



Corporations Must Focus On Deemed Exports

U.S. Citizenship and Immigration Services (USCIS) now requires companies that employ foreign workers to certify that the company has read and complied with the deemed export rules. The USCIS form, an I-129, is a new tool by which the United States government is able to force companies doing business in the U.S. to pay attention to the export laws and requirements. The deemed export concept sounds fairly simple, but the regulations and compliance process is complex. The regulations refer to both the U.S. Department of Commerce Export Administration Regulations (EAR) and the Department of State International Traffic in Arms Regulations (ITAR). Both sets of regulations include lists of goods and technology that are controlled and may not be shared with foreigners in the U.S. This type of export is a “deemed export.” The Department of Commerce regulations cover dual uses products for both commercial and defense purposes. The Department of State regulations cover products specifically designed for military use. The required I-129 certification states that the company manager has read the regulations and then requires acknowledgement regarding whether the technology is controlled and whether a license is required to release the technology for the foreign employee.

Companies need to review their export compliance programs. The company manager must know and understand what the technologies are, whether they are used or available in the company and whether any foreign national has access to the technology. Technology of customers and vendors may qualify if a foreign employee has access to it. Fortunately, only a small percentage of companies actually handle covered technologies. But, for those companies using covered technologies, the consequences of noncompliance are significant. Penalties include civil fines of up to \$500,000 per violation, criminal penalties of up to \$1 million per violation and up to 10 years in prison, a denial of export privileges and debarment from U.S. government contracts.

How We Can Help

We regularly represent corporate and individual clients who may be subject to requirements for export licensing. We counsel companies prospectively on the development of internal compliance programs that minimize the risk and potential for violation of such laws. We perform preliminary audits of company policies and actions. We believe that such service is an important element in the best practices program for any U.S. business entity transacting international business in today’s regulatory climate.

Click [here](#) for a recording of our July 12, 2011 webinar for further clarifications and practical tips for complying with the new deemed exports requirements for companies that employ foreign workers. Moderated by Ms. Edelman with Kevin Wolf, Assistant Secretary for Export Administration; and Randy Pratt, Director Information Technology Controls Division and encryption expert from the U.S. Bureau of Industry and Security of the Department of Commerce.

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