

**DEEMED EXPORT ATTESTATION for EMPLOYMENT****INSTRUCTIONS****Key Terms & Information****FOR COMPLETING THE DEEMED EXPORT CONTROL ATTESTATION FORM FOR SPONSORSHIP OF H-1B, H-1B1 and O-1A EMPLOYEES**

**NOTE:** The hiring department is required to return the Deemed Export Control Attestation Form (Pages 5 and 6) to Immigration Services. No action on your request will take place without this document.

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 the Office of Human Resources before the institution can petition for the foreign national employee.

Prior to completing and certifying the attestation the direct supervisor and the foreign national employee (contingent upon contract/employment offer successful processing) are required to 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>. This training is mandatory and must be completed within ten (10) business days of contract or employment offer acceptance.

The hiring department is required to:

- Review the EAR and the ITAR regulations.
- Certify that you have reviewed the two sets of regulations
- Make a determination that an export license is not required for the individual you intend to employ to have access to Prairie View A&M University technology or technical data, or that such a license is required.
- Should a license be required – make a statement that you will prevent the foreign national from having access to the controlled technology or technical data until an export license has been obtained.
- You must document and keep a file of sources used to make your determination.
- Your attestation is what the University will use to file the nonimmigrant petition with the Department of Homeland Security.
- You must attach a statement to the attestation justifying your determination.

## **KEY TERMS**

EAR (Export Administration Regulation)  
ITAR (International Traffic in Arms Regulations)  
FTR (Foreign Trade Regulations), or  
OFAC (Office of Foreign Assets Control)

**Hiring Department** – Authorized unit with personnel in an official capacity with delegated authority to issue a contract or offer for employment (i.e. department head/director).

**Export control laws** are federal regulations that control the conditions under which certain information, technologies, and commodities can be transmitted overseas to anyone, including U.S. citizens, or to a foreign national on U.S. soil. The laws are implemented by both the Department of Commerce through its Export Administration Regulations (EAR) and the Department of State through its International Traffic in Arms Regulations (ITAR).

### **Export**

Export means an actual shipment or transmission of items subject to the EAR out of the United States, or release of technology or software subject to the EAR to a foreign national in the United States. Release of export-controlled technology and source code can also occur through transmission via e-mails, faxes, designs, and verbal correspondence.

Under the ITAR regulations, export means not only sending or taking a defense article out of the U.S. in any manner, but also disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the U.S. or abroad. An export also means performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the U.S. or abroad.

### **“Deemed” Exports**

In addition to actual shipment of a commodity out of the country, the export regulations also control the transfer, release or disclosure to foreign persons in the United States of technical data about controlled commodities. The “deemed export” regulation states that a transfer of source code or “technology” (EAR term) or “technical data” (ITAR term) to the foreign person is “deemed” to be an export to the home country of the foreign person. This deemed export 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)). Accordingly, for all controlled commodities, a license or license exception is required prior to the transfer of “technology” or “technical data” about the controlled commodity to foreign persons inside the U.S.

### **“Foreign National and Foreign Entity”**

The term “foreign national” refers to everyone other than a US citizen, a permanent resident alien, & certain “protected individuals” (refugees and those with asylum); it includes any company not incorporated in the United States.

**DEEMED EXPORT ATTESTATION for EMPLOYMENT****ITAR:****"Technology" or "Technical Data"**

These phrases refer to technical information beyond general and basic marketing materials about a controlled commodity. They do not refer to the controlled equipment/commodity itself, or to the type of information contained in publicly available user manuals. Rather, the terms "technology" and "technical data" mean specific information necessary for the development, production, or use of a commodity, and usually takes the form of blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering specifications, and documentation. The "deemed export" rules apply to the transfer of such technical information to foreign nationals inside the U.S.

**Defense Service**

The ITAR defines defense service as (1) The furnishing of assistance (including training) to foreign persons, whether in the U.S. or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; (2) The furnishing to foreign persons of any controlled technical data; and (3) Military training of foreign units and forces. A Technical Assistance Agreement would need to be put in place before transfer of ITAR controlled technical data to a foreign person.

**Why is Export Control important?**

Because you, as an individual, and PVAMU can be held liable for improperly transferring controlled technology, it is important that you review the federal requirements.

**What is a Technology Control Plan (TCP)?**

A TCP is simply a plan that outlines the procedures to secure controlled technology (e.g., technical information, data, materials, software, or hardware) from use and observation by unlicensed non-U.S. citizens.

**What are "Use" Technologies?**

The routine "use" of controlled equipment by foreign nationals (e.g., using it in the ordinary way specified in the user manual, in such a manner that does not disclose technical information about the equipment beyond what is publicly available, does not require a license. However, a license may be required if a foreign national is "using" the equipment in such a way as to access technical information beyond what is publicly available (for example, accessing the source code of software or modifying a piece of equipment in such a way as to gain non-publicly available technical information about its design.)

**What is "Published" Information?**

Information is "published" (and therefore not subject to export controls) when it becomes generally accessible to the interested public in any form, including:

1. publication in periodicals, books, print, electronic, or other media available for general distribution (including websites that provide free uncontrolled access) or to a community of persons interested

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- in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution;
2. readily available at libraries open to the public or at university libraries;
  3. patents and published patent applications available at any patent office; and
  4. release at an open conference, meeting, seminar, trade show, or other open gathering held in the U.S. (ITAR) or anywhere (EAR).

Note, a conference or gathering is "open" if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record of the proceedings and presentations. A conference is considered open notwithstanding a registration fee reasonably related to cost, and there may be a limit on actual attendance as long as the selection is either 'first come' or selection based on relevant scientific or technical competence.

**What is a *Fundamental Research Exclusion (FRE)*?**

The export control regulations exempt from licensing requirements technical information (but not controlled items) resulting from "fundamental research." "The term *Fundamental Research* is defined as *basic and applied* research in science and engineering conducted at an accredited U.S. institution of higher education where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research the results of which ordinarily are restricted for proprietary reasons or specific national security reasons." Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research. The Fundamental Research Exclusion (FRE) permits U.S. universities to allow foreign members of their communities (e.g., students, faculty, and visitors) to participate in research projects involving export-controlled technical information on campus in the U.S. without a deemed export license. Further, technical information resulting from fundamental research may be shared with foreign colleagues abroad and shipped out of the United States without securing a license.

Prepublication review by a sponsor of university research solely to ensure that the publication does not compromise patent rights or inadvertently divulge proprietary information that the sponsor has furnished to the researchers does not change the status of the research as fundamental research, so long as the review causes no more than a temporary delay in publication of the research results. However, if the sponsor will consider as part of its prepublication review whether it wants to hold the research results as trade secrets (even if the voluntary cooperation of the researcher would be needed for the company to do so), then the research would no longer qualify as "fundamental". As used in the export regulations, it is the actual and intended openness of research results that primarily determines whether the research counts as "fundamental" and not subject to the export regulations. University based research is not considered "fundamental research" if the university or its researchers accept (at the request, for example of an industrial sponsor) restrictions on publication of scientific and technical information resulting from the project.

**What is "*Educational*" Information?**

Whether in the U.S. or abroad, the educational exclusions in EAR and ITAR cover instruction in science, math, and engineering taught in courses listed in catalogues and associated teaching laboratories of academic institutions, even if the information concerns controlled commodities or items. Dissertation research must meet the standards for "fundamental research" to qualify as "publicly available."

**DEEMED EXPORT ATTESTATION for EMPLOYMENT**

**DEEMED EXPORT CONTROL ATTESTATION FORM**

The Deemed Export Control Attestation form should be returned to Human Resources – Immigration Services. Attachments for additional required information should be attached to the form with the subject line: Deemed Export – Applicant’s Name. All sign in blue ink.

**Hiring Department** - As the hiring department 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. This certification will be made available to the federal authorities in case of a request or audit.

1. My full name is: \_\_\_\_\_
2. I am the Dean/Director, Department Head, Principal Investigator: circle one
3. In the department of: \_\_\_\_\_
4. The PVAMU College of or Administrative Unit: \_\_\_\_\_

Contact Information:

5. Email: \_\_\_\_\_
6. Office Telephone Number: \_\_\_\_\_
7. Physical address: \_\_\_\_\_

I have knowledge of:

8. The proposed employment of (applicant): \_\_\_\_\_
9. Title/Position: \_\_\_\_\_
10. I am attaching a description of the position responsibilities and duties for which a nonimmigrant petition is being sought.
11. 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:
12. 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:

Initial

- 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 Research Compliance Office at Prairie View A&M University to further clarify potential restrictions regarding such technology or technical data and, I have determined that for prospective employee that for the position duties:

If the response to questions 12.1. or 12.2. is 'YES' or 'UNKNOWN'. Provide details under a separate attachment.

12.1 \_\_\_\_\_ 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

12.2 \_\_\_\_\_ 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 Prairie View 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.

**1. Principal Investigator**

\_\_\_\_\_  
Printed Name & Position Title -Program

\_\_\_\_\_  
Signature & Date

**2. Department Head or Director (circle one)**

\_\_\_\_\_  
Printed Name & Position Title -Program

\_\_\_\_\_  
Signature & Date

**3. Dean or Vice President (circle one)**

\_\_\_\_\_  
Printed Name & Position Title -Program

\_\_\_\_\_  
Signature & Date