FAQ ON DEEMED EXPORT CONTROL ATTESTATION

❖ **What is Deemed Export Control?**

Any release of technology or source code subject to the Export Administration Regulations (EAR) or International Traffic in Arms Regulations (ITAR) to a foreign person in the United States. Such release is deemed to be an export to the home country or countries of the foreign person.

❖ **Who is a Foreign Person for Export Control Purposes?**

For export control purposes, a foreign person includes any individual in the United States in nonimmigrant status (i.e., H-1B, O-1, TN, H-3, L-1, J-1, F-1, B-1, Practical Training), and individuals unlawfully in the United States. A foreign person is also any branch of a foreign government or any foreign corporation or group that is not incorporated or organized to do business in the United States. (Texas A&M University System Policy 15.02 [http://policies.tamus.edu/15-02.pdf](http://policies.tamus.edu/15-02.pdf))

❖ **Does the Deemed Export Control Rule apply to all Foreign Persons?**

The deemed export control rule does not apply to persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

❖ **Who does the Deemed Export Control Attestation Affect?**

The attestation is part of the federal immigration form (I-129). However, the attestation is required only for the sponsorship of foreign nationals on an H-1B, H-1B1, L-1 and O-1A nonimmigrant status. This, however, does not mean that the deemed export control rule is not applicable to all other foreign persons. It just means that you do not have to complete an attestation for those other foreign persons.

❖ **Who needs to Complete and Execute the Internal Deemed Export Control Attestation?**

The department head, principal investigator or supervisor (hereinafter collectively referred as "supervisor") of the foreign national employee or prospective employee are the individuals responsible for the completion of the internal attestation.

❖ **Why are You Required to Complete and Execute the Internal Deemed Export Control Attestation?**

As the direct employer and supervisor of the foreign national employee (or prospective employee), you know the details of the position's job duties and responsibilities and whether the research in which the foreign person will be participating or the technical data being released to the foreign person may be restricted to foreign persons. 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 attestation.

❖ **Can Someone Else other than the Supervisor Complete and Execute the Internal Deemed Export Control Attestation?**

The attestation must be completed by the individual supervising the foreign national employee. This responsibility cannot be delegated to someone who does not possess direct knowledge of and accountability for the job duties and responsibilities of the employee. For example, the completion of the attestation cannot be delegated to administrative staff positions.
Will the Internal Deemed Export Control Attestation be Filed with the Federal Authorities?

Texas A&M University – Corpus Christi’s internal attestation will not per se be filed with the federal authorities. Instead, the internal attestation completed by the supervisor will provide Texas A&M University – Corpus Christi the basis to complete the federal attestation based on the disclosures made by the supervisor in the internal form.

Where Do You Obtain the Internal Deemed Export Control Attestation Form?

The Texas A&M University – Corpus Christi Internal Deemed Export Control Attestation Form can be obtained from Human Resources.

What does “technology” or “technical data” mean in the context of the EAR and ITAR?

The EAR defines “technology” as: Specific information necessary for the “development”, “production”, or “use” of a product. The information takes the form of “technical data” or “technical assistance”. Controlled “technology” is defined in the General Technology Note and in the Commerce Control List (Supplement No. 1 to part 774 of the EAR).

As indicated in the above definition, technology can be released through technical assistance which may take forms such as instruction, skills training, working knowledge, consulting services. Also, technical assistance may involve transfer of “technical data” (see below).

The General Technology Note applies to development, use and production of a product. In this regard, the EAR defines the following:

- “Development”. (General Technology Note)--“Development” 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, layouts.
- “Production”. (General Technology Note) (All Categories)-- Means all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.
- “Use”. (All categories and General Technology Note)--Operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.

According to the EAR, “technical data” 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.

The ITAR in 22 CFR §120.10 defines “technical data” as (1) information, other than software as defined in §120.10(a)(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation. (2) Classified information relating to defense articles and defense services; (3) Information covered by an invention secrecy order; (4) Software as defined in §120.8(f) of this subchapter directly related to defense articles; (5) This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in §120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.
What are you Required to do by the Internal Deemed Export Control Attestation?

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.pmddtc.state.gov/regulations_laws/itar.html

2. **Certify** that you have reviewed the foregoing regulations

3. **Make a determination** that an export license is not required for the employee or individual you intend to employ to have access to Texas A&M University – Corpus Christi'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

In addition, the supervisor 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 Human Resources 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).

How do you Determine If a License is Required?

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 the Human Resources office for further guidance and support in arriving at this determination.

What Happens if I Make a Mistake or Misrepresentation on the Internal Deemed Export Control Attestation?

A mistake or misrepresentation on the attestation carries **serious consequences**:

1. Failing to properly assess if an export control license is required and, consequently, committing an export control violation may result in the imposition of civil penalties of up to $500,000 per violation, criminal penalties of up to $1,000,000 per violation and up to 20 years in prison, denial of export privileges, and debarment from U.S. government contracts.

2. Knowingly misrepresenting or concealing a material fact on a United States federal form (I-129) may result in the imposition of civil and criminal penalties, and denial of the nonimmigrant petition. Note that when the Texas A&M University – Corpus Christi immigration employment specialist completes the federal attestation, it will be done relying on the internal attestation executed by the supervisor.
Is There Training Available for Export Control?

Yes. The Texas A&M University System has the online training module 2111212 “Export Control & Embargo Training” available on TrainTraq thorough the Single Sign On (SSO) login at https://sso.tamus.edu/Logon.aspx