

Deemed Exports

The Export Administration Regulations (EAR) define a **deemed export** as the release of technology or source code subject to the EAR to a foreign national in the United States. Any such release is "deemed" to be an export to the home country of the foreign national. Situations that can involve the release of U.S technology or software include:

- Employees that are foreign nationals involved in specific research, development, and manufacturing activities
- Foreign students or scholars conducting research
- Laboratory tours
- Face-to face
- Telephone
- E-mail
- Fax
- Sharing of computer files
- Visual inspections

This is the PRIMARY export control issue facing university research.

Who it Affects

Foreign Nationals are subject to deemed export requirements unless:

- Granted U.S. citizenship;
- Granted permanent residence status (i.e., "Green Card" holders); or
- Granted status as a "protected individual." Protected individuals include political refugees and political asylum holders.

As a general rule, the last citizenship obtained by the foreign national governs. Example: Dual Citizenship. Foreign National that becomes a citizen of the United Kingdom but maintains his/her birth country citizenship.

Why it is Important

According to recent reports, the Commerce Department has begun to monitor applications for employment based visas, and particularly H visas, more closely.

The Department's Bureau of Industry and Security has conducted sporadic spot checks of foreign nationals who have been granted H visas to work in sensitive industries, including interviews with their employers.

The FBI also has become increasingly concerned with the relationship between foreign workers and the release of technology deemed to be an export under the EAR and ITAR. As part of their investigative activities, FBI agents have visited universities in order to learn more about projects on which particular foreign nationals have been working and to ascertain whether or not they are licensed.