



July 30, 2010

Chief, Regulatory Products Division Clearance Office
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
111 Massachusetts Avenue, NW, Suite3008
Washington, D.C. 20529-2210

EMAIL: rfs.regs@dhs.gov; oira_submission@omb.eop.gov

Re: OMB Control Number 1615-0009 30-Day Notice of Information Collection Under Review: Form I-129, Petition for Nonimmigrant Worker; draft forms labeled USCIS-2005-030-0213 and USCIS-2005-030-0214

To Whom It May Concern,

I am writing on behalf of the Association of University Export Control Officers (AUECO), an association of senior export practitioners with export compliance responsibilities at sixteen accredited institutions of higher learning in the United States. As expressed in its founding charter, AUECO is committed to monitoring changes in the administration of export laws and regulations that could affect international transactions and collaborations in academia. As a result, AUECO is providing the following comments in response to the United States Citizenship and Immigration Service's (USCIS) proposed addition of a "Certification Pertaining to the Release of Controlled Technology or Technical Data to Foreign Persons in the United States" section to the I-129 Form.

Evaluating the Propriety and Practical Utility of the Collection of Information

As the U.S. Departments of Commerce and State are the cognizant agencies for export licensing, it is still unclear as to why this information is necessary for the USCIS to evaluate a visa applicant's employment eligibility. We urge the agency to consider whether using the I-129 form to collect information about deemed export licenses is necessary for the proper performance of the functions of the USCIS. AUECO concludes that information collected is irrelevant to the determination of the alien's eligibility. Also, institutions that sponsor H-1B visas are required to comply with the deemed export provisions found in the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR). Requiring completion of this new section does not serve any practical utility in ensuring compliance with deemed export regulations.

Evaluating the Accuracy of the Agency's Estimate of the Burden of the Collection of Information

While it is clear that the proposed revision to the deemed export acknowledgement on its face attempts to reduce the information collection burden overall, AUECO believes that the estimate is still inaccurate. The applicant will need to consult a variety of individuals as well as conduct a review of the regulations

in order to simply determine which box is appropriate for a given beneficiary. The public burden per petition for institutions of higher learning, and likely also small businesses, may be closer to eight man-hours rather than the 2.75 burden calculated in the proposal.

Enhancing the Quality, Utility, and Clarity of the Information To Be Collected

AUECO has found that, apart from its questionable utility and burdensome nature, the proposed changes to the I-129 and the Instructions documents are still not worded in such a manner as to be consistent with the regulatory definitions found in 15 CFR 734.2 and 22 CFR 120.17. Should USCIS decide to move forward with the addition of a certification to the I-129 form, AUECO respectfully proposes the following editorial changes to enhance clarity and consistency with standing regulations and the remainder of the form.

(Excerpt from USCIS-2005-030-0214)

I-129 Petition for a Nonimmigrant Worker, Part 6:

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:

1. A license is not required from either U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the ~~foreign person~~ beneficiary; 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~~ not release controlled technology or technical data to the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

(Excerpt from USCIS-2005-030-0213)

Instructions for Form I-129, Petition for a Nonimmigrant Worker, Certification Pertaining to the Release of Controlled Technology or Technical Data to Foreign Person in the United States:

U.S. Export Controls on Release of Controlled Technology or Technical Data to Foreign Persons. The Export Administration Regulations (EAR) (15 CFR Parts 770-774) and the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130) require U.S. persons to seek and receive authorization from the U.S. Government before releasing to foreign person in the United States controlled technology or technical data. Under both the EAR and the ITAR, release of controlled technology or technical data to foreign persons in the United States—even by an employer—is deemed to be an export to that person’s country or countries of nationality. One implication of this rule is that a U.S. company ~~must seek and receive~~ may require a license ~~from the or other~~ U.S. Government authorization before it releases controlled technology or technical data to its nonimmigrant workers employed as H-1B, L-1, or O-1A beneficiaries.

Requirement to Certify Compliance with U.S. Export Control Regulations. The U.S. Government requires each company or other entity to certify that it has reviewed the EAR and ITAR and determined whether it will require a U.S. Government export license to release controlled technology or technical data to the beneficiary. If an export license is required, then the company or other entity must further certify that it will not release ~~or otherwise provide access to~~ controlled technology or technical data to the beneficiary until it has received from the U.S. Government the required authorization to do so. The petitioner must indicate whether or not a license is required on **Page 5, Part 6** of Form I-129.

In closing, AUECO would like to express its appreciation for the opportunity to provide comments on these proposed changes. Deemed export licensing requirements in the context of the visa application process is a sensitive and inherently complex topic, and AUECO would like to thank the USCIS taking the time necessary to consider the impact of the proposed changes to the 1-129 form. It is AUECO's position that the proposed changes are unnecessary and unduly burdensome, particularly for the academic community. However, should the USCIS choose to proceed with the proposed changes, AUECO would strongly encourage the USCIS consider the proposed editorial changes which would significantly improve the clarity of the form and guidance documents.

Sincerely,

A handwritten signature in black ink, appearing to read "J. May", with a large, stylized flourish at the end.

Jennifer P. May
Chair