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How to Approach the New Question on Export Controls

This document discusses an important change to the I-129 Form. The Citizenship & Immigration Service (CIS) has agreed to assist the US Departments of Commerce (DOC) and State (DOS) with the collection of information about compliance with U.S. export laws. Specifically, the application form now inquires whether or not the foreign national employee has access to any technology or technical data controlled under U.S. export laws and, if so, whether the company has an appropriate license in order to export the information to the employee.

As a result, applications for H-1B, L-1 and O-1 visas now include an attestation that the employer has reviewed the export control regulations known as EAR ([Department of Commerce Export Administration Regulations](#)) and ITAR ([State Department International Traffic in Arms Regulations](#)); applied EAR and ITAR to their operations and the specific role that the foreign national employee will play within the organization; and determined that either an export control license is not necessary or a license is needed and, unless/until a license is received, the employer will prevent the foreign national employee from accessing any controlled data.

In order to complete the application process for H-1B, L-1, and O-1 petitions, employers will need to review and analyze EAR and ITAR to determine whether foreign national employees will have access to any data or technology that may be subject to export controls.

Although the CIS has included this statement on visa application forms as a courtesy to DOC and DOS, *EAR and ITAR are not immigration regulations*: rather, they are a complex set of laws that pertain to the control of potentially sensitive data and technology. The information and materials covered by these export controls are broad-based, although there are many exclusions to the license requirement (including, but not limited to, data that is published, patented, available in the public domain, or consists of commonly taught principles and fundamental research).

So that you can accurately address the attestation on the visa application forms, we recommend that you consider the following steps:

1. Contact the appropriate office within your organization that would handle export control issues, if any. Offices that might typically be charged with export control include: the Provost Office, Compliance Office, General Counsel Office, Institutional Research, Office of Sponsored Programs, Office of Research, Grant Accounting, etc. Such offices may already be familiar with export license regulations and thus be able to assist you in understanding how to respond to the attestation requirements.
2. If no one within your organization is familiar with export control issues and, upon reviewing EAR and ITAR, you believe that you may be subject or you cannot determine whether or not you are subject, you may want to consult an attorney who practices in this area of law. He/she may be able to provide you with sufficient direction to make an informed determination on future applications in addition to this case.

3. The Department of Commerce (DOC) has established a telephone line available to companies who need assistance in making the correct determination regarding EAR. You can reach their offices at 202-482-4811. If you would prefer, you can submit a commodity classification request to the DOC online [here](#).
4. In addition to (1) and (2) above, you or another member of your organization may want to complete the web-based informational piece, *USCIS I-129 Part 6 Training: What You Need To Know Before Your Sign*, available for \$150 [here](#). Although this program is targeted specifically to assist organizations with the response to the attestation regarding export controls, the information provided therein is complicated and may not be sufficient for making a determination without some prior understanding of the concepts involved.
5. The DOC web site has a series of six training modules called “Essentials of Export Controls” available [here](#). The training modules can also be downloaded as a pdf [here](#).

In addition to the suggested actions above, other documents that may be helpful as you consider this issue have been linked on our web site.

Please keep in mind that the individual signing the I-129 Forms on behalf of your organization should be someone with enough seniority to understand both your operations and the implications of signing this petition under penalty of perjury. Employers will want to make sure that they have taken sufficient steps to ensure no misrepresentations are made on the I-129 Form, which in itself would be a violation of federal law.

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