

Supplemental Export Control Certification for Form I-129

Overview

As part of the process of petitioning for a nonimmigrant worker (H-1B, H-1B1, L-1, or O-1A applications), the federal government requires any petitioner to certify in Part 6 of Form I-129 that it has reviewed the Export Administration Regulations (EAR) (15 CFR §§770-774) and International Traffic in Arms Regulations (ITAR) (22 CFR §§120-130) and determined whether the regulations will require a U.S. government export license to release controlled technology or technical data to the beneficiary (“Prospective Employee”). If an export license is required, then the employer must further certify that it will not release or otherwise provide access to controlled technology or technical data to the Prospective Employee until it has received from the U.S. government the required authorization to do so. The licensing requirements described above will, however, affect only a small percentage of petitioners because most types of technology are not controlled for export or release to foreign persons.

The technology and technical data that are controlled for release to foreign persons are identified on the EAR's Commerce Control List ([CCL](#)) and the ITAR's U.S. Munitions List ([USML](#)). The EAR-controlled technology on the CCL generally pertains to that which is for the production, development, or use of what are generally known as “dual-use” items, or items susceptible to both commercial and military uses. The ITAR-controlled technical data on the USML generally pertains to that which is directly related to defense articles. Specific information about EAR's requirements pertaining to the release of controlled technology to foreign persons is located at www.bis.doc.gov/deemedexports. Specific information about the ITAR's requirements pertaining to the release of controlled technical data is located at http://www.pmdtc.state.gov/faqs/license_foreignpersons.html.

Role of Internal University Sponsor

The internal University sponsor (Internal Sponsor) is best positioned to know the range of technologies and/or information to which the Prospective Employee will be exposed during the course of his or her employment. Therefore, the University requires that the Internal Sponsor (1) answer a series of questions about the activity of the Prospective Employee through the Export Control Questionnaire and (2) subsequently complete the **Supplemental Export Control Certification** form. The questions included in the **Export Control Questionnaire** are intended to indicate whether further export control review is necessary before the University is sufficiently informed in order to complete the certification in Part 6 of Form I-129. In addition to informing the process so that Part 6 of Form I-129 is accurately completed, the Export Control Questionnaire and Supplemental Export Control Certification form will further serve the important purpose of documenting the export control determination process.

Questions about this supplemental certification process should be directed to the [International Programs Office](#) (IPO). Questions concerning whether certain technologies or information are export controlled should be directed to the [Export Control Analyst, Office of Sponsored Programs](#) (ECA).

Instructions

1. Internal Sponsor: The person(s) completing and signing this form should be the individual(s) best able to determine and evaluate the technology or technical data to which a Prospective Employee may have access or be exposed during the term of his/her employment at the University. If no single person is able to attest to full scope of the work experience of the Prospective Employee throughout the term of employment, as many individuals as are necessary to fully and completely account for the Prospective Employee's work experience must participate in this process by answering the questions in the Export Control Questionnaire and completing the Supplemental Export Control Certification form.
2. Export Control Questionnaire: The Internal Sponsor must answer all questions posed in the Export Control Questionnaire, sign the Questionnaire upon completion, scan the completed Questionnaire, and provide the scanned copy of the completed Questionnaire to IPO and the ECA.
3. If all questions in the Questionnaire can, in good faith, be answered "**NO**," the Internal Sponsor may only then complete the Supplemental Export Control Certification form, indicating that the Prospective Employee's "work **WILL NOT** involve exposure to technology or technical data requiring a license."

The Supplemental Export Control Certification form will not be considered complete, and the Form I-129 certification will not be provided by the University, until the appropriate Department Chairperson and College Dean signatures have been obtained and the supplemental certification has been accepted by the Empowered Official (or designee). (The Empowered Official is the Vice President for Research; signature may be obtained through the ECA.) A scanned copy of the completed form must be provided by email to IPO and the ECA and the original is to be retained by the Internal Sponsor.

4. If **any** question in the Questionnaire is answered "YES," then the Internal Sponsor may not complete the Supplemental Export Control Certification form without consulting with the ECA to determine whether any covered technology or information requiring a license will be released to the Prospective employee.

If the ECA determines that a license IS NOT required, the Internal Sponsor may complete the Supplemental Export Control Certification form, including obtaining the required signatures. A scanned copy of the completed form should then be provided by email to IPO and the ECA and the original should be retained by the Internal Sponsor.

If the ECA determines that a license IS required, the Internal Sponsor may not complete the Supplemental Export Control Certification form until a Technology Control Plan (TCP) is in place and/or the necessary license has been obtained. Once a TCP is in place or license has been obtained, the Supplemental Export Control Certification form may be submitted by email to IPO and the ECA and the original should be retained by the Internal Sponsor.

5. IPO will not complete its processing of the Form I-129 for the Prospective Employee until it receives the properly completed Supplemental Export Control Certification form and verifies that it has all the required signatures.

Export Control Questionnaire

Prospective Employee: _____

Position: _____

Department: _____

1. Will the Prospective Employee be working with high-tech or experimental equipment, and related technical data (see definition below), or any equipment or technical data that has been specifically designed, developed, configured, adapted or modified for a military or space application (examples include high speed computers, lasers, telecommunication devices, or other cutting-edge equipment)?

YES NO

2. Will any encryption source code be released to the Prospective Employee?

YES NO

3. Will any technology or technical data (see definitions below) that will be released to the Prospective Employee be unpublished, subject to publication and/or dissemination restrictions, or subject to other access restrictions (such as restrictions on access and participation of foreign nationals) at the time of its release?

YES NO

4. Will the Prospective Employee have access to any confidential information provided by an outside entity? Access would include verbal discussions, training, access to shared drives or websites, access to laboratories and equipment.

YES NO

5. Will the Prospective Employee work on corporate sponsored research?

YES NO

6. Will the Prospective Employee be working on materials obtained under a confidentiality agreement (CDA), non-disclosure agreement (NDA), or Material Transfer Agreement (MTA), other than the Uniform Biological Material Transfer Agreement (UBMTA)?

YES NO

7. Will the Prospective Employee be working on other projects not administered as a corporate sponsored project or MTA that involves data, knowhow, software or equipment of a technical nature?

YES NO

Internal Sponsor: _____ Date: _____
Signature

(Printed Name/Position/Department)

Additional
Internal Sponsor: _____ Date: _____
(as necessary) Signature

(Printed Name/Position/Department)

**Supplemental Export Control Certification for Form I-129,
Petition for Nonimmigrant Worker (H-1B, H-1B1, L-1, or O-1A)**

It is the intent and practice of the University of Idaho to comply with all applicable U.S. laws and regulations related to export control. The Export Administration Regulations (EAR), under the jurisdiction of the Bureau of Industry and Security, Department of Commerce, and the International Traffic in Arms Regulations (ITAR) administered by the Directorate of Defense Trade Controls, Department of State are among the U.S. export control regulations that may apply to certain University activities.

Certification

In support of the University certification regarding the release of controlled technology or technical data to foreign persons in the United States (Form I-129, Part 6):

I certify that I work, or will work, in a capacity that enables me to anticipate the particulars of the employment of _____ (“Prospective Employee”) should he/she be granted permission from the U.S. Government to work at the University and that, based upon my knowledge of the circumstances of his/her proposed employment, such work **[WILL]/[WILL NOT]** (circle one) involve technology or technical data (as defined in the *Definitions* section, below) that requires a license from the U.S. Department of Commerce or the U.S. Department of State for release to a foreign person.

By signing this certification, I confirm that I have, as required by the University, reviewed the United States Munitions List (22 C.F.R 121, at http://www.access.gpo.gov/nara/cfr/waisidx_06/22cfr121_06.html) and the Commerce Control List (15 C.F.R. 774, Supp. 1 at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=b54680936ca785e237be939db7e5685b&tpl=/ecfrbrowse/Title15/15cfr774_main_02.tpl), in making this determination.

This proposed Prospective Employee will be funded by:

Award or Proposal Number: _____

Sponsor Agency or University Source of funding: _____

I agree to notify the University Export Control Analyst and the International Programs Office before this Prospective Employee’s funding source or work changes.

Internal Sponsor: _____ Date: _____
(Include Printed or Typed Name of Signer)

Additional Internal Sponsor (as necessary): _____ Date: _____
(Include Printed or Typed Name of Signer)

Concurrence of Chairperson(s): _____ Date: _____
(Include Printed or Typed Name of Signer)

Concurrence of College Dean’s Office(s): _____ Date: _____
(Include Printed or Typed Name of Signer)

Acceptance by Empowered Official: _____ Date: _____

Definitions

The definitions below apply to terms used this Supplemental Certification and in USCIS Form I-129, *Petition for a Nonimmigrant Worker*. Definitions have been taken from the *Export Administration Regulations* (The “EAR”, created by the Bureau of Industry and Security, Department of Commerce) or the *International Traffic in Arms Regulations* (The “ITAR”, created by the Directorate of Defense Trade Controls, Department of State). Paraphrasing has been used, where appropriate.

Technology: Is defined by the EAR as “information necessary for the development, production, or use of a product.” See definitions of underlined words below.

Development Technology: According to the EAR, is “related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, and layouts.”

Production Technology: According to the EAR, is related to “all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance.”

Use Technology: According to the EAR, is related to operation, installation, maintenance (checking), repair, overhaul and refurbishing. NOTE that Use Technology has not been released unless all six aspects have been communicated to another party.

Product: For the purposes of completing the *I-129 Deemed Export Questionnaire*, a product can be thought of as any tangible article (organic or inorganic) that may be used or developed by University personnel in the course of their work.

Technical Data: The EAR states that technology can be expressed as technical data and may take forms such as “blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.”

Technical data is also defined by the ITAR in a way that overlaps with the EAR definition of technology.