



TEXAS TECH UNIVERSITY
HEALTH SCIENCES CENTER™
EL PASO

CHECKLIST & CERTIFICATION FOR EXPORT CONTROL

**TO BE USED FOR THE INITIAL HIRING AND EXTENSION OF INTERNATIONAL
EMPLOYEES ON H-1B, O-1, or L-1 STATUS**

Instructions: Upon completion of this Questionnaire and Certification please return the original to the Office of International Employment Services.

This Questionnaire must be completed for all persons who are not U.S. citizens, permanent residents, or protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)) who will be employed by TTUHSC under the following types of work visas issued by U.S. Citizenship and Immigration Services:

**** H-1B, H-1B1, L-1, or O-1A Visa Petitions and Renewals ****

- **PLEASE COMPLETE EVERY BLANK, and SIGN OR INITIAL WHERE REQUESTED.** Failing to do so will result in delays and this questionnaire will be returned to you for completion. You may use "N/A" if the blank is not applicable.
- Before you begin, please take a moment to review the attached *Definitions* and *Deemed Export FAQs*.
- * An asterisk means you should review the definition of the bolded word in the attached *Definitions* before answering.

Section 1: Identifying Information of the Beneficiary (person for whom the Form I-129 is required)

Beneficiary's Name:

(First)

(Middle)

(Last)

Country of Citizenship or Permanent Residence:

If the Beneficiary has dual citizenship or residency, please list all other countries of citizenship:

Section 2: Nature of Employment

TTUHSC Sponsor (person who will be sponsoring the Beneficiary for H-1B visa):

Sponsor Department/Unit:

Phone Number: ()

TTUHSC Supervisor (*person who is responsible for supervising the Beneficiary*):

Supervisor Department/Unit:

Phone Number:

Beneficiary's work will be supported by (*check the appropriate box*):

Grant Contract TTUHSC Other: _____

If Grant or Contract, please include grant award number or contract number and granting agency:

Beneficiary's duties will be (*must mark all that apply*):

Administrative Technician Clinical Medicine/Patient Care Teaching

Research, and if so, is it: Basic or Applied (*see definitions attached*)

Will the Beneficiary work on Department of Defense, Department of Energy, NASA, Defense Threat Reduction Agency, Department of Homeland Security, or U.S. military sponsored research? Yes No

If yes, please describe briefly.

Section 3: Scope of Employment/Research

Will the Beneficiary need to understand how an "item" (e.g., infectious biological agent, hazardous chemical, radioactive material, scientific equipment or instrument, including highly specialized computing equipment) is designed, developed, produced, manufactured, or repaired in order to perform his/her duties? Yes No

If yes, please describe each item.

Will the Beneficiary work with any experimental equipment or prototypes (e.g., experimental high speed computers, materials, electronics, sensors, lasers, telecommunication devices, or other non-commercial equipment) that are **NOT publicly available**?

Yes No

If yes, please describe all such equipment.

Section 4: Overview of Specific Technology Necessary for Position

Will the Beneficiary need "**technology**" (*information required to **develop***, **produce***, or **use*** an item, such as manuals, diagrams, blueprints, drawings, etc., including verbal instructions*) at any reporting work station, regardless of location, with respect to the following items:

Yes No **Chemicals or mixtures**

If you checked **Yes**:

(a) Is any of the technology NOT publicly available*? Yes No

If yes, please briefly describe the technology.

(b) Is any of the technology regarding the disposal of the item NOT publicly available*? Yes No

If yes, please briefly describe the technology.

Yes **No** **Human or zoonotic pathogens**

If you checked **Yes**:

(a) Is any of the technology NOT publicly available*? Yes No

If yes, please briefly describe the technology.

(b) Is any of the technology regarding the disposal of the item NOT publicly available*? Yes No

If yes, please briefly describe the technology.

Yes **No** **Toxins**

If you checked **Yes**:

(a) Is any of the technology NOT publicly available*? Yes No

If yes, please briefly describe the technology.

(b) Is any of the technology regarding the disposal of the item NOT publicly available*? Yes No

If yes, please briefly describe the technology.

Yes **No** **Animal pathogens**

If you checked **Yes**:

(a) Is any of the technology NOT publicly available*? Yes No

If yes, please briefly describe the technology.

(b) Is any of the technology regarding the disposal of the item NOT publicly available*? Yes No

If yes, please briefly describe the technology.

Yes No **Genetic elements or genetically-modified organisms**

If you checked **Yes**:

(a) Is any of the technology NOT publicly available*? Yes No

If yes, please briefly describe the technology.

(b) Is any of the technology regarding the **disposal** of the item NOT publicly available*? Yes No

If yes, please briefly describe the technology.

Yes No **Plant pathogens**

If you checked **Yes**:

(a) Is any of the technology NOT publicly available*? Yes No

If yes, please briefly describe the technology.

(b) Is any of the technology regarding the **disposal** of the item NOT publicly available*? Yes No

If yes, please briefly describe the technology.

Yes No **Vaccines, immunotoxins, medical, analytical, diagnostic, or food testing kits**

If you checked **Yes**:

(a) Is any of the technology NOT publicly available*? Yes No

If yes, please briefly describe the technology.

(b) Is any of the technology regarding the **disposal** of the item NOT publicly available*? Yes No

If yes, please briefly describe the technology.

Yes No **Thermal imaging or night vision devices**

If you checked **Yes**:

- Is any of the technology NOT publicly available*? Yes No

If yes, please briefly describe the technology.

Yes No **Lasers**

If you checked **Yes**:

- Is any of the technology NOT **publicly available***? Yes No

If yes, please briefly describe the technology.

Yes No **Mass spectrometers**

If you checked **Yes**:

- Is any of the technology NOT **publicly available***? Yes No

If yes, please briefly describe the technology.

Yes No **Triggered spark gaps**

If you checked **Yes**:

- Is any of the technology NOT **publicly available***? Yes No

If yes, please briefly describe the technology.

Yes No **Oscilloscopes**

If you checked **Yes**:

- Is any of the technology NOT **publicly available***? Yes No

If yes, please briefly describe the technology.

Section 5: Scope of Research Exposure, Access*

Will the Beneficiary have **access*** to research involving Department of Defense, NASA, Department of Energy, Defense Threat Reduction Agency, Department of Homeland Security, or U.S. military sponsored research? Yes No

If yes, are there any restrictions which would prevent the Beneficiary from having **access*** to the research? Yes No

If there are restrictions, please describe them briefly.

While working at TTUHSC, will the Beneficiary have **access*** to any non-TTUHSC owned or controlled technical data or technology that is considered proprietary or confidential by the non-TTUHSC party? *(This includes U.S. government furnished technical data or information with dissemination controls or other restrictive markings, as well as source code*

subject to the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR) controlled software.) Yes No

If yes, please describe briefly.

Will the Beneficiary have **access*** to "items" (e.g., infectious biological agents, hazardous chemicals, radioactive material and/or scientific equipment or instruments, including highly specialized computing equipment) in the performance of his/her job duties? Yes No

If yes, are there any restrictions which would prevent the Beneficiary from having **access*** to the items or its technology? Yes No

If there are restrictions, please describe them briefly.

Section 6: Contractual Issues

If any research is being sponsored by another organization, has the sponsor imposed publication restrictions or has the sponsor provided information under a Non-Disclosure Agreement or Confidentiality Agreement? Yes No N/A

If any research of the Beneficiary is being sponsored by another organization, has the organization indicated or imposed any specific national security controls? Yes No N/A

Section 7: Deemed Export Questionnaire Certification

I work, or will work, in a capacity that enables me to anticipate the particulars of the employment of _____ (name of employee), a citizen of _____, should he/she be granted permission from the U.S. Government to work within the Texas Tech University Health Sciences Center ("TTUHSC").

I affirm that the contents of the foregoing Questionnaire are true to the best of my knowledge, information, and belief. I also certify that I have read the *Definitions* and *Deemed Exports Q&A* pages as attached. I understand that it is my responsibility to review the rules of the International Traffic In Arms Regulations and Export Administration Regulations.

If at any time during Beneficiary's employment I become aware that technology or technical data has or will be released to Beneficiary in ways that were not addressed or anticipated by my answers to this Questionnaire, I will immediately notify the Office of International Employment Services in writing.

I will also promptly notify the Office of International Employment Services in writing before the Beneficiary moves to a new office or lab, or begins any work activity that is not disclosed in this Questionnaire.

Signature of Supervisor: _____ **Date:** _____

Name: _____

Title: _____

Signature of Department Chair: _____ **Date:** _____

Name: _____

Title: _____

EXPORT CONTROL CERTIFICATION STATEMENT

Complete as appropriate:

No, a deemed export license is not required from either the US Department of Commerce or the US Department of State to release such technology or technical data to the international employee; or

Yes, a deemed export license may be required. By signing below, I certify that an export license may be required to release project technology or technical data to the international employee (beneficiary) and I will prevent access to the controlled technology or technical data by the international employee until and unless I have received the required license or other authorization to release it to this beneficiary.

I certify that I have reviewed the export control regulations applicable to this I-129 petition (H-1B or O-1 petition) and that, to the best of my knowledge, the information I have provided in connection with this petition is true and correct. I understand that information provided in connection with this petition is subject to the penalties for perjury and/or knowing submission of false statements to the Federal Government including fines up to \$10,000 and imprisonment up to five years, or both.

_____ PRINTED NAME Department Chair/ Faculty Sponsor	_____ SIGNATURE Faculty Sponsor/Department Chair	_____ DATE
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Definitions

The following definitions apply to terms used in TTUHSC's *I-129 Deemed Export Questionnaire* and in USCIS Form I-129, *Petition for a Nonimmigrant Worker*.

- Access- permission, liberty or ability to enter approach or pass to and from a place or to approach or communicate with a person or thing; freedom or ability to obtain or make use of something. "Access" could include discussions about technology or technical data, training related to the technology, availability of technology/ technical data on shared drives or websites, and shared use of laboratories and equipment. ***A common example for universities: Lab mates generally have or can easily obtain access to each other's research, lab notebooks, and related equipment located in the lab space that they share.***
- Applied Research- like basic research is also original investigation undertaken in order to acquire new knowledge. It is however directed primarily towards a specific practical aim or objective.
- Basic Research- experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundation of phenomena and observable facts, without any particular application or use in view.

Definitions have been taken from the *Export Administration Regulations* (The "EAR", created by the Bureau of Industry and Security, Department of Commerce) or the *International Traffic in Arms Regulations* (The "ITAR", created by the Directorate of Defense Trade Controls, Department of State). Paraphrasing has been used, where appropriate.

- Technology: Is defined by the EAR as "information necessary for the development, production, or use of a product." See definitions of underlined words below.
 - Development Technology or "develop": According to the EAR, is "related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, and layouts."
 - Production Technology or "produce": According to the EAR, is related to "all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance."
 - Use Technology or "use": According to the EAR, is related to operation, installation, maintenance (checking), repair, overhaul and refurbishing. NOTE that Use Technology has not been released unless all six aspects have been communicated to another party.
- Technical Data: The EAR states that technology can be expressed as technical data and may take forms such as "blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories." Technical data is also defined by the ITAR in a way that overlaps with the EAR definition of technology, but also includes design, manufacture, assembly, operation, repair, testing, or modification of articles listed on the U.S. Munitions List.
- Publicly Available: "Publicly available" is a term used to describe certain technology and software that are not subject to export controls. However, with the exception of "publicly available" technology and software, virtually all other items (commodities, software, and technology) are subject to the export control regulations. The EAR and ITAR use different terminology and slightly different interpretations to address this topic, and the requirements under the EAR and ITAR solely determine whether technology or software is in fact "publicly available." **When "Publicly Available" is mentioned in this Questionnaire, it shall mean both the EAR and ITAR definitions. The technology must fit under both specific definitions to classify as publicly available.**

Under the EAR (Sections 734.3, 734.7 - 734.10), "publicly available" applies to technology and software that are: (1) already published or will be published (through libraries open to the public, patents available at patent offices, or release at open conferences); (2) arise *during*, or *result from* fundamental research; (3) are educational (released by instruction in card catalog courses or associated teaching laboratories of academic institutions); or (4) are included in certain patent applications. Certain encryption software is excluded from being considered publicly available under EAR.

The ITAR (Section 120.11) uses the term "public domain," which is similar to "publicly available" under the EAR, with some differences. Under the ITAR, "public domain" applies to information that is published and generally accessible or available to the public. Information in the public domain includes information available through public libraries or newsstands/bookstores, patents at patent offices, unlimited distribution at open conferences *in the US*, and fundamental research by accredited institutions of higher learning in the US.

NOTE: Both EAR "technology" and ITAR "technical data" can be released through technical assistance or services, such as through instruction, skills training, working knowledge, and consulting services.

"Deemed Export" Questions and Answers for EAR ONLY

Helpful Questions and Answers from the Bureau of Industry and Security Webpage

1. What is the "deemed export" rule?

An export of technology or source code (except encryption source code) is "deemed" to take place when it is released to a foreign national within the United States. See §734.2(b)(2)(ii) of the Export Administration Regulations (EAR). For brevity, these questions and answers refer only to "technology" but apply equally to source code.

2. What is a "release" of technology?

Technology is "released" for export when it is available to foreign nationals for visual inspection (such as reading technical specifications, plans, blueprints, etc.); when technology is exchanged orally; or when technology is made available by practice or application under the guidance of persons with knowledge of the technology. See §734.2(b)(3) of the Export Administration Regulations (EAR).

3. What is "technology"?

Per Part 772 of the Export Administration Regulations (EAR), "technology" is specific information necessary for the "development," "production," or "use" of a product. The General Technology Note states that the "export of technology is controlled according to the provisions of each Category." It further states that "technology required for the development, production, or use of a controlled product remains controlled even when applicable to a product controlled at a lower level." Please note that the terms "required," "development," "production," "use," and "technology" are all defined in Part 772 of the EAR. Controlled technology is that which is listed on the Commerce Control List.

4. When do I need to apply for an export license for technology under the "deemed export" rule?

Assuming that a license is required because the technology does not qualify for treatment under EAR99 and no license exception is available, U.S. entities must apply for an export license under the "deemed export" rule when both of the following conditions are met: (1) they intend to transfer controlled technologies to foreign nationals in the United States; and (2) transfer of the same technology to the foreign national's home country would require an export license.

Foreign Nationals

5. How do I know if a foreign national would be subject to the "deemed export" rule?

Any foreign national is subject to the "deemed export" rule except a foreign national who (1) is granted permanent residence, as demonstrated by the issuance of a permanent resident visa (i.e., "Green Card"); or (2) is granted U.S. citizenship; or (3) is granted status as a "protected person" under 8 U.S.C. 1324b(a)(3). This includes all persons in the U.S. as tourists, students, businesspeople, scholars, researchers, technical experts, sailors, airline personnel, salespeople, military personnel, diplomats, etc. As noted, one exception to this general statement is a "protected person." "Protected persons" include political refugees and political asylum holders. Be aware that individuals seeking "protected person" status must satisfy all of the terms and conditions that are fully set forth in 8 U.S.C. 1324b(a)(3). It should be emphasized that although the deemed export rule may be triggered, this does not necessarily mean that a license is required. For example, the technology may be EAR99 or license exception eligible.

6. How are individuals handled who are permanent residents or citizens of countries other than those of their nationality?

As noted above in Question 5, if the individual is a naturalized citizen or permanent resident of the United States, the "deemed export" rule does not apply. In other words, he or she is not subject to the provisions of the "deemed export" regulation. For individuals who are citizens of more than one foreign country, or have citizenship in one foreign country and permanent residence in another, as a general policy, the last permanent resident status or citizenship obtained governs. If, for some reason, the status of a foreign national is not certain, then you should ask the Bureau of Export Administration (BXA), to determine where the stronger ties lie, based on the facts of the specific case. For instance, the status of a foreign national could be uncertain in situations where information may indicate involvement with prohibited entities or activities, for example, missile or nuclear-related end-uses or end-users as identified in Part 744 of the EAR. In response to a request for the status of a foreign national, BXA will look at the foreign national's family, professional, financial, and employment ties.

7. What if the individual is a foreign national of one country, say India, but has obtained permanent residency in another, say the U.K.?

Release of controlled technology to that individual in the U.K. would be treated as if the shipment were being made to the U.K. and licensing requirements, if any, would be the same as for a British national in the U.K.

8. If this same Indian foreign national traveled to visit facilities in a third country, say Germany, do the licensing requirements change, or is the release still treated as a transfer to the U.K. for licensing purposes?

The Indian national's U.K. permanent residency status still drives the licensing requirements and releases of technology to him or her would be considered as transfers to the U.K.

9. What if that same Indian foreign national comes to the United States?

As long as the Indian foreign national maintains his or her permanent residency status in the U.K., transfers of technology to that individual would be deemed as transfers to the U.K.

10. Now, what about changes in nationality? If a person was a citizen of India but subsequently became a citizen of the U.K., how is that person treated for export control purposes?

If the former Indian national becomes a British citizen, transfers of technology would be viewed as transfers to the U.K.

11. What if the Indian foreign national becomes a citizen of the U.K. but retains his or her Indian citizenship, as well? This is the situation of people who have dual-citizenship.

As a general principle, the last citizenship obtained governs. As is clear in response to Question 10 above, the individual's most recent citizenship is with the U.K. and releases of technology would be viewed as releases to the U.K.

12. I have read elsewhere on your web page the requirements for information that the Bureau of Export Administration (BXA) wants in order to process a "deemed export" license application. I see that you require a lot of personal data, including citizenship and country of origin. I understand that I cannot ask for such information from my employees under the Equal Employment Opportunities Commission (EEOC) rules. How do I get that information?

The information we normally request derives from a curriculum vitae/resume or from company background checks. The information that BXA may request as part of the license application process is requested in order to determine whether BXA should authorize the release of such controlled sensitive technology. The hiring of foreign nationals is not prohibited nor regulated by the Export Administration Regulations (EAR). The EAR does not regulate employment matters. The justification for the "deemed export" rule is that there is no more effective way of disclosing sensitive technical information (e.g., design know-how) than to work side-by-side in a laboratory or on the production floor of a company. Our web page [guidance](#)[PDF] is designed to assist you in pointing out the types of relevant information that BXA examines in connection with the license application review.

13. What is a "deemed re-export"?

The term "deemed re-export" is often used to indicate the transfer of controlled U.S. technology to a third-country national overseas. As an example, a U.S. exporter transfers its controlled proprietary technology to a firm in country A. The firm in country A, in turn, will employ an individual from country B who is not a permanent resident of country A, or of the United States, and who will need the controlled proprietary technology to perform his or her assigned duties. If the U.S. exporter intends to transfer the controlled technology to the country B national who is now an employee of the country A firm, the U.S. exporter is responsible for obtaining any required deemed export license, as if it were transferring the technology to country B. If the country A firm intends to transfer the controlled technology that it received from the United States to the country B national, then the country A firm is responsible for obtaining any required deemed re-export license from BXA. Please see §734.2(b)(4) of the Export Administration Regulations (EAR).

Technology

14. What technologies are subject to the Commerce Department controls?

Generally, technologies subject to the Export Administration Regulations (EAR) are those which are in the United States or of U.S. origin, in whole or in part. Most are proprietary. Technologies which tend to require licensing for transfer to foreign nationals are also dual-use (i.e., have both civil and military applications) and are subject to one or more control regimes, such as National Security, Nuclear Proliferation, Missile Technology, or Chemical and Biological Warfare.

Foreign technology with U.S.-origin technology commingled to a degree above a de minimis level is considered to be subject to the EAR. Technologies which may require an export license are those which are subject to the EAR and which are listed in the Commerce Control List, see Parts 734, 738, and 774 of the EAR.

Some technologies are under the exclusive jurisdiction of another agency of the U.S. government and are not subject to the EAR. These include defense services which are under the jurisdiction of the State Department and technology related to the production of special nuclear materials which is under the jurisdiction of the Energy Department.

Still other technologies do not require any authorization because they are already "publicly available." These include patent applications; publicly available technology and software (other than software and technology controlled as encryption items) that are already published or will be published; technology which arises during or as a result of fundamental research; or technology which is educational. See Part 734 of the EAR for details. **NOTE: ITAR requires the technology to be PUBLISHED, not will be published.**

15. Is software considered "technology" and is it similarly controlled?

The Export Administration Regulations (EAR) definitions distinguish between software and technology. Software is one of the groups within each of the categories of items listed on the Commerce Control List (CCL). Software which is delineated on the CCL is controlled.

16. What technologies are considered "fundamental research"?

"Fundamental research" is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community. It is distinguished from proprietary research and from industrial development, design, production, and product utilizations, the results of which ordinarily are restricted for proprietary and/or specific national security reasons. Normally, the results of "fundamental research" are published in scientific literature, thus making it publicly available. Research which is intended for publication, whether it is ever accepted by scientific journals or not, is considered to be "fundamental research." A large segment of academic research is considered "fundamental research." Because any information, technological or otherwise, that is publicly available is not subject to the Export Administration Regulations (EAR) (except for encryption object code and source code in electronic form or media) and thus does not require a license, "fundamental research" is not subject to the EAR and does not require a license. Please see §734.8 for a full discussion.

17. Are cryptographic technology and software source code "deemed exports" handled the same way as other technology and software source code?

No, they are not. The encryption regulation published on January 14, 2000, changed the deemed export rule for encryption technology. The authorization for encryption technology was updated to allow some encryption technology under License Exception ENC. ENC is now also allowed for foreign employees of U.S. companies coming to the United States to work. However, ENC would not cover employees of a Romanian firm, for example, working at a U.S. company. These foreign nationals are not "employees" of the U.S. company. As far as encryption source and object code are concerned, while in the United States, foreign nationals may use any type of encryption source code and object code. The only deemed export authorization required for encryption relates to encryption technology and when a U.S. person intends to provide technical assistance to foreign nationals using source code. (Please note that Export Administration Regulations (EAR) licensing requirements may apply for transfers of encryption software in the United States to an embassy or affiliate of a foreign country.) See our related [deemed export encryption chart](#) for more guidance.

Controlled "use" technology

18. How do I determine if "use" technology available to a foreign national here in the United States requires a deemed export license?

Answer:

- The EAR outlines specific parameters to determine whether technology is subject to the EAR or whether technology is not subject to the EAR.
- "Use" technology that is not subject to the EAR and therefore not subject to deemed export licensing includes:
 - Items that are exclusively controlled for export or reexport by other U.S. government agencies;
 - Prerecorded records, printed books, pamphlets and miscellaneous publications; or,
 - Publicly available technology and software (excluding encryption), which includes: i) information already published or that will be published, see part 734.7; ii) information arising during or resulting from fundamental research, see part 734.8; iii) information which is educational, see part 734.9 and iv) information included in certain patent applications, see part 734.10.
- If the "use" technology available to your foreign national falls into any of the above categories, then it is not subject to the EAR, and thus, a deemed export license is not required.
- If you determine that the "use" technology available to your foreign national does not fall into any of the above categories, it may be subject to deemed export licensing depending on the commodity classification of the "use" technology and the country of origin of the foreign national.

19. I determined that my foreign national employee will be around controlled equipment, does this mean that my foreign national employee, researcher or student needs a deemed export license to operate export controlled equipment?

Answer:

Not necessarily. Keep in mind that the deemed export rule does not regulate the operation of controlled equipment. Rather, it is a release to a foreign national of export-controlled “use” technology that may have deemed export licensing implications, and “use” technology includes all of the attributes of “use” as defined in the EAR Part 772 (i.e., operation, installation, maintenance, repair, refurbishing and overhaul).

- If the foreign national has access only to the technology that is necessary to operate the export controlled equipment, a release of “use” technology has not occurred and no deemed export license requirement is triggered.

Fundamental Research

20. Question: Do I need authorization for a foreign graduate student to work in my laboratory?

Answer:

- You do not need a license or authorization for the mere presence of a foreign graduate student in your laboratory. You do need a license if you plan to transfer controlled technology to a foreign national and the export of that technology is restricted to the foreign national’s home country.
- The EAR license requirements apply to the transfer of controlled technology for “development”, “production”, or “use” of certain equipment. See Part 772 for definitions of all three terms.
- If the graduate student is receiving technology that has already been published, then that technology is not subject to the EAR and no license is required for the release of that technology. See §734.3(b)(3) and §734.7 (defining published technology). BIS considers user manuals for equipment to be “published” when they are available from the manufacturer, either (1) for purchase at a price that does not exceed the cost of distribution, or (2) as part of the normal materials that accompany the equipment when sold to the public and without restrictions on further distribution.
- If the graduate student is receiving technology in the context of instruction in a catalog course (or associated teaching laboratories) of an academic institution, then that technology is not subject to the EAR and no license is required for the release of that technology. See §734.3(b)(3)(iii) and §734.9.
- If the graduate student is receiving technology that arises during, or results from, “fundamental research,” then that technology is not subject to the EAR and no license is required for the release of that technology. See §734.3(b)(3)(ii) and §734.8.
- But if you plan to release technology that is subject to the EAR and that is, according to the CCL and Country Chart, restricted for export to the home country of the foreign graduate student, then you will need a deemed export.

More direct hypothetical situations

21. Our university has several departments that are conducting research under contract with private corporations. Some of this research is controlled “development” technology. We often have researchers (visiting faculty, post-graduate fellows, and research assistants) who are foreign nationals working on controlled “development” technology research. Does the university need to apply for a deemed export license?

It depends. You need to look at the research and the contract terms for release of the results of the research. If there are no conditions placed on the research, and it is the intent of the research team to publish its findings in scientific literature, then it is considered “fundamental research,” and no license is required. If the contract requires that the private corporation review the findings of the research team with the intent of controlling what results are to be released in open literature, then the research is considered proprietary, and a license is required.

22. Our university does research under U.S. government sponsorship. We may have foreign national researchers working on this. Is a deemed export license required?

Under the Export Administration Regulations (EAR), U.S. government sponsored research is handled very much like corporate sponsored research. It may be “fundamental research”, or it may be proprietary. See §§ 734.8 and 734.11 of the EAR for details. In addition, some U.S. government data may be subject to separate restrictions on dissemination such as security classification.

****Courtesy of BIS website:** <http://www.bis.doc.gov/deemedexports/deemedexportsfaqs.html>

Links to the REGULATIONS:

EAR: ECFR database

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=256c971f2e9cb547e32ac24ffc861acb&c=ecfr&tpl=/ecfrbrowse/Title15/15cfrv2_02.tpl#730

ITAR: United States Munitions List database

http://www.pmdtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf

Remember: You are solely responsible for understanding and conducting yourself in accordance with the rules regarding exports and deemed exports. Ask questions where you do not understand. You may call the BIS help desk, DDTC help desk and/or Millie Johnson, JD, Institutional Compliance Officer - millie.johnson@ttuhsc.edu at 806-743-3950