

Why GAO Did This Study

Countries posing national security concerns to the U.S. could upgrade their military forces with certain technologies having civilian and military (dual-use) applications. The Department of Commerce (Commerce) may require employers to obtain a “deemed export” license before they can transfer these technologies to foreign nationals in the U.S. The State Department also requires foreign nationals to obtain specialty occupation visas to work in the U.S. in occupations such as engineering, computers, and biotechnology. GAO was asked to examine the risk that foreign nationals in the U.S. may gain unauthorized access to controlled technologies, and the extent to which Commerce and other agencies implemented recommended changes to the deemed export licensing process and enforcement system. GAO analyzed licensing and visa data from Commerce and Homeland Security, respectively; reviewed reports; and met with law enforcement agencies, companies, and universities in Boston, Los Angeles, and San Francisco.

What GAO Recommends

Commerce should (1) assess issuance of specialty occupation visas covered by deemed export license applications and (2) report to Congress on how it will implement prior deemed export recommendations as part of the export control reform process. Commerce agreed with the first recommendation, but did not comment on reporting to Congress.

View [GAO-11-354](#) or key components. For more information, contact Joseph A. Christoff at (202) 512-8979 or christoffj@gao.gov.

EXPORT CONTROLS

Improvements Needed to Prevent Unauthorized Technology Releases to Foreign Nationals in the United States

What GAO Found

Four factors together may indicate the risk that foreign nationals could gain unauthorized access to controlled dual-use technology. First, according to unclassified intelligence reports and law enforcement officials, foreign businessmen, scientists, engineers, and others have gained unauthorized access in the United States to controlled dual-use technologies. Second, during fiscal years 2004 through 2009, Commerce suspended the export privileges of three violators and fined 14 U.S. companies about \$2.3 million for allowing foreign nationals unauthorized access to controlled technologies. Third, Commerce’s screening of overseas visa applications for potential unlicensed deemed exports dropped from 54,000 in fiscal year 2001 to 150 in fiscal year 2009. Fourth, from fiscal years 2004 to 2009, the United States issued about 1.05 million specialty occupation visas in high-technology fields to foreign nationals from 13 countries of concern to work in the United States, while Commerce issued deemed export licenses authorizing transfers of technology to about 3,200 foreign nationals from these countries.

Commerce and Immigration and Customs Enforcement (ICE) have not implemented prior recommended changes to the deemed export licensing process involving outreach, and Commerce has taken action to clarify a regulatory definition, but confusion may remain. As a result, employers may not be aware of deemed export licensing requirements and obtaining the licenses required. GAO and other audit organizations made two key recommendations to correct weaknesses in the deemed export licensing process. The first recommended that Commerce develop an approach or plan to better inform employers about requirements to apply for deemed export licenses. However, Commerce still lacks an approach or plan to provide such information, particularly to small and mid-size companies. The second recommended that Commerce eliminate confusion by modifying the regulatory definition that is part of determining when foreign nationals can access controlled technologies in fundamental research without triggering the deemed export licensing requirement. In response, Commerce clarified the definition but may not have eliminated the confusion, as shown by uncertainty within Commerce over the definition, which resulted in a misunderstanding with a U.S. agency. Based on guidance from Commerce, the agency applied for 37 deemed export licenses, which Commerce processed over a 17-month period before advising the agency that it no longer needed to apply for such licenses.

Commerce has not implemented GAO’s and others’ recommendations to the export enforcement system involving monitoring license compliance and using immigration data for deemed export enforcement. Commerce has not created a program to monitor security conditions in licenses or used existing immigration data to enforce deemed export regulations. Commerce, ICE, and the Federal Bureau of Investigation have also not implemented recommendations to improve coordination on export control investigations, including those of foreign nationals subject to deemed export controls.