?</p> <p>If YES, please provide a detailed explanation below:</p>		
<p><b>d.</b> Work on activities that are subject to a restriction or prohibition on participation by foreign nationals?</p> <p>If YES, please provide a detailed explanation below:</p>		

**SECTION III. TECHNOLOGY CATEGORIES**

*Note:* Complete Section III **ONLY** if you answered “YES” to any question in Section II above.

If you answered YES to a question above, will the foreign national be involved in research, development or activities related to any of the following areas? Check all that apply.	YES	NO
a. Nuclear technologies		
b. Human, zoonotic, animal or plant pathogens, select agents, other toxicological agents		
c. Sensors or lasers		
d. Telecommunications or Information Security technologies, including encryption technologies		
e. Missile/rocket technology or unmanned vehicle systems		
f. Advanced computer or microelectronic technologies		

**SECTION IV. Signature.**

I certify that the information provided is true and correct to the best of my knowledge. In addition, I will notify Academic Affairs if the answers to Section II or III change or if the beneficiary moves to a new department or is no longer under my supervision.

\_\_\_\_\_  
Supervisor Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please forward the completed form, via e-mail to the Office of Academic Affairs to [mpurvis@unf.edu](mailto:mpurvis@unf.edu).