April 9, 2010

Regulatory Products Division Clearance Office
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, N.W. Suite 3008
Washington, D.C. 20529-2210

**Re: OMB Control Number 1615-0009**

To Whom It May Concern:

I am responding on behalf of the Association of Independent Research Institutes to the February 8, 2010 Federal Register notice concerning the United States Citizenship and Immigration Services' (USCIS) proposal to add a "Deemed Export Acknowledgement" question to the Form I-129.

AIRI is a nationwide association of 91 non-profit independent research institutes conducting peer-reviewed basic and applied research in the biomedical and behavioral sciences. Like universities, independent research institutes (IRIs) conduct federally-funded research awarded by science agencies primarily on the basis of merit. AIRI institutes are academic-style institutions with faculty who publish their research results in scholarly journals. Most IRIs do not grant degrees to students but conduct their research in an academic model. AIRI institutes are compliant with federal export controls rules although most of our research is exempt under the fundamental research exception.

AIRI appreciates this opportunity to express serious concerns about USCIS' proposal to add a question to the Form I-129 filed by H-1B visa petitioners that requires them to state whether or not they will be required to have a deemed export control license. IRIs have the same interests as universities in a workable export controls regime that imposes limited regulatory requirements to protect national interests reasonably balanced with the free expression of ideas, open commerce and trade, and international cooperation. We believe the proposal does little or nothing to augment national security, is poorly timed, and reflects a lack of understanding of the nature and scope of existing deemed export requirements, particularly as they affect our member institutions. If enacted, the new requirement will result in substantial burdens on our members, significant time delays, with little or no benefit for national security.

In recent years, AIRI has worked closely with the responsible federal agencies, including the Departments of Commerce and State, to ensure that our IRIs are in full compliance with deemed export control requirements and to improve these export control policies. We were quite pleased when President Obama announced on August 13 plans to review the nation's export control policies. According to the White House statement on that occasion, "the President extended the authority of the Department of Commerce-administered export controls. In addition the President directed the NEC/NSC to launch a broad-based interagency process for reviewing the overall export control system." In his January 2010 State of the Union Address, President Obama reiterated the importance of reforming the nation's export control systems so that they are consistent with national security needs while not compromising national economic objectives.

Given the current reviews of export control policies and, specifically, deemed export control policies by the Administration, USCIS' proposal to amend the Form I-129 to address deemed exports seems both ill-timed and premature. We do not think it makes sense for USCIS to add this new question to the Form I-129 when the Administration is seriously considering changing current export control policies.

We also question the appropriateness of USCIS' usage of the Form I-129 for the collection of this type of information. The purpose of the Form I-129 is for an employer to petition for a foreign worker to come to the U.S. temporarily to perform services or labor that cannot be performed otherwise by U.S. citizens—not to collect information concerning deemed export licenses. We question how USCIS plans to use this information and if it is appropriate or necessary for the visa process. We also question USCIS' authority in this area, given that the Export Administration Act of 1979 and subsequent extensions of the Act by Presidential executive order clearly grant the Department of Commerce regulatory authority over dual use exports. Indeed, USCIS has no responsibility for export control enforcement or compliance. Thus, we do not believe that USCIS is the appropriate agency or that the Form I-129 is the appropriate mechanism to collect information concerning the need for deemed export licenses.

The proposal overlooks the fact that most research conducted by foreign nationals at our IRIs is fundamental research, which is excluded from export control requirements. Whether or not technology is subject to the EAR is irrelevant if a foreign national is performing fundamental research. Because of the fundamental research exclusion, there would likely be very few instances where deemed export control licenses would be required for foreign nationals employed at our institutions on H-1Bs. However, to ensure our compliance with this new requirement, we would have to do significant additional checks to guarantee that this was indeed the case, an exercise that would be above and beyond what we already do to ensure compliance with the existing Department of Commerce deemed export rules.

The inclusion of the "Deemed Export Acknowledgment" would therefore make filling out the Form I-129 and the H1-B application process much more complicated for H-1B visa petitioners and their employers. This would be challenging, costly, and tremendously time-consuming for our non-profit institutions. This would dramatically increase the time it takes staff to complete the Form I-129, and could have a significant impact on overall processing time for H-1B visa applications.

We further believe that in a research environment, it is unrealistic to expect that export-control issues and technologies connected to a particular line of research will remain static from the time the Form I-129 is completed to the end of the overall visa application process. We are not readily able to predict where scientific inquiry will take our researchers, and many of the actual technologies involved in conducting their research may change during the course of the research project as findings and discoveries progress. Thus, it would be easy for an IRI to inadvertently respond to this question in a way that would turn out to be inaccurate. This, too, reduces the value of this information to USCIS, and it demonstrates, in our view, a lack of understanding of the nature of research and the research process at our member institutions.

For these reasons, we question the appropriateness and value of this proposal to our nation's security, the authority of USCIS to request and collect this information and the unnecessary potential costs it would impose on our institutions. We hope that you will take our views into consideration when making a final determination concerning the inclusion of this new requirement.

Sincerely,

Kim E. Witmer

Kim Witmer
President, Associations of Independent Research Institutes