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**INTERNATIONAL TRADE &
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USCIS Imposes New Requirements on Form I-129 Application

On February 20, 2011, important new certification requirements concerning deemed exports take effect for the U.S. Citizenship & Immigration Service (USCIS) Form I-129 application. The Form I-129 is used by companies sponsoring employees for most employment-based visas. USCIS recently added a new question to the Form I-129 that requires a “Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States” to address deemed export concerns.

“Deemed export” is a term used by the U.S. Department of Commerce and the U.S. Department of State in their respective export control regulations. It refers to allowing access to a controlled product or technology by a non-U.S. national (i.e., a person other than a U.S. citizen or permanent resident) inside the United States. Under the respective regulations of Commerce and State, if an export license is required to export a product or technology to a particular country, a deemed export license is required to allow access within the United States to a national of that country. The Form I-129 revision requires employers to certify they have reviewed the export control requirements applicable to that individual and have determined whether a deemed export license is required.

To avoid submitting incorrect certifications, employers should assess whether any products or technologies (including production equipment) that they procure, use or produce require a deemed export license under the Department of Commerce’s Export Administration Regulations (for commercial products and dual-use goods) or the International Traffic in Arms Regulations administered by the Department of State’s Directorate of Defense Trade Controls (for defense articles). Not only do employers need to be aware of whether their products or technologies require a license, but also whether the products or technologies of third parties (such as clients or customers) where their employees are placed require licenses. Penalties for incorrectly concluding that an export license is not required for a non-U.S. national employee include civil fines of up to \$500,000, criminal fines of \$1 million per violation, prison terms of up to 10 years and possible loss of export privileges and government contract debarment.

FOR MORE INFORMATION

For more information, please contact:

James A. Losey	202.263.4135	James.Losey@ThompsonHine.com
Sarah C. Flannery	216.566.5718	Sarah.Flannery@ThompsonHine.com

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