

**H1-B / 0-1 Foreign Person Collaboration, Non-immigration Visa Export Control Certification**

**H1-B Visa Deemed Export Advisory**

Export Control Regulations (ECR) are federal laws that prohibit the unlicensed transfer to foreign nationals of U.S. goods, services and technologies that are subject to trade restrictions, or have proprietary, military, or economic applications. Pursuant to ECR, the Department of Homeland Security (DHS) requires employers (petitioners) sponsoring an H-1B nonimmigrant worker (beneficiary) and certain other foreign workers to certify their compliance with ECR “deemed export” rules regarding the transfer or disclosure, including visual and oral, of technology or technical data to a foreign entity in the United States.

The Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States, incorporated as Part 6 of United States Citizen and Immigration Services (USCIS) Form I-129, Petition for Nonimmigrant Worker, requires the employer to certify that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and determined that:

a license is not required from either 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

1. 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.
2. The employer is required also to acknowledge that the USCIS has the authority to verify the information in the petition, including compliance with the deemed export requirement, through audits, on-site compliance reviews, and other ways of investigation.

Failure to comply with ECR can lead to civil penalties in an amount not to exceed the greater of $250,000 or an amount that is twice that of the transaction; criminal penalties of up to $1,000,000 per violation, prison terms up to 20 years, denial of export privileges, and debarment from U.S. government contracts.

**Instructions**

United States export control laws prohibit foreign nationals from receiving information concerning certain technologies to protect U.S. trade and to ensure national security. If an UCB visa applicant’s studies or work involves these certain technology and technical data, an export license from the Departments of Commerce, State, or Treasury may be required, unless there is an applicable exemption.

The purpose of this worksheet is to provide the Export Controls office with enough information about the work the visa applicant will be doing to make a preliminary determination if such a license may be required. If it appears that a license may be required, you will then be asked to complete a more detailed worksheet in order to begin the process of applying for a license. Most visa applicants will not require more than this initial screening worksheet.

It is important that before starting to complete the H1-B Deemed Export Worksheet and signing the H1- B Petitioner Deemed Export Compliance Certification, the petitioner familiarize him/herself with Export Control Regulations, ECR exemptions, and the items which are subject to ECR as outlined in the EAR [Commerce Control List](http://www.bis.doc.gov/policiesandregulations/ear/index.htm) (CCL) and ITAR [United States Munitions List](http://www.ecfr.gov/cgi-bin/text-idx?SID=86008bdffd1fb2e79cc5df41a180750a&node=22:1.0.1.13.58&rgn=div5#22:1.0.1.13.58.0.31.1) (USML). Petitioners may visit: <http://www.colorado.edu/VCResearch/integrity/exportcontrols/index.html>

Due to the complex nature of the ECR review process, petitioners should allow additional time for completion of their H1-B application. The petitioner can facilitate the process by providing as much detail as possible regarding the beneficiary’s position duties, and the technology and technical data (if any) to which s/he will have access, including names of any software the foreign national will use in the performance of her/his job duties, and their corresponding Export Control Number (ECN) from the CCL or USML.

When a license is required, departments should plan for possible delays to employment start dates, or continuations in the case of visa renewals. Processing time for deemed export licenses can run anywhere from two to four months and longer in certain circumstances. During this time, it is the responsibility of the direct supervisor/project principal investigator(s), and sponsoring department to prevent the beneficiary access to the controlled technology or technical data until and unless the University receives the required license or other authorization to release such data.

In addition, it is incumbent upon the sponsoring department to notify the Office of International Programs and the Export Control Officer in the Office of Research and Sponsored Programs of any material changes to the H1-B employee’s job duties which would require filing an amended petition. This includes, but is not limited to: work location, types of technology used in performance of their job duties, and foreign travel.

This questionnaire should be completed and signed by the person who will be supervising the visa applicant or Beneficiary, or who is otherwise knowledgeable about the Beneficiary’s intended work, area of research, and projects throughout the term of the Beneficiary’s UCB employment.

**Section A: Beneficiary (Employee)**

Line 1

Line 1

Line 1

Beneficiary Name (as it appears on the passport):

Line 1

Line 1

Line 1

Country of Birth:

Line 1

Line 1

Line 1

Country of Citizenship (if dual-national, name both countries):

Line 1

Line 1

Line 1

Current Visa Type/Status:

Line 1

Line 1

Line 1

Foreign Institution/Entity Affiliation (if any):

Line 1

Line 1

Line 1

Applicant Proposed Hire Date:

Beneficiary’s CV Attached:

**Section B: Sponsor Information (Hiring Department)**

Line 1

Line 1

Line 1

Name of Sponsoring Department:

Line 1

Line 1

Line 1

Name of Sponsor (supervisor/PI):

Line 1

Line 1

Line 1

Sponsor Email :

**Section C: Proposed Work of the Beneficiary**

Titles and Speed type of all known grants/contracts on which the beneficiary will work:

Grant/Contract Title Speed Type

Line 1

Line 1

Line 1

Line 1

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1. Provide the scope of work or job description. You may copy and paste this or send as an attachment. (If attached, please note this in the description field.)

Line 1

Line 1

Line 1

* 1. Describe research activities the individual will be involved in:

Line 1

Line 1

Line 1

* 1. Describe teaching activities the individual will be involved in:

Line 1

Line 1

Line 1

1. Provide key words related to the work performed:

Line 1

Line 1

Line 1

1. Licenses from the Department of Commerce may be required for foreign nationals who are working on projects involving “dual-use” technologies (i.e., having potential applications for military, terrorist, or criminal purposes in addition to their usual commercial uses). Does the intended work of the Beneficiary fall into any of the broad categories listed in the [Commerce Control List](http://www.bis.doc.gov/policiesandregulations/ear/index.htm) (CCL)?

No – Proceed to Question 4.

Yes - Please list and describe:

Line 1

Line 1

Line 1

If yes, was any item(s), information or software to be shared, transmitted or transferred to the visa applicant developed under a sponsored agreement or government contract which imposed publication restrictions for proprietary reasons (other than limited sponsor prepublication review to insure intellectual property or patent rights); or pursuant to specific U.S. government access and dissemination controls? (See [Definitions](http://www.colorado.edu/vcr/export-controls/guidance/definitions) for more information on Public Domain and Fundamental Research Exclusions)

No Yes – Contact [exportcontrolhelp@colorado.edu](mailto:exportcontrol@colorado.edu)

1. Will the Beneficiary be provided with technology, data, software, or other material that was disclosed to UCB from an external sponsor, vendor, collaborator or other third party?

No – Proceed to Question 5.

Yes – If yes, did this third party, under a material transfer agreement, confidentiality agreement, or other non-disclosure agreement, restrict publication of or transfer of the item(s), information or software that will be shared, shipped, transmitted or transferred to the Beneficiary?

Yes - Contact [exportcontrolhelp@colorado.edu](mailto:exportcontrol@colorado.edu) No

1. Licenses from the Department of State may be required for foreign nationals who are working on projects that involve equipment, software, or technology designed or modified for a military use or for use in outer space; or could reasonably be used in the development of weapons of mass destruction. Does the intended work of the Beneficiary fall into any of the broad categories listed on the [United States Munitions List](http://www.ecfr.gov/cgi-bin/text-idx?SID=86008bdffd1fb2e79cc5df41a180750a&node=22:1.0.1.13.58&rgn=div5#22:1.0.1.13.58.0.31.1) (USML)?

No – Proceed to Question 6.

Yes - Please list and describe:

Line 1

Line 1

Line 1

If yes, is the USML-listed equipment, software, or technology that is being shared, transmitted, or transferred to the Beneficiary published, patented, or otherwise generally accessible and available to the public? (See [Definitions](http://www.colorado.edu/vcr/export-controls/guidance/definitions) for more information on Public Domain and Fundamental Research Exclusions).

No Yes – Contact [exportcontrolhelp@colorado.edu](mailto:exportcontrol@colorado.edu)

1. What are the items that will be used in the research project (technology, technical data, samples, equipment, research instruments, software)?

Line 1

Line 1

Line 1

1. How will the items be used by the applicant?

Line 1

Line 1

Line 1

1. Will the Beneficiary need to understand how a piece of scientific equipment is designed, manufactured, or repaired in order to perform his/her duties?

No Yes– Contact [exportcontrolhelp@colorado.edu](mailto:exportcontrol@colorado.edu)

1. Will the Beneficiary be provided access to UCB-owned technical data or technology that is considered proprietary or confidential to UCB?

No  Yes

If yes, provide a brief description:

Line 1

Line 1

Line 1

Has it been disclosed to the CU Technology Transfer Office (TTO)? If yes, please list the TTO case number as well:

Line 1

Line 1

Line 1

1. Do you know of, or have any reason to believe that the item, information, or software to be shared with the Beneficiary will support the design, development, production, stockpiling, or use of nuclear explosive devices, chemical or biological weapons, or missiles?

No  Yes- Contact [exportcontrolhelp@colorado.edu](mailto:exportcontrol@colorado.edu)

**Section D: Sponsor Certification**

The signatory certifies that s/he has read the H1-B Visa Deemed Export Advisory attached and has familiarized him/herself with Export Control Regulations including items, which are subject to Export Control Regulations under EAR, ITAR and OFAC. S/he certifies that the above information is accurate, complete, and current as of the date of signature, to the best of his/her knowledge, and understands that the Export Control Officer in the Office of Research Integrity and Regulatory Compliance makes the form I-129 attestations under penalty of perjury. This certification is made under penalty of perjury (28 USC 1746). Penalties for providing false information may include, but are not limited to, fines, criminal prosecution, and disbarment from the H-1B program.

The signatory will notify the Office of Research Integrity and Regulatory Compliance before:

* Any controlled technology or information is released to the prospective employee, and/or
* The prospective employee moves to a new office or lab, or begins work outside of my control or knowledge.

Line 1

Line 1

Line 1

Sponsor’s Printed Name:

Line 1

Line 1

Line 1

Line 1

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Line 1

Sponsor’s Signature: Date:

**Please send the completed form to Linda Morris in the Office of Research Integrity – Export Controls at** [**exportcontrolhelp@colorado.edu**](mailto:exportcontrol@colorado.edu)