

# H1-B VISA: DEEMED EXPORT WORKSHEET & COMPLIANCE CERTIFICATIONS

**University of Maine departments/units seeking to sponsor H1-B, H-1B1 Chile/Singapore, L-1 and O-1A nonimmigrant workers are required to submit a completed Deemed Export Worksheet with required attachments and a signed Deemed Export Compliance Certification. No visa petition will be filed until these documents have been received and a determination made by the campus Export Control Officer as to whether an export license is required.**

## Part I: H1-B VISA DEEMED EXPORT ADVISORY

Export Control Regulations<sup>1</sup> (ECR) are federal laws that prohibit the unlicensed transfer to foreign nationals<sup>2</sup> 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:

1. 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
2. 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.

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.

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<sup>1</sup> Foreign Assets Controls (FAC), International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR).

<sup>2</sup> Defined in EAR as, “Any individual who is not a U.S. citizen or lawful permanent resident of the U.S. (green card holder), any individual who is not a protected individual (e.g., asylum holder or refugee, any foreign corporation or other entity not incorporated or organized to do business in the U.S., or any foreign government.”

**Part II: INSTRUCTIONS FOR COMPLETING THE WORKSHEET AND CERTIFICATION**

Petitioners please complete the Worksheet and Certification and obtain appropriate signatures. Forward signed documents, along with a copy of the job description, beneficiary's curriculum vitae, and copies of pages from beneficiary's passport(s) as listed below in Part I, Section C: Document Checklist, to: Amanda Ashe, Office of Research Compliance, 5717 Corbett Hall, Room 401, University of Maine, Orono, ME 04469-5717. Alternatively, completed documents may be sent as attachments via email to: [amanda.l.ashe@maine.edu](mailto:amanda.l.ashe@maine.edu). Questions specific to Export Control Regulations or related to completing this form also should be directed to Amanda at the email address listed or at phone number: (207) 581-1480.

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](#) (CCL) and ITAR [United States Munitions List](#) (USML). Petitioners may visit: <https://umaine.edu/research-compliance/export-control/> to access ORC's [ECR Quick Course \(PDF\)](#) and [ECR Decision Tree \(PDF\)](#). Web addresses for these and other resources are provided in Part VI of this document.

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 Compliance 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.

**Part III: H1-B DEEMED EXPORT WORKSHEET**

*Must be completed by the beneficiary's direct supervisor/project principal investigator(s). Note that because the H-1B must be sponsored by a single department, the sponsoring department is responsible for reviewing all projects and programs under which the H-1B nonimmigrant employee will be funded, including those housed in other departments.*

**Section A. Beneficiary Information**

Beneficiary's name:

Country of citizenship:

Country of legal permanent residency:

Country of most recent residency:

Foreign institution/entity affiliation (if any):

Applicant proposed hire date:

**Section B. Sponsor Information**

Name of sponsor (supervisor/PI):

Name of sponsoring department:

**Section C. Document Checklist**

- Job description
- Beneficiary's curriculum vitae
- Copies of Beneficiary's passport(s), as follows:

Pages Showing:	For Country (s) of:	
	Citizenship	Legal Permanent Residency (if applicable)
Issuing government	<input type="checkbox"/>	<input type="checkbox"/>
Vital statistics	<input type="checkbox"/>	<input type="checkbox"/>
Signature	<input type="checkbox"/>	<input type="checkbox"/>
Photo	<input type="checkbox"/>	<input type="checkbox"/>

**Section D. Grant/Contract Information**

Titles & PeopleSoft chartfields of all known grants/contracts on which this Beneficiary will work:

PeopleSoft Chartfield	Grant/Contract Title
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

Beneficiary Name:

**Section E. Controlled Item(s) Use & Disclosure Information**

- 1) An export license from the Department of Commerce may be required for foreign nationals who are working on projects involving controlled commercial and 'dual-use' items (Dual use describes commodities, information, software and technology that have both commercial and military or proliferation applications. Note: items with purely commercial uses are also subject to EAR). Do the Beneficiary's work duties involve the use or disclosure of any items contained on the [Commerce Control List](#)?
- No – Proceed to Question 2
- Yes – If yes,
- a. For each controlled item attach a detailed description including technical specifications and your best determination of the item's Export Control Classification Number (ECCN).*
- 2) An export license from the Department of State may be required for foreign nationals who are working on projects that involve equipment, materials, software, or technical data designed or modified for a military use or for use in outer space; or which could reasonably be used in the development of weapons of mass destruction. Does the intended work of the Beneficiary involve the use or disclosure of any items contained on the [United States Munitions List](#)?
- No – Proceed to Question 3
- Yes – If yes,
- a. For each controlled item attach a detailed description including technical specifications and your best determination of the item's USML category and sub-category under which it falls.*
- 3) Do you know, or have any reason to believe that the items, information, equipment, material, software, technology or technical data 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 – Proceed to Question 4
- Yes – Contact Export Control Officer
- 4) Were any of the items, equipment, software, technology or technical data to be shared, transmitted or transferred to the Beneficiary developed under a sponsored agreement or government contract that imposed publication restrictions for proprietary reasons (other than limited sponsor pre-publication review to insure intellectual property or patent rights), or pursuant to specific U.S. Government access and dissemination controls?
- No – Proceed to Question 5
- Yes – Contact Export Control Officer
- 5) Will the Beneficiary be receiving, sharing, transmitting, or otherwise transferring UMaine-developed encryption software and/or traveling outside of the U.S. with such software?
- No
- Yes – Contact Export Control Officer

6) Will the Beneficiary be provided with items, equipment, software, technology or technical data, or other materials that were disclosed to UMaine from an external sponsor, vendor, collaborator or other third party?

No – Proceed to Page 6

Yes – If yes,

*a. Did this third party, under a material transfer, confidentiality or other non-disclosure agreement restrict publication or transfer of the items, equipment, software, technology or technical data, or other materials that will be shared, shipped, transmitted or transferred to the Beneficiary?*

No – Proceed to Page 6

Yes – Contact Export Control Officer

Beneficiary Name:

**PART IV: H1-B PETITIONER DEEMED EXPORT COMPLIANCE CERTIFICATION**

Must be signed by the Beneficiary's direct supervisor/principal investigator(s), the Chair of the H-1B sponsoring department and applicable college Dean, or the unit Director. Signatures by other authorized personnel and/or designees are not permissible.

The signatory certifies that s/he has read the attached *H1-B Visa Deemed Export Advisory* 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 form I-129 attestations are 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.

Supervisor/PI - Printed Name:

Supervisor/PI Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Please add additional Certification pages if there are multiple Principal Investigators. If there is no Principal Investigator, or if the PI is also one of the signatories below, please note that in the signature box above.

Department Chair - Printed Name:

Department Chair - Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Dean/Unit Director - Printed Name:

Dean/Unit Director - Signature: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

Beneficiary Name:

**PART V: UNIVERSITY OF MAINE DEEMED EXPORT ATTESTATION**

The Office of Research Compliance, which administers the export control compliance program at the University of Maine, has reviewed the attached certifications and associated agreements and information submitted by Petitioner(s):

[Redacted], Supervisor/PI; and

[Redacted], Department Chair (if applicable); and

[Redacted], Dean/Director;

for the Beneficiary, [Redacted]

As of the date signed, and with respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has 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
- 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.

EC Compliance Officer - Printed Name: \_\_\_\_\_

EC Compliance Officer - Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Beneficiary Name: [Redacted]

## **PART VI: RESOURCES**

Resources 1: EAR Commerce Control List (CCL):

<http://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>

Resources 2: ITAR United States Munitions List (USML):

[https://www.pmdtc.state.gov/regulations\\_laws/itar.html](https://www.pmdtc.state.gov/regulations_laws/itar.html)

ECR Quick Course: <https://umaine.edu/research-compliance/resource/ecr-quick-course/>

ECR Decision Tree: <https://umaine.edu/research-compliance/resource/ecr-decision-tree/>