

Deemed Exports and You

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You may be surprised to learn that you can commit an export control violation without shipping a single product overseas. This is due to the “deemed export” rule.

Simply put, you must obtain an export license from the Bureau of Industry and Commerce before you can legally release controlled technology to a foreign person. This is because the US government considers the sharing of controlled information with foreign nationals to be the functional equivalent of a physical export to the person’s country of origin. See 15 CFR 734.13 (b).

It makes sense when you think about it. A physical product can be tracked and recovered. If not, it still has a finite shelf life. For example, a set of night vision goggles will eventually break or simply wear out. Yet the knowledge of how to manufacture or operate night vision goggles does not have an expiration date. In fact, once such technology is disseminated it can no longer be effectively controlled. Depending on the technology concerned, its dissemination to foreign persons can have serious economic and national security implications.

So that is the basic rule, but what should you do about it? First, you need to determine whether an export license is necessary. There is definitely a risk if you employ foreign nationals or otherwise share data or other information with foreign persons as part of your business. This is particularly the case in the bio-chemical, medical, computer and defense-related industries. Universities are also subject to export licensing requirements because foreign students frequently work in a research and development role that involves exposure to controlled technology.

So regardless of whether you actually ship products out of the country, if your work concerns defense-related or dual use products, you need to be aware of the “deemed export” rule. A determination of whether an export license is necessary needs to be made before you share controlled information with a foreign person. If there is any doubt, the best practice is to screen any foreign national employees or customers from potentially controlled information until a licensing determination has been made.

For more information, contact Mark Hamilton.