**Export Control Review Form for I-129 Deemed Export Attestation
(for H-1B, H-1B1, L-1 or O-1A visa applicants only)**

As of February 20, 2011, petitioners for certain visa applicants (H-1B, H-1B1, L-1, O1A) must certify whether the prospective employee (beneficiary of the petition) will be given access to controlled technology or technical data (hereafter controlled information) in the course of employment such that an export license will be required to share the controlled information with the beneficiary and, if so, that no controlled information will be released to the beneficiary before an export license is in place.

The transfer or release of controlled information to a national of a foreign country within the United States is “deemed” to be an export to that country and may require a license or other government authorization prior to sharing the controlled information. The “deemed export rule” has been in place for many years, but the employer’s certification on the I-129 application is a new addition to the U.S. Citizenship and Immigration Services (USCIS) visa process. The modified Part 6 “Deemed Export Attestation” of the I-129 petition is below.

A knowing or careless incorrect certification is a violation that can result in civil and/or criminal penalties under U.S. export control laws, therefore the certification response is not to be taken lightly. The University has developed this Export Control Review Form to assist hiring units in collecting information that will help determine whether a potential employee may be exposed to export controlled information in the course of his or her duties, to route the review, and to document the decision on the correct certification response. The Office of International Programs (IP) must be in receipt of this completed and fully signed form before the I-129 application for the visa types noted above will be processed.

While all prospective hires for the visa types noted above must undergo export review, it is likely that many positions at KU will not be exposed to export-controlled information. Much—but not all—sharing of technical data, technology, and software source code in the University is either excluded or exempt from export control regulation because export control laws and regulations provide an exception for fundamental research and educational information that is or will be made publicly available. For additional information on Export Control regulations and applicability to university activities see the KU export control web page: <https://gos.ku.edu/export-compliance>

**Excerpt of the new Export Certification from the I-129 petition form:**

**Hiring Department: Part I, and Part II if required, of this form should be completed by** the person with the most knowledge of the projects and facilities that the prospective employee will have access to in the course of his or her duties.

**Part I: If “No” is answered to all of the questions in Part I,** it indicates that the employee’s duties do not anticipate involvement with export controlled information. In this case, Part II may be left blank. Skip to Part III. . Otherwise proceed to Part II.

**Part II: If “Yes” is answered to any of the questions in Part I,** a review of the requirements for the position, anticipated funding sources, and the technology and/or technical data involved must be conducted jointly with the KU Export Control Officer to assess the potential need for documentation and licensure. You may complete Parts II and III and send the entire form to the Export Control Officer for review or, if you have questions, contact the Export Control Officer for assistance in filling out Part II.

**Part III, in all cases,** must be signed by the supervisor, the Principal Investigator or person to whom the employee will directly report (if different from the supervisor), and the chair or director of the unit. Send the signed form via e-mail (pdf) to gos@ku.edu or by campus mail to KU Research Center/Export Controls.

**Export Control Officer: Part IV** must be reviewed by the Export Control Officer. Please send completed for to gos@ku.edu. The Export Control Officer will forward the full Review to International Programs, with a copy to the hiring unit.

**International Programs: The completed, fully signed Review** must be received by International Programs before the I-129 petition can be completed. For questions about the I-129 petition process, contact Keeli Nelson, International Programs, keelinelson@ku.edu .

**Questions:** For questions about filling out this form contact Matthew Battiston, KU Export Control Officer, at gos@ku.edu or 785-864-1811.

**Definitions and Terms**

The **Export Administrative Regulations (EAR)** and **International Traffic in Arms Regulations** **(ITAR)** use similar terms, but there are some slight yet important differences between the regulations. The definitions and terms here represent a brief overview only and are not meant to replace careful reading of the regulations. For more information, consult the KU export controls web page <https://gos.ku.edu/export-compliance> or contact Export Control Officer, Matthew Battiston, 785-864-1811, gos@ku.edu

**Fundamental Research**: **The** **EAR** **excludes** from its jurisdiction: basic and applied research in science and engineering, conducted at U.S. universities, where the resulting information is ordinarily published and shared broadly within the scientific community. The regulations distinguish such research from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons.
**The ITAR provide** a similar exemption for fundamental research within its definition of Public Domain information. In addition, the ITAR clarify that university research will not be considered fundamental research if (1) the University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or (2) the research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

**Technology and Technical Data**: **The** **EAR** **describe** “technology” as information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves. In addition, the EAR reference three types of specific information required for the “development”, “production”, or “use” of a product which is itself “controlled”.

The transfer of “**use technology**” **under the EAR** requires all of the following to be transferred: Operation, installation (including on-site installation), maintenance (checking), repair, overhaul ***and*** refurbishing.
**For ITAR-controlled items**, technical data includes any information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, ***or*** modification of “defense articles” and software directly related to “defense articles”. Teaching a foreign national to simply operate an ITAR-controlled item would be a defense service that would require an export license.

**Release of Technology:** Technology or software source code may be “released” through: (i) Visual inspection by foreign nationals of U.S.-origin equipment and facilities; (ii) Oral exchanges of information in the United States or abroad; or (iii) The application to situations abroad of personal knowledge or technical experience acquired in the United States.

**Part I: Department Information**

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| ⇩Hiring unit | ⇩Supervisor/Principal Investigator | ⇩phone | ⇩e-mail |
|  |  |  |  |
| ⇩Name of person filling out this form, if different from Unit Contact above | ⇩Position title |
|  |  |
| ⇩I-129 Beneficiary Name (last, first , middle) | ⇩Country(ies) of Citizenship |
|  |  |
| ⇩Position title | ⇩Position funding source | ⇩Anticipated start date |
|  |  |  |
| ⇩Area(s) of expertise  |
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| This part is to be completed by the hiring unit. Check the appropriate box for each row. **NO indicates** that the nature of the position does not anticipate involvement in activities under this condition. **YES indicates** that it is likely or certain that the beneficiary will be involved in activities under this condition.**1**. **Will the beneficiary be engaged in activities that will involve any of the following conditions?**  |
| **NO** | **YES** | **Condition** |
|  |  | 1. **Release of or provision of access to University-owned technical data or technology** that is considered proprietary or confidential to the University and is not intended to be published or otherwise made public (i.e. is not intended to be disseminated through methods such as journals, open web pages, or patent application)?
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|  |  | 1. **Release of or provision of access to third party technical data or technology** protected under confidentiality or non-disclosure terms or identified as export controlled, regardless of funding source, including government, foundation, or industry-sponsored research, and service agreements?
 |
|  |  | 1. **Participation on projects subject to access** **or dissemination** **controls**, regardless of funding source, such as restrictions on hiring or access to the research process, delay of publication greater than 90 days or for any reason other than to remove sponsor’s proprietary information or to file a patent application, indefinite or permanent delay, or sponsor’s approval of publication?
 |
|  |  | 1. **Release of or provision of access to** (including participating in the development of) materials, equipment, software, or technology:
2. Specifically designed, developed, configured, adapted, or modified for space or military applications; or
3. On the U.S. Munitions List (USML); or
4. Developed or funded by Department of Defense or its agencies (including flow-through funding).
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**⇨If you responded “NO” to every condition** a through d, skip to Part III. Send the signed form to the Export Control Officer for review by e-mail (pdf) to gos@ku.edu or campus mail Research and Graduate Studies/Export Controls. Upon review, the Export Control Officer will e-mail the completed form to International Programs, with a copy to the unit contact listed above.

**⇨If you responded “YES” to any one or more of the conditions** a through d, you must complete Parts II and III. See Part II for instructions.

**Part II: Supplemental Department Information**

This part is to be filled out by the hiring department *only if* a YES response was recorded for any of a through d in question 1. If you have questions or would like guidance for completing this portion of the form Matthew Battiston, Export Control Officer, 785-864-1811 or gos@ku.edu.

Forward the completed form, including Part III, via e-mail (pdf) to gos@ku.edu or by campus mail to Research and Graduate Studies/Export Controls. Upon review, the Export Control Officer will e-mail the full Review to International Programs, with a copy to the unit contact listed in Part I.

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| **2. Will the beneficiary be involved with research, development or services in any of the following areas?** |
| **NO** | **YES** | **Technology area** |
|  |  | 1. Nuclear technologies
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|  |  | 1. Human, zoonotic, animal or plant pathogens, select agents, other toxicological agents
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|  |  | 1. Sensors or lasers
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|  |  | 1. Telecommunications or Information security technologies
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|  |  | 1. Propulsion or missile technology or unmanned vehicle systems
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|  |  | 1. Advanced computer or microelectronic technologies
 |
|  |  | 1. Satellite or space technology
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| **3. Additional information about job duties** |
| ⇩Job duties |
|  |
| ⇩Research projects beneficiary may be assigned to |
| KU reference | PI name | Short title | Sponsor |
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**Part III: Hiring Unit Acknowledgement and Certification**

By my signature below, I certify that the information provided is true and correct to the best of my knowledge and that I will prevent access to export controlled technology, technical data, and software source code by the beneficiary of the petition until and unless the University has received the required license or other authorization to release it to the beneficiary. I understand that it is the responsibility of the Supervisor/Primary Investigator to immediately notify the Department Chair and the KU Export Control Officer if any of the answers in Parts I or II above change in the future, or the prospective employee moves to a new office or lab, or is no longer under my supervision. I understand that the Export Control Officer must be consulted in these cases to determine whether the changes would trigger export control requirements. In addition, changes in job duties, title, or position description should also be reported to International Programs to ensure visa status of the beneficiary remains compliant.

Note: Securing an export license is a complex process that may take several months. The department will be primarily responsible for providing the required information and supporting materials to obtain the appropriate license. All license applications must be submitted through the Export Control Officer, Research and Graduate Studies.

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| ⇧Supervisor/Principal Investigator (Print)  |  | ⇧Signature |  | ⇧Date |
|  |  |  |  |  |
| Director/Dept. Chair (Print) |  | ⇧Signature |  | ⇧Date |

Forward the completed form via e-mail (pdf) to gos@ku.edu or by campus mail to KU Office of Research and Graduate Studies/Export Controls. Upon review, the Export Control Officer will e-mail the full Review to International Programs, with a copy to the unit contact listed in Part I.

**Part IV: Export Control Office Recommendation**

This part is to be filled out by the University Export Control Officer or designate.

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| ⇩Potential ITAR or CCL categories |
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| ⇩Export Control Analysis |
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With respect to the university position of the beneficiary and the potential for intersection with controlled information, technology, software source code, technical data, and/or use of defense articles (hereafter “controlled information”), we have reviewed the relevant EAR and ITAR regulations and determined that:

🞏 **Option 1 of Part 6** of the I-129 form should be checked. At this time, it is not anticipated that the university position offered to the beneficiary will involve the release of controlled information to the beneficiary that would require export authorization.

🞏 **Option 2 of Part 6** of the I-129 form should be checked. The nature of the position offered to the beneficiary has a likelihood of exposure to controlled information but no specific project has been identified.

🞏 **Option 2 of Part 6** of the I-129 form should be checked. The beneficiary will be exposed to controlled information in the course of his or her duties.

🞏 An export license has been obtained. License reference:­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

🞏 A license exception or exemption is applicable. KU export control documentation ID\_\_\_\_\_\_\_\_

🞏 An export license application is in process. Until the university receives a valid license from the appropriate government agency, the hiring unit will adhere to a technology control plan approved by the Export Control Officer. KU TCP ID\_\_\_\_\_\_\_\_\_\_\_\_

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| Reviewed by: |
|  |
| KU Export Control Officer  |  | Date |

**Amber Road Restricted Party Screening (RPS)**

Date of screening: Performed by: (attach copy of RPS)

🞏 No significant matches found, and no country restrictions apply.

🞏 Yes, a significant Restricted Party Screening match was returned or country restrictions apply.

**Receipt of full Review at International Programs**

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| IP representative (print and sign) |  | Date |