The purpose of this document is to provide you, as the supervisor of a person to be hired on an H-1B, H-1B1, L-1, or O-1A visa, with background that will assist you in completing the Technology Control Assessment Form ("Assessment Form").

The Assessment Form that you are asked to complete requires you to make two key determinations. The first is whether the person for whom the I-129 Form is being completed will have access to “controlled” technology or technical data. The second is whether the person is a citizen of a country that appears on a Department of Commerce list of countries to which specific types of exports are prohibited.

To make the first determination, it is important to understand what is meant by “controlled” technology or technical data. The government classifies these technologies in two ways. First, the State Department maintains a list under the International Traffic Arms Regulations (ITAR), which identifies technologies and technical data that have been produced or modified for military use (or that may have dual military and civilian use potential) called the U.S. Munitions List (USML), which can be found at the following link: www.pmddtc.state.gov/regulations_laws/itar.html. Second, the Department of Commerce maintains a list of technologies and technical data under their Export Administration Regulations (EAR) called the Commerce Control List, which is found at www.access.gpo.gov/bis/ear/ear_data.html#ccl. It is important to understand that both of these lists have exemptions for technologies and technical data that are in public domain or that would be accessed in the course of conducting research.

**Licensure and/or Exemptions for Controlled Technologies and Technical Data**

**Export Administration Regulations - EAR**

According to EAR section 734.3(b)(3), “technology and software” as defined in the EAR is “publicly available,” and thus not subject to the EAR if it is:

~ “already published or will be published,” as described in section 734.7;
~ “arise(s) during, or result from, from fundamental research,” as described in section 734.8;
~ is “educational” as described in section 734.9;
~ is “included in certain patent applications,” as described in section 734.10;  
~ EXCEPT software classified under ECCN 5D002 on the Commerce Control List.

*Note:* ¹ American Immigration Lawyers Association
According to ITAR section 120.10(a)(5), information otherwise within the scope of the ITAR’S definition of “technical data” is not subject to the ITAR if it is:

- “information in the public domain,” as defined in section 120.11;
- “information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities;” or
- “basic marketing information on function or purpose or general system descriptions of defense articles.”

*Note:* American Immigration Lawyers Association

Therefore, the first question you need to ask yourself is whether the employee in question would have access to technologies or technical data that falls outside of the EAR and ITAR exemptions listed above. If yes, then under the ITAR rules you need to ask yourself whether they would have access to technologies or technical data that was produced or modified for military use. Only at this point would you need to consider the kinds of technologies or technical data the employee might have access to and then review the USML and CCL to determine whether those technologies appear on one of those lists. If yes, then NIU will need to pursue a license for that employee to have access to that technology.

The second issue pertains to the citizenship of the prospective employee for EAR controlled technology or technical data. Here, the Assessment Form asks you to consult the EAR’s Commerce Country Chart, which can be found at [https://www.bis.doc.gov/index.php/forms-documents/doc_view/14-commerce-country-chart](https://www.bis.doc.gov/index.php/forms-documents/doc_view/14-commerce-country-chart). The chart lists a number of countries and the types of technologies for which exports are prohibited. If the prospective employee is a citizen of one of the countries on the list and they will have access to a technology for which export is prohibited, you will need to note this on the form and NIU will need to pursue obtaining a license.

Please be aware that if NIU needs to pursue a license as described above, the University will need to prevent access to any controlled technology or technical data by the foreign national employee until the University actually acquires the requisite license.