Deemed Exports

Whenever Emory University allows a foreign national employee to have access to certain technology or technical data, that access may be considered to be a "release" or "export" of the technology or technical data to the foreign national's country of citizenship. This release of technology and/or technical data is referred to as a "deemed export," because an export is "deemed" to have occurred. (Note that a "deemed export" does not require that the technology or technical data actually be transmitted or exported across the U.S. border.)

In some cases, a license from the appropriate government regulatory agency may be required before the foreign national is permitted to work with or have access to technologies or technical data that are controlled by U.S. Export Controls regulations.

For this reason, Emory requires that the "Deemed Export Decision Tree" be completed as a part of the visa application process.

Information Needed:

The "Deemed Exports Decision Tree" will assist you in determining whether a license potentially could be required for a prospective employee based on his/her job duties. If the employee is expected to have more than one job duty, such as both research and clinical duties, you must analyze each duty separately.

After you have reviewed the decision tree, you should have enough information to decide whether or not a license potentially could be required. You will then need to do one of the following:

A.) If, after using the "Deemed Exports Decision Tree," you determine that the employee will be engaged in activities that will NOT potentially require a license, please sign and date the attached "Deemed Export Controls Certification" form and return it to ISSP. (Note - Emory ISSP will rely upon this internal certification in completing and signing the Deemed Exports Certification section contained in the federal I-129 form.)

B.) If, after using the Decision Tree, you are unable to determine whether the employee will be engaged in activities for which a license potentially could be required, please complete the "Deemed Export Controls Questionnaire" form and submit it to your area or unit's Export Controls Coordinator. Your Export Controls Coordinator will contact the Office of Research Compliance (ORC) for further evaluation regarding the potential license requirement.

Please keep in mind that if a license is required, it can take 45-90 days (or more in some extreme cases) to obtain approval for the license from the appropriate federal agency, so please be sure to consider this delay in developing the schedule for your project.

Please be aware that failure to obtain the appropriate license and/or failure to file accurate deemed export information on the visa petition can result in severe federal civil and criminal penalties for both the University and the involved individuals.
Deemed Export Certification Decision Tree

**IMPORTANT NOTE** - If the scholar will be performing multiple duties, such as conducting research AND providing clinical or administrative services, EACH proposed duty must be analyzed separately in accordance with this decision tree. Initial each final decision box relevant to the position duties.

Will the scholar engage in research funded by NIH or NSF?

- Yes
  - Fundamental Research – No license required. Initial corner box; date Decision Tree; complete Certification e-form.

- No
  - If the scholar will conduct testing and/or research that is NOT funded by NIH or NSF, does the contract or grant contain restrictions on publication or the citizenship status of research staff?
    - Yes
      - Initial corner box, date Decision Tree; complete Deemed Exports Questionnaire e-form
    - No
      - Will the scholar teach catalogue courses or to provide clerical administrative services?
        - Yes
          - Initial corner box, date Decision Tree; complete Deemed Exports Questionnaire e-form
        - No
          - Will the scholar have access to encryption technology in excess of 64 bits?
            - Yes
              - Is the scholar a citizen of Cuba, Iran, North Korea, Syria or Sudan?
                - Yes
                  - Initial corner box; date Decision Tree; complete Deemed Exports Questionnaire e-form
                - No
                  - No license required. Initial corner box; date Decision Tree; complete Certification e-form.
            - No
              - Will the scholar have access to “use” technology* (see definition below) or other technical data or non-publicly available source code for software?
                - Yes
                  - No license required. Initial corner box; date Decision Tree; complete Certification e-form.
                - No
                  - No license required. Initial corner box; date Decision Tree; complete Certification e-form.

**KEY**

- Move to next question
- Initial box; date Decision Tree; complete Certification e-form
- Initial box; date Decision Tree; complete Deemed Exports Questionnaire e-form

Date of review of Decision Tree:

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* The Export Administration Regulations defines “use” technology as “specific information necessary for the “operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing” of a product. If the technology available to the foreign national does not meet all of these attributes, then it is not “use” technology for deemed export licensing purposes. 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.