The USCIS H1-B Deemed Export Certification

Requirements and Workflow for H1-B Employment at Stanford University

Steve Eisner, Director of Export Compliance and University Export Control Officer
Stanford University
Presentation to Stanford’s Human Resource Managers Group
April 3rd, 2013
**USCIS Employer Requirements for H1-B Applicants**

**Export Control Assessment**

- Requirement debated in the aftermath of 9/11 and instituted in 2011
- Export controls intended to deny adversaries technology and materials that could place US at strategic disadvantage
- USCIS now requires all employers to certify that an H1-B beneficiary does or does not require an export license as a condition of employment
- “Deemed Export” – the release of export controlled technology to foreign nationals in the US
US Export Control Regulations

**EXPORT LICENSING REGIME**

- US export control regulations require US citizens to seek and receive USG approval in the form of an export license before releasing regulated technology on US export control lists to foreign nationals either in the US or abroad.

- Significant penalties apply to the unauthorized release of export controlled technology to foreign nationals:
  - **Criminal penalties**: A fine of up to $1,000,000 or imprisonment for up to twenty years, or both, for each violation.
  - **Civil penalties**: A fine of up to $250,000 for each violation, or twice the value of the transaction, whichever is greater.
Export Controlled Technology

**Definition**

- Specific unpublished *technical information* necessary for the development, production or use of items or software on export control lists
  - Examples: software source code, instructions, diagrams, plans, blueprints, models, formulae, engineering designs and specifications, technical manuals
  - Includes release through oral or visual disclosure
    - Meetings, emails, telephone conversations
  - Also includes release through technical assistance
    - Instruction, skills training, working knowledge, consulting
What Export Controlled Technologies Are Not

**Key Concepts**

- Export controlled technology does NOT include technical information or software code that results from Stanford research
  - The informational products of Stanford research are treated as published since they are intended to be shared broadly
    - Stanford generated technology is thus outside the scope of US export controls

- Stanford’s exposure to export controlled technology generally occurs when a Stanford sponsor or third party provides Stanford personnel with disclosure-restricted or export control-marked technical information, materials or software code identified on US export control lists
H1-B Deemed Export Questionnaire

Bechtel/Dean of Research Office Collaboration

- H1-B Deemed Export Questionnaire is an integral element of Bechtel's H1-B Employment Visa Workflow process

- Questionnaire is accessed from within the electronic workflow module
  › Appears as a discrete tab entitled “Export Control”

- H1-B workflow process for export control is described at Section 3.6.3 and Section 6 of Bechtel’s H1-B Process Overview

- All workflow questions should be addressed to Bechtel (Lynn Kroner)
  › EC Officer is available to provide technology assessments and guidance on questionnaire content
Questionnaire Submission

**PROCESS REQUIREMENTS**

- Two key requirements:
  - The Questionnaire must be completed and submitted from within the H1-B workflow; and
  - The Questionnaire must be completed and submitted by the applicant’s:
    - Principal Investigator/Faculty Supervisor (research positions) or
    - Senior Human Resource Manager (non-research positions)
      - **Questionnaire completion cannot be delegated!**

- ORA-1130 “Export Controls, an Overview” is a one time STARS course requirement.
  - Course completion must occur prior to Questionnaire submission
WHAT DO EXPORT CONTROLS USUALLY COVER?

- Chemical, Biotechnology, and Biomedical Engineering
- Materials Technology
- Remote Sensing, Imaging, and Reconnaissance
- Navigation, Avionics, and Flight Control
- Robotics
- Propulsion System and Unmanned Air Vehicle Subsystems
- Telecommunications/Networking
- Nuclear Technology
- Sensors and Sensor Technology
- Advanced Computer/Microelectronic Technology
- Information Security/Encryption
- Laser and Directed Energy Systems
- Rocket Systems
- Marine Technology
Dear Steve Eisner,

You are receiving this message because you have been offered a job at Stanford University and will require the University to sponsor a visa based on your employment. In order for Stanford to sponsor your employment visa, I need detailed, accurate information regarding your biographical data, immigration history, employment history and education.
Sample Workflow Section: Export Control Questionnaire

The questions that follow are designed to assist Stanford in accurately certifying to USCIS whether unpublished, regulated technology or technical data will be released to a Stanford foreign national employee, and if so, whether an export license will be required. These questions will also help mitigate institutional and individual export control compliance risk.

Please note that Stanford University’s export control website contains background information, tools and resources including an export control tutorial available as a desktop reference in PDF format that you may find helpful. In addition, Stanford’s Export Control Officer (steve.eisner@stanford.edu, 4-7072) is available should you have questions or wish to request guidance. Export control regulation is complex and you should not hesitate to seek this guidance.

* Do you know, or anticipate, that the proposed Stanford foreign national employee will require access to or use of an ITAR listed item or ITAR listed software that is NOT the product of university fundamental research?

*Do you know, or anticipate, that the proposed Stanford foreign national employee will require access to commercial or third-party unpublished development, production or use technology that would be subject to export control regulations?

* Do you know, or anticipate, that the proposed Stanford foreign national employee will require access to technical information or software source code that is subject to disclosure restrictions?

*Do you know, or anticipate, that the proposed Stanford foreign national employee will be exposed to regulated export control-listed technology or technical data in any other manner?
Stanford Export Control Resources

- Stanford Export Control Website:
  - [http://doresearch.stanford.edu/research-scholarship/export-controls](http://doresearch.stanford.edu/research-scholarship/export-controls)

- Stanford H1-B Deemed Export Certification Webpage:

- Stanford Export Controls Decision Tree:

- Stanford Export Controlled Items Page: