

NATIONAL WEATHER SERVICE Instruction 60-704

August 20, 2012

***Information Technology
Controlled Technology***

Technology Controls and Foreign National Access

NOTICE: This publication is available at: <http://www.nws.noaa.gov/directives/>.

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Type of Issuance: Initial

SUMMARY OF REVISIONS:

 //Signed//
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 August 6, 2012
Date

1.0 Purpose.

1.1 To reduce the potential for unauthorized release of classified, sensitive-but-unclassified (SBU), export controlled technology, proprietary, and non-public information and data to foreign national (FN) while in National Weather Service (NWS) facilities. To provide Information Technology security instructions to mitigate the risk of unauthorized release to FN and, to show behavioral signs of persons who engage in illegal collection of information (espionage); and the importance of checking “Lists” to reduce the vulnerability of terrorist threat.

2.0 Authorities and Responsibilities.

2.1 The Department of Commerce (DOC), through the Office of Security (OSY), regulates access by FNs and is responsible for technology controls at DOC facilities and activities (Department Administrative Order (DAO) 207-12 and NOAA Administrative Order (NAO) 207-12).

2.2 OSY is responsible identifying threats from foreign intelligence services, overseeing the investigation of security incidents, and protecting Departmental personnel, facilities and activities (Department Organization Order (DOO) 20-6).

2.3 Presidential Decision Directives (PDD) and the Code of Federal Regulations (CFR) authorize OSY to identify threats from employee contacts with foreign Nationals (PDD-12), promulgate operations security actions (PDD-298), and investigate the potential loss, compromise or unauthorized disclosure of classified material (32 CFR 2001.48).

2.4 The Export Administration Regulations (EAR) establish export control and deemed export control rules with fines for violations, including criminal and civil penalties (15 CFR Parts 300-799).

3.0 Definitions.

3.1 Foreign National Visitors – Foreign nationals with access to NOAA facilities for three days or less, or attending NOAA-sponsored conferences for five or fewer business days, are defined to be FNVs. A FN attending a conference who requests a follow-on visit for three or fewer additional days remain categorized as an FNV.

3.2 Foreign National Guests - Foreign nationals with access to NOAA facilities for more than three days, are defined to be FNGs, including foreign nationals conducting work at a NOAA facility under a grant, contract, or cooperative arrangement or agreement, where such work requires access to NOAA facilities. Multiple NOAA facilities, the total number of days at all NOAA facilities counts to ascertain if they are FNVs or FNGs.

3.3 Foreign National - For the purposes of DAO 207-12, NAO 207-12, and EAR controls, a

“foreign national” subject to the deemed export rule is an individual who is not a citizen of the United States, not a legal permanent resident (meaning not a "permanent resident alien" or "Green Card" holder), and not a "protected individual" under 8 U.S.C. 1324b (a) (3). As a practical matter, foreign nationals present in NOAA facilities include employees, contractors, vendors, tourists, students, businesspersons, scholars, researchers, technical experts, military personnel, and diplomats, but may include other categories of visitors or guests. One exception to this general statement is for a "protected person," which includes political refugees and political asylum holders.

- 3.4 Departmental Sponsor/NOAA (DSN) - The NOAA Federal Government employee responsible for the day-to-day activities associated with the successful accomplishment of a foreign visit at the DSN's location. The DSN takes all reasonable steps to protect classified, SBU, export controlled, or otherwise controlled, proprietary, or not-for-public release data, information, or technology from unauthorized physical, visual, and virtual access by a FN. The DSN is a U.S. citizen; a FN cannot host another FN.
- 3.5 Controlled Technology - Items and technology that is required for the development, production, or use of the items on the Controlled Technology List (CCL, 15 CFR Part 774) and that are subject to EAR controls. Controlled technology includes dual use items that have both commercial and military or proliferation applications. Whether export license is required in any particular situation is determined by the home country designation of the foreign national and the type of access that foreign national has to the technology. In addition, controlled technologies are classified, SBU, proprietary, otherwise controlled, or not-for-public-release data, information, or technology.
- 3.6 Controlled Technology Coordinator (CTC) - The NOAA employee, designated by each NOAA Assistant Administrator, Corporate Office (CO), and Staff Office (SO) Director, responsible for managing and coordinating foreign national access and deemed export compliance activities. The CTC is responsible for planning and implementation of FN and export compliance activities within his/her organization. The CTC assists the Departmental Sponsors/NOAA (DSNs) in performing their roles in an appropriate manner and in accordance with this Order and other related DOC and NOAA policies and procedures. The CTC may also be the individual who serves as the Line Office (LO) Deemed Export Steering Committee member.
- 3.7 Senior Administrative Official (SAO) or Senior Bureau Management Official (SBMO) - The SAO or SBMO reviews the information provided by the CTC, or other designated official, and the DSN to ensure the value of collaborative efforts gained to Departmental facilities, staff, and information remains balanced or tips toward the "value gained for the NWS side". The SBMO balances the need to protect classified, SBU, export controlled, or otherwise controlled, proprietary or not-for-public release data, information, or technology against the benefit gained. The SAO/SBMO signifies his/her endorsement in the appropriate location on the Certification of Conditions and Responsibilities for the Departmental Sponsors of

FNG and ensures this completed Certification goes to the proper servicing security office.

- 3.8 Deemed Export - Any release of technology or source code subject to the EAR to a FN within the United States. Such a release is deemed to be an export to the home country or countries of the FN. This deemed export rule does not apply to persons lawfully admitted for permanent residence in the United States or to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).
- 3.9 Commerce Control List - The list of items (i.e., commodities, software, and technology) subject to the export licensing authority of the Bureau of Industry and Security.
- 3.10 Escort - A U.S. citizen employee of NOAA assigned the responsibility of accompanying a foreign national visitor or guest who lacks authorized access within a facility in order to ensure adherence to (1) security measures and (2) technology controls as required by the EAR.
- 3.11 Servicing Security Office (SSO) - The field offices of the DOC/OSY provides security services, support, and guidance to DOC organizations. A servicing security office may provide services and support to a single bureau or may provide services and support to all DOC organizations in a given geographical area.
- 3.12 Facility - An office building; a laboratory; ship, aircraft, or other vessel, or a complex of buildings located on a site that is operated and protected as one unit by DOC/NOAA or its contractors.
- 3.13 Visa - A permit to enter the United States that establishes a particular status (immigrant/non-immigrant, student, exchange visitor, diplomat, etc.) evidenced by a stamp in the foreign national's passport or his/her status as noted on Form I-94 or I-95. A Form I-94 (Arrival-Departure Record) or Form I-95 (Crewman's Landing Permit) shows the date a foreign national arrived in the United States and the "Admitted Until" date – the date the authorized period of stay expires. A foreign national receives a Form I-94 or I-95 upon arrival at a U.S. port-of-entry. Of note, a visa is not a guarantee that the foreign national will be permitted to enter the United States. Final approval for a foreign national to enter the United States rests with U.S. Immigration and Customs Enforcement officials at the port-of-entry.
- 3.14 Access Control Plan (ACP) - Each LO/CO/SO responsible for technology subject to EAR controls ensures appropriate access controls are established and documented for each facility within its control where there are EAR controlled items. Such facilities have an access control plan that identifies all measures and procedures implemented at that facility to control foreign national access to technology regulated under the EAR, and demonstrates that the facility has instituted sufficient measures and procedures to assure full compliance with the EAR.

3.15 EAR99 – This designation is for items that fall under the purview of the EAR, but not on the Commerce Controlled List. For example, a table falls under the EAR jurisdiction not listed in the CCL, so the table would be EAR99. EAR99 items cannot be released to certain countries such as Cuba and North Korea, etc. It is important to remember that release under the deemed export rule often means the blueprints or manuals on how to construct the item.

4.0 Departmental Sponsor/NOAA (DSN) Responsibilities.

The DSN will:

- 4.1 Complete the SSO FNV Form and fax or send by secure email since it contains Personally Identifiable Information (PII). See your Region's SSO website for form, as each region has a specific format. See links at:
http://deemedexports.noaa.gov/compliance_access_control_procedures/how-to-sponsor-a-foreign-national-at-a-noaa-facility.html
- 4.2 Complete the Line Office Endorsement Supplement for the NOAA Sponsor of FNGs Form (ESF) with attached Certification of Conditions and Responsibilities for Departmental Sponsors of Foreign National Guests (the Appendix B Form) and send these only to the CTC. See above link for Forms.
These Forms are required by the CTC at least 30 days in advanced of the expected arrival date of the FNG.
- 4.3 Follow up on the status of the ESF and Appendix B to ensure the CTC signs the forms, the NOAA SAO/SMBO approves, and the SSO grants conditional approval prior to allowing access. The DSN will receive an email from SSO providing conditional approval for the FNG to enter NOAA facilities. After the acceptance of Appendix C, the DSN receives final approval from the SSO.
- 4.4 Review the Access Control Plan with the NWS CTC to ensure it is up to date and that all CT is identified. The DSN also will ensure staff in the office/facility that will visited by the FN have reviewed the ACP and protective measures, including IT security, to prevent unauthorized release of CT.
- 4.5 Review Espionage Indicators (referred to as Appendix A in NAO 207-12) with all staff in the office/facility prior to the FN visit.
- 4.6 Before the FN enters the facility, check and ensure that the FNG/V is not on the following lists:
 - Denied Person List;
 - Unverified List;

- Entities List;
- Specially Designated Nationals List;
- Debarred List; and
- Nonproliferation Sanctions List.

These lists are at the website:

<http://www.bis.doc.gov/complianceandenforcement/liststocheck.htm>

- Do not allow the FN into the facility if they are any of the above referenced lists. Contact the NWS CTC and SSO immediately.

- 4.7 Ensure FNs have health insurance when sponsored by the United States Government. Contact the Office of International Activities for specific requirements.
- 4.8 Ensure the FNG is 100% escorted (i.e., continuous visual access) by a Federal Employee while in the facility, either by the DSN or a designated escort. The SSO under the Limited Unescorted Access (LUA) provision, has authority to grant unescorted access for certain areas without CT., see site at http://deemedexports.noaa.gov/compliance_access_control_procedures/how-to-sponsor-a-f-foreign-national-at-a-noaa-facility.html

Requests for LUA will be in writing and may include facility visit by SSO before granting approval. Coordinate with the CTC and the SSO before initiating this request.

- 4.9 Establish an orientation course for the FN to cover important topics before they begin their assignment. The orientation should include topics such as:
- Safety
 - Shelter-in-Place and Evacuation
 - NOAA Employee Safety, Environmental and Sustainability Awareness Course
 - Diversity and Equal Opportunity
 - Security
 - Ethics
 - IT Security Awareness Course
 - Health Insurance
 - Customs and Courtesies

Safety and evacuation procedures are very important to everyone in the workplace. The FN is no exception. Thus, NWS requires the DSN to provide adequate training or instructions prior to allowing the FN to work in NWS facilities.

- 4.10 Verify the FN's U.S. Visa expiration date does not end before the planned departure date on the DE Form. If you are aware that the FN's U.S. Visa will be renewed, you may enter a departure date (within the one-year timeframe) that goes beyond their visa expiration date.

However, the DSN is responsible to ensure the renewal happens.

- 4.11 Limit the FN's network access only to work-related data and documents; restrict unnecessary access to the network by the FN whenever possible.
 - a) Prohibit issuing/granting administrator rights or other high-level network access on NOAA networks or workstations for FNs unless necessary to perform their work. Report to your CTC before you grant high-level network access.
 - b) Issue VPN Client software to FNs only on Government Furnished Equipment.
 - c) Remove access to any large storage drives on the FN's computer, unless it is monitored and necessary for the performance of their duties.
 - d) Disable thumb drives and other removable media.
 - e) Prohibit or monitor fax machine use.
- 4.12 Review administrative orders on FNs accessing DOC/NOAA facilities (see DAO207-12 and NAO 207-12). These orders are located on the NOAA DE Web site at:
http://deemedexports.noaa.gov/compliance_access_control_procedures/how-to-sponsor-a-foreign-national-at-a-noaa-facility.html
- 4.13 Receive authorization from the SSO before allowing FN access any Government facility.
- 4.14 Submit an Appendix C to the SSO no later than 3 days after the arrival of the FNG. The Appendix C can be submitted prior to the FNG's arrival.
- 4.15 Ensure FNs terminating employment with NWS return their NOAA ID badge and CAC, and that all network access accounts are closed.
- 4.16 NWS DSN completes the On-Line Sponsor Course prior to becoming a DSN. This course is located on the Commerce Learning Center website.
- 5.0 Responsibilities of NWS Offices and Regions:
 - 5.1 Each office and region will assign at least one primary point-of-contact (POC) and an alternate POC who will be responsible for coordinating with the NWS CTC.
 - 5.2 POC Responsibilities:
 - a) Provide accurate and timely updates to the NWS FN list and CT Asset Control Plans each quarter.
 - 1) NWS CTC sends by email the foreign national list and controlled technology list for review and updates
 - 2) At the end of the Fiscal Year, in addition to providing the updates to the CTC, provide the annual certification statement signed by the Office or Region Director

- b) Monitor and assist the DSNs
- c) Update the office, region or facility technology control ACP when new technology enters the area and/or at least annually
- d) Report changes to NWS facilities to the CTC
 - 1) Facility closes
 - 2) New facility opens
 - 3) Name changes
- e) Complete the on-line sponsor course and/or classroom training for the NOAA Deemed Exports Program
 - 1) POCs can request classroom training through the CTC
- f) Assist the CTC in conducting violation or late submission reports
- g) Report to the CTC the deemed export licenses obtained for FNs
- h) Assist the CTC with DSNs identification for the on-line Foreign National Registration System