

Deemed Exports

How Sharing Technology With Foreign Persons Inside the
U.S. Triggers Export Controls

R. McConnell Group PLLC

01

What Is a Deemed Export?

A release to a foreign person is treated as an export, no border required

THE CORE RULE

- Releasing controlled technology or source code to a foreign person is a deemed export
- It can happen entirely within the United States
- It reaches employees, contractors, students, and visitors
- The EAR attributes it to the person's most recent country of citizenship or permanent residency; the ITAR, to all countries of current or former citizenship or permanent residency

HOW A RELEASE HAPPENS

- Visual inspection of controlled technology or drawings
- Oral or written exchange of technical data
- Access to controlled systems, labs, or source code
- Application of controlled knowledge on the job

02

When a License Is Required

*It turns on what the technology is
and who the foreign person is*

THE TWO-PART QUESTION

- Classify the technology under an ECCN on the Commerce Control List
- Identify the person's most recent country of citizenship or permanent residency
- Cross-reference the Commerce Country Chart
- A license is required only for certain pairings

COMMON TRIGGER AREAS

- Research and development teams
- Engineering and manufacturing know-how
- IT administrators with broad system access
- Cloud and shared network environments

03

The Immigration Overlap: Form I- 129

*Export compliance is now built into
routine visa petitions*

THE I-129 CERTIFICATION

- Employers certify deemed-export compliance for H-1B, H-1B1, L-1, and O-1A petitions
- Part 6 asks whether a license is needed for the worker
- It is made under penalty of perjury
- It ties export control directly to hiring

WHY IT MATTERS TO THE BOARD

- Hiring and export compliance are now linked
- An error exposes the company on two fronts
- It requires HR, Legal, and export coordination
- It is a high-volume compliance touchpoint

04

Building a Program

Controls and governance keep everyday technical work inside the rules

CORE CONTROLS

- Maintain a written technology control plan
- Screen and track the foreign-person workforce
- Restrict access to controlled technology
- Manage licenses and their conditions

GOVERNANCE AND CULTURE

- Train employees who handle controlled technology
- Assign ownership across Legal, HR, and IT
- Audit access and license conditions
- Report metrics and incidents to the board

The Board's Deemed-Export Checklist

Five things directors should be able to confirm

1

Know the Technology Classify controlled technology and source code correctly.

2

Know the People Identify foreign persons with access and their country.

3

Control Plan Maintain a written plan governing access and handling.

4

I-129 Discipline Keep hiring and export certifications accurate.

5

Train and Audit Train affected staff and test access controls.