The I-129 form is an application for an alien to come to the United States temporarily to perform services/labor, or to receive training, as a nonimmigrant worker under an H-1B, H-1B1, L-1, or O-1A visa. A key change on the form I-129 is the inclusion of a “Deemed Export Attestation” in Part 6. Part 6 requires the petitioner (i.e. NIU) to certify that the beneficiary (i.e. potential employee) will be denied access to certain technology and/or technical data until a license allowing for such access has been obtained, or it is exempt from the need for a license. Answering Part 6 of the I-129 without first verifying its accuracy can constitute perjury, which may result in severe penalties.

The NIU International Student & Faculty Office cannot complete the visa application for a foreign national hire until this issue has been fully vetted by an appropriate designee of the hiring department/unit. Persons filling out this form should be those best able to predict what a foreign national employee should be working on, with, etc..., throughout the term of his/her visa authorized employment at Northern Illinois University. Multiple individuals should complete and sign where requested if no single person is able to attest to the foreign national employee’s work experience throughout the term of his/her employment.

1. Department/Unit requesting foreign national hire: ____________________________________________

2. Department/Unit designee(s) for completing this form: _______________________________________

3. Name of I-129 beneficiary (foreign national): ____________________________________________

4. Country of citizenship of beneficiary: ___________________________________________________

5. Country of residence of beneficiary: ____________________________________________________

6. Reason for I-129 (Please check one):
   □ New Employment
   □ Continuation of previous employment
   □ New position for existing employee

7. Expected start date of beneficiary: ______________________________________________________

The following section will help the department determine whether controlled technologies and technical data will be released, disclosed (including oral or viral disclosure), or transferred to the beneficiary. If there is no restricted technology or technical data that will be released, disclosed, or transferred to the beneficiary, please write NONE in the space for Question 10 and skip to Question 13.
In order to determine whether or not a particular technology is restricted, you must review the applicable list of controlled technologies and technical data at both the Export Administration Regulations’ (EAR’s) associated Commerce Control List, which is found at www.access.gpo.gov/bis/ear/ear_data.html#ccl, and the International Traffic Arms Regulations’ (ITAR’s) associated U.S. Munitions List (USML), which is located at www.pmddtc.state.gov/regulations_laws/itar.html. You can also contact the manufacturer of specific devices to determine whether the technology or information/data is controlled. This will help answer Question 10 below. An alpha-numeric classification, known as an Export Control Classification Number (ECCN) has been ascribed to controlled technologies and technical data. It is advisable for each department/unit to maintain an inventory of any controlled technology and technical data that it uses, maintains, or develops.

8. Proposed title of beneficiary: ______________________________________________________________________

9. Description of beneficiary’s duties: ______________________________________________________________________________________
____________________________________________________________________________________

10. Identify any controlled technology and technical data, by EAR or ITAR citation, that will be released, disclosed (including oral or visual disclosure), transferred to the beneficiary (if none, please indicate such and skip to Question 13): __________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

Licensure and/or Exemptions for Controlled Technologies and Technical Data

A license is normally necessary if controlled technologies and technical data is released, disclosed, or transferred to a beneficiary and that person is from a country to which the restriction of that specific technology applies. There are three general categories of exceptions that apply to universities: (1) fundamental research; (2) educational information; and (3) publicly available or public domain technology as defined in the EAR and ITAR.

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 734.10i
~ EXCEPT software classified under ECCN 5D002 on the Commerce Control List.

Note: i 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

11. If the beneficiary will have access to controlled technology, do any of the exemptions apply? (if yes, please identify which exemption(s) and skip to Question 13:__________________________

________________________________________________________________________________________

If a beneficiary will have access to EAR controlled technologies, a license will need to be obtained if that person’s citizenship is with a country that is listed on the EAR’s Commerce Country Chart.

12. If the beneficiary will have access to EAR controlled technology, do the export restrictions on that technology apply to this beneficiary’s home country? □ Yes □ No

13. Is a license required from either the U.S. Department of Commerce (under EAR) or the U.S. Department of State (under ITAR) to release, disclose (including oral or visual disclosure), or transfer the technology or technical data that the beneficiary is supposed to have access to at Northern Illinois University?

□ Yes

□ No (a license is not required if (a) controlled technology and technical data is not released, disclosed, or transferred to the beneficiary; (b) the release is exempt; or (c) the export restrictions do not apply to the beneficiary’s country of citizenship)

14. If the answer to Question 13 is YES, has such a license been obtained or applied for? □ Yes □ No

15. Signature of Departmental Designee: ____________________________________________________________

**Please note that this assessment does not negate the need to actually apply for an appropriate license in the event that the beneficiary does receive controlled technology or technical data that was not anticipated at the time of this assessment. Should that occur, the beneficiary-employee should not be allowed to access such controlled technology or technical data until an appropriate license is obtained.”