

Latin American Blog

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[USCIS Makes Important Changes to I-129 Petition for Foreign Workers Effective December 23](#)

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United States Citizenship and Immigration Services (USCIS) has changed the I-129 Petition for Nonimmigrant Workers. This affects all H-1B, H-1B1 Chile/Singapore, L-1 and O-1A petitioners. Companies must certify compliance with the deemed export laws governing the release of controlled technology or technical data to foreign persons in Part 6 of the new form, which becomes mandatory on December 23, 2010.

The new I-129 form requires companies to certify that:

1. A license is not required from the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or
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 beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

To complete this certification, companies must know the export control treatment under the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR) of technology or technical data to which their non-immigrant workers will have access. Making this determination requires a careful review of the technical characteristics of the technology or data and the nationality of the employee.

Companies in the manufacturing and engineering sectors will be most affected, and within those sectors some of the industries most affected include aerospace, sophisticated electronics, high speed computing and software, chemicals, biotech, security technologies and anything relating to the military. The countries subject to the most restrictive export controls include China, Cuba, Iran, North Korea, Russia, Sudan, and Syria, but there are some technologies controlled for nationals of virtually all foreign countries, including all countries in Latin America. Companies that handle controlled technology and choose to prevent access for their foreign workers will be required to implement safeguards that are deemed legally adequate under applicable EAR and ITAR policies.

Sheppard Mullin's export control specialists are assisting many companies with this new compliance requirement. If your company employs foreign workers in the H-1B, H-1B1 Chile/Singapore, L-1 and O-1A categories and is not certain of the export control status of its technology, feel free to contact us.

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