



## 903 Export & Restriction Controls

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Contessa Food Products, Inc.

## Faculty Biographies

### Reina M. MacDonald

Reina M. MacDonald is general counsel and secretary for NMB (USA) Inc., in Chatsworth, California, and its subsidiaries. Ms. MacDonald is responsible for all legal matters relating to NMB Group Companies including export control, import compliance, environmental compliance, acquisitions and divestitures, litigation management, transactional matters, and records management. A member of NMB's executive council, Ms. MacDonald is an integral member of the management team.

Ms. MacDonald previously held the position of foreign counsel in the legal department of NMB's Japanese parent company, Minebea Co., Ltd., in Tokyo, where she was responsible for multinational transactional matters.

Ms. MacDonald is a member of ACC and the Los Angeles County Bar Association, corporate counsel section. She is also a past member of the corporate law departments committee and the committee on cyberspace law of the business law section of the State Bar of California. Active in her community, Ms. MacDonald recently graduated from the Leadership Simi Valley Program offered by the Chamber of Commerce, through which she is involved in establishing a teen center for the city's youth population. Ms. MacDonald is a long-standing member of the local steering committee for the American Cancer Society's Relay For Life. Ms. MacDonald received the Anti-Defamation League's Deborah Award, given to women of achievement who exhibit courage, determination, and leadership in their professional and personal lives.

Ms. MacDonald received her B.A. from the University of Regina and her LL. B. from the University of Ottawa.

### Gregory J. Morrow

Gregory J. Morrow is director of corporate administration, general counsel and secretary for Contessa Premium Foods, Inc., a fully integrated, multi-national frozen foods company with corporate headquarters in San Pedro, California. Mr. Morrow's responsibilities include providing direct meaningful advice to multifaceted disciplines within Contessa. Aside from managing an array of outside legal service providers, Mr. Morrow enjoys applying his "hands on" approach to all aspects of his company's business from finance to procurement and from operations to marketing.

Prior to joining Contessa, Mr. Morrow served in a myriad of capacities with the U.S. Government. Prior to attending law school, he acted as examining officer for the Federal Reserve Bank. As an attorney, Mr. Morrow has held positions as senior trial attorney for the Interstate Commerce Commission (ICC), special assistant United States attorney for the Central District of California, and assistant district counsel for the Department of Justice, Immigration and Naturalization Service (INS).

Mr. Morrow served on the board of directors for ACC's Southern California Chapter and chaired the international committee. He has also served on the board of directors of the Federal Bar Association, California chapter. Mr. Morrow is currently a member of the intellectual property

section of the California Bar Association, corporate law section for the Los Angeles County Bar Association, and National Association of Corporate Directors. Over the last two secessions, Mr. Morrow has been honored as a United States Delegate to the joint committee of the United Nations and World Health Organization Codex Alimentarius, establishing worldwide standards for a variety of food products. He has also served as an instructor at the University of Florida Aquatics Food Products Program and as guest panelist at numerous other professional events.

Mr. Morrow received his B.S. from the University of Utah and his J.D. from the University of the Pacific McGeorge School of Law.



**Session 903**  
**EXPORT & RESTRICTION CONTROLS**

**Gregory J. Morrow, Esq.**  
General Counsel and Corporate Secretary  
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**GENERAL OVERVIEW**  
**WHAT IS AN EXPORT?**

The transfer of anything to a foreign person by any means, anywhere, anytime, or the knowledge that what you are transferring to a U.S. person will be further transferred to a foreign person.

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## GENERAL OVERVIEW

### HOW ARE EXPORTS CONTROLLED?

#### 2 PRIMARY REGIMES

1. Export Administration Regulations (EAR)
2. International Traffic in Arms Regulations (ITAR)



## I. EXPORT ADMINISTRATION REGULATIONS

1. 15 CFR 730 through 15 CFR 774 are popularly known as EAR, the Export Administration Regulations
2. EAR was drafted by the executive branch, primarily the Department of Commerce.
3. Administered by Department of Commerce



## I. EXPORT ADMINISTRATION REGULATIONS

4. Often referred to as the “new export administration”, covers ten categories:
  1. Nuclear materials, facilities and equipment and Miscellaneous related exports;
  2. Materials chemicals, Microorganisms and toxins;
  3. Materials processing;
  4. Electronics;
  5. Computers;
  6. Communications, telecommunications;
  7. Optics, Cameras, Lasers, Radar;
  8. Guidance, navigation, altimeters, avionics;
  9. Submersible systems, scuba, marine equipment; and
  10. Propulsion systems, space vehicles



## 2. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

1. 22 CFR 120 through 22 CFR 130, the International Traffic in Arms Regulations (ITAR).
2. The executive branch, primarily the Department of State, drafted ITAR.
3. ITAR has controlled Internet-security software for many years; however, in December 1996, ITAR was modified to control only “military” security software.



## 2. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

4. The Arms Export Control Act of 1994, specifically 22 USC 2752, 22 USC 2778, and 22 USC 2797 authorizes ITAR. (Previous statutes along the same lines: the Arms Export Control Act of 1976, the Mutual Security Act of 1954, and the Neutrality Act of 1935).
5. List of 21 categories of defense articles/services that are subject to its regulations.
6. List of proscribed countries that are generally denied permission to receive any exports from the list.



## EXAMPLES OF U.S. GOVERNMENT AGENCIES, LAWS & REGULATIONS

1. DEA – 21 CFR 1311
2. FDA – 21 USC 301
3. Department of Interior – 50 CFR 17, 21, 22, 31, 32
4. Department of Treasury – 31 CFR 500
5. Department of Energy – 1- CFR 205.300, 10 CFR 110 & 810



## WHY DO WE CONTROL EXPORTS?

1. National Security
2. Foreign Policy
3. Proliferation
4. Short Supply
5. Antiterrorism
6. Crime Control
7. Regional Stability
8. UN Sanctions

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## EXAMPLES OF U.S. EXPORT CONTROLS IN ACTION CHINA

China is currently the focus of U.S. export control policy because of its growing regional military power as well as certain Chinese entities involved in proliferation related activities.

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## EXAMPLES OF U.S.EXPORT CONTROLS IN ACTION CHINA

U.S. export control policy on China imposes sanctions on end-users and prohibits specific military or proliferation related exports.

At the same time, U.S. policy allows flexibility in areas where technology is widely available as a commodity physically impractical to control, such as low level computers or encryption. This flexibility helps U.S. companies compete in China on a level playing field.



## EXAMPLES OF U.S.EXPORT CONTROLS IN ACTION CHINA

U.S. policy on export controls on China, as in the case of export controls more generally, must continue to balance national security concerns and other foreign policy concerns with economic concerns.

Unfortunately, in the view of the U.S. Government, the Beijing regime remains one of the world's key sources for missile and weapons of mass destruction technology. This category of countries includes countries like Iran, Libya and North Korea.





## EXAMPLES OF U.S.EXPORT CONTROLS IN ACTION CHINA

Chinese entities have provided extensive support in the past to Pakistan's nuclear and ballistic missile programs and have supported some nuclear and chemical programs in rogue states.

Like any other country, the challenge of China is finding balance between the desire to successfully compete in a commercial market and the need to protect national security.

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## EXAMPLES OF U.S.EXPORT CONTROLS IN ACTION CHINA

Policy toward China must fit into the larger national security and foreign policy agenda set by the President. China currently has more than 100 nuclear warheads and is increasing the size, accuracy and survivability of its nuclear missile force, making it one of the few countries that can severely threaten the United States.

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## EXAMPLES OF U.S.EXPORT CONTROLS IN ACTION

### IRAN

As a result of Iran's support for terrorism and its actions against shipping in the Persian Gulf, a series of U.S. Presidents have issued Executive Orders tightening the trade restrictions between Iran and U.S. companies for nearly two decades.



## EXAMPLES OF U.S.EXPORT CONTROLS IN ACTION

### IRAN

On October 29, 1987, President Reagan issued Executive Order 12613 imposing a new import embargo on Iranian origin goods and services (i.e., this Order used Section 505 of the International Security and Development Cooperation Act of 1985 (ISDA) as statutory authority).

This Order was followed in March 1995 when President Clinton issued Executive Order 12957 prohibiting U.S. involvement with petroleum development in Iran.



## EXAMPLES OF U.S.EXPORT CONTROLS IN ACTION

### IRAN

On May 6, 1996 President Clinton signed Executive Order 12959 substantially tightening sanctions against Iran.

On August 19, 1997, President Clinton signed Executive Order 13059 clarifying Executive Orders 12957 and 12959 and confirming that virtually all trade and investment activities with Iran by the U.S., wherever located, are strictly prohibited.



## EXAMPLES OF U.S.EXPORT CONTROLS IN ACTION

### IRAN

On March 17, 2000 sanctions against Iran were eased to allow trade of goods such as rugs, food products, etc.

Corporate criminal penalties continue to be harsh against those that violate any existing Executive Order and include up to \$500,000 in penalties per violation (\$250,000 for individuals) and up to 10 years imprisonment.



## EXERCISES

### CASE A<sup>1</sup>:

- Re-exporting through third party countries.

### CASE B<sup>2</sup>:

- Foreign company diverting goods after lawful purchase from U.S. Company.

### CASE C<sup>3</sup>:

- Specifically designed items vs. exclusively designed items.



## CASE A<sup>1</sup>: RE-EXPORTING...

Company A exports Item X, an item controlled by the EAR, from the United States to the United Arab Emirates, a lawful transaction. With the knowledge of Company A, Item X is then re-exported to Iran, a country heavily monitored and controlled by both the EAR and ITAR.

<sup>1</sup>Bureau of Industry and Security, United States Department of Commerce v. Industrial Scientific Corporation. Available at <http://efoia.bis.doc.gov/ExportControlViolations/E752.pdf>



## CASE A<sup>1</sup>: RE-EXPORTING...

***Question – Is Company A subject to fines and sanctions under the authority of the Department of Commerce for its involvement in the exportation of Item X to Iran?***

<sup>1</sup>Bureau of Industry and Security, United States Department of Commerce v. Industrial Scientific Corporation. Available at <http://efoia.bis.doc.gov/ExportControlViolations/E752.pdf>



## CASE A<sup>1</sup>: RE-EXPORTING...

In a recent case, the Department of Commerce established that neither companies nor individuals could evade export control laws by transshipping goods through third countries. In that case, the Department of Commerce's Bureau of Industry and Security imposed civil penalties against Industrial Scientific Corporation of Oakdale, Pennsylvania to resolve charges that it had violated U.S. export control laws by exporting gas monitors to the United Arab Emirates with knowledge that they would be re-exported to Iran.

<sup>1</sup>Bureau of Industry and Security, United States Department of Commerce v. Industrial Scientific Corporation. Available at <http://efoia.bis.doc.gov/ExportControlViolations/E752.pdf>



## CASE A<sup>1</sup>: RE-EXPORTING...

DOC alleged that the Oakdale Corporation violated the Export Administration Regulations by shipping two gas monitors from the United States to the UAE in June 1998 without obtaining the proper authorization. In addition, DOC alleged EAR violations by transferring the gas monitors to the United Arab Emirates with knowledge that the monitors would be re-exported from the UAE to Iran.

<sup>1</sup>*Bureau of Industry and Security, United States Department of Commerce v. Industrial Scientific Corporation. Available at <http://efoia.bis.doc.gov/ExportControlViolations/E752.pdf>*



## CASE B<sup>2</sup>: DIVERTING GOODS FROM U.S...

Company A, a Chinese company, imported machines under export licenses issued by DOC with the stated purpose of manufacturing civilian aircraft. The machines had been used previously in the development of the B-1 Bomber. The machines were shipped to China between September 2004 and March 2005, by Company B, an U.S. corporation, and destined for Beijing Machining Center. The Beijing Machine Center however did not exist at the time the licenses were granted and was actually never created. Instead, the tools were sent to other locations, including Company C, that just so happens make military attack aircraft and anti-ship missiles.

<sup>2</sup>49 F.3.d 1010, *United States of America v. Robert Hitt*



## CASE B<sup>2</sup>: DIVERTING GOODS FROM U.S...

*Question - Did any of the companies involved in this transaction violate U.S. Export Control Laws? If so, how?*

<sup>2</sup>249 F.3.d 1010, *United States of America v. Robert Hitt*

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## CASE B<sup>2</sup>: DIVERTING GOODS FROM U.S...

In a factually similar case an investigation completed by the DOC concluded that the Chinese companies "knowingly violated" U.S. export regulations by diverting sensitive U.S. machine tools to a missile factory in Nanchang. In addition, DOC investigators found that the three companies had committed "intentional and willful violations of U.S. export regulations" and that the diversion posed "an imminent threat to the security of the United States."

<sup>2</sup>249 F.3.d 1010, *United States of America v. Robert Hitt*

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## CASE B<sup>2</sup>: DIVERTING GOODS FROM U.S...

The investigators recommended that the three companies and their subsidiaries as well as affiliates be denied U.S. export privileges until they complied with the export licenses under which the machines were shipped. DOC investigators concluded that the Chinese companies "demonstrated neither technical errors nor negligence" and were guilty of "deliberate violations."

<sup>2</sup>249 F3.d 1010, *United States of America v. Robert Hitt*

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## CASE B<sup>2</sup>: DIVERTING GOODS FROM U.S...

The U.S. corporation involved was not found to be guilty of any violation given its reliance on the export licenses issued by the Commerce Department and its involvement in the discovery of the diverted use of the machine parts.

<sup>2</sup>249 F3.d 1010, *United States of America v. Robert Hitt*

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### CASE C<sup>3</sup>: SPECIFICALLY DESIGNED vs. EXCLUSIVELY DESIGNED ITEMS

Company A, a U.S. corporation, develops a dual use, military or commercial, Item X and contracts to export a large supply of Item X to India. Item X is an essential part to the triggering mechanism of explosives weighing up to 4.9 lbs. Explosives weighing five pounds or more and all components designed for the triggering and deployment of such explosives, are subject to the Export Administration Act of 1979. In addition, the President of Company A signed a letter stating that Item X, though specially designed for explosives up to 4.9 lbs, “was given added capacity...to provide for future expansion...to be used with larger explosives.” A shipment of Item X was later used in explosives weighing more than 5 lbs, including nuclear explosives.

<sup>3</sup>387 F.3d 42, *United States of America v. Walter Lachman, Maurice H. Subilia, Jr. Fiber Materials, Inc.*

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### CASE C<sup>3</sup>: SPECIFICALLY DESIGNED vs. EXCLUSIVELY DESIGNED ITEMS

EAA is designed "to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country . . . which would prove detrimental to the national security of the United States." (50 U.S.C. app. § 2402(2)(A)). It is a criminal offense to knowingly violate or conspire to violate EAA or its regulations. (50 U.S.C. app. § 2410(a)). Willful violations incur an even greater penalty. (*Id.* § 2410(b)).

<sup>3</sup>387 F.3d 42, *United States of America v. Walter Lachman, Maurice H. Subilia, Jr. Fiber Materials, Inc. Materials International, Inc.*

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### CASE C<sup>3</sup>: SPECIFICALLY DESIGNED vs. EXCLUSIVELY DESIGNED ITEMS

Company A asserts that Item X is *specifically designed* and marketed only for use with explosives weighing up to 4.9 lbs. It further argues that even though Item X may be used to trigger explosives exceeding 4.9 pounds, it is not *exclusively designed* for such a purpose and therefore not subject to EAA restrictions that the government intended to impose.

The government contended that the term *specifically designed*, as used in the act, included all controls that were designed so that they could be used with regulated items, whether or not such controls were designed *exclusively* for such use or not.

<sup>3</sup>387 F.3d 42, *United States of America v. Walter Lachman, Maurice H. Subilia, Jr. Fiber Materials, Inc. Materials International, Inc.*

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### CASE C<sup>3</sup>: SPECIFICALLY DESIGNED vs. EXCLUSIVELY DESIGNED ITEMS

*Question - Would Company A be in violation of EAA regulations and penalties if it was correct in asserting that the intended use of Item X was not for items under the control of EAA?*

<sup>3</sup>387 F.3d 42, *United States of America v. Walter Lachman, Maurice H. Subilia, Jr. Fiber Materials, Inc. Materials International, Inc.*

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### **CASE C<sup>3</sup>: SPECIFICALLY DESIGNED vs. EXCLUSIVELY DESIGNED ITEMS**

In United States v. Lachman, 278 F. Supp. 2d 68 (D. Mass. 2003), on appeal, the court held that that the applicable EAA regulation was not unconstitutionally vague and, accordingly, vacated the judgment of acquittal thus holding defendants guilty of violating EAA regulations.

<sup>3</sup>387 F.3d 42, *United States of America v. Walter Lachman, Maurice H. Subilia, Jr. Fiber Materials, Inc. Materials International, Inc.*

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### **Session 903 EXPORT & RESTRICTION CONTROLS**

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## ELEMENTS OF A COMPLIANCE PROGRAM:

1. Corporate Policy
2. Compliance Procedure Manual
3. Training
4. Auditing

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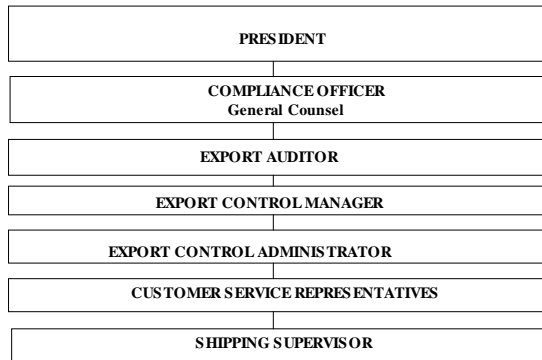
## SAMPLE CORPORATE COMPLIANCE POLICY

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## RESPONSIBILITY CHART



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## TRAINING: WHO SHOULD ATTEND?

- Inside Sales
- Outside Sales
- Product Support / Engineering
- Everyone on Responsibility Chart
- Foreign Nationals

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## TRAINING OUTLINE

- Terms and principles used in the export regulations
- Steps for using the procedures
- Is a license required based on the item and country of ultimate destination?
- Is a license required based on the end use/and user?
- Are there any applicable license exceptions?
- How do you apply for a license?
- Record keeping requirements
- How to manage company's export compliance program.

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## INSIDE SALES DEPARTMENT RESPONSIBILITIES

- Should have general knowledge of the export control regimes and agencies that are controlling exports.
- Should have knowledge about the company's products and related technologies and whether they are controlled.
- Check transactions (quotes and P.O.'s) for foreign customers against DPL, Entity, Specially Designated Nationals List (through order entry system).

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## INSIDE SALES REPONSIBILITIES – cont.

- Screen all orders shipping outside of the United States or to domestic entities for re-export
- Watch for the red flags
- Know the general prohibitions
- Know the application – end use, user, and ultimate destination.

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## PRODUCT SUPPORT AND ENGINEERING RESPONSIBILITIES

- Have a general knowledge of the export control regimes and agencies that are controlling exports
- Assist inside sales in classifying company products
- Classify all technical data
- Emphasize: Technology may be controlled, not only the product

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## **PRODUCT SUPPORT & ENGINEERING RESPONSIBILITIES – cont.**

- Keep accurate daily export facsimile log
- Follow company worldwide policy – no hand carry without proper authorization and documentation
- Watch for the red flags
- Know the general prohibitions
- Know the application – end use, user, and ultimate destination.

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## **FOREIGN NATIONALS RESPONSIBILITIES**

- Must have a general knowledge of the export control regimes and agencies controlling export.
- Emphasize -Technology disclosed to a Foreign National in the U.S. is an export
- Must obtain authorization from appropriate personnel prior to sending technology out of US via email, fax, or shipping.

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## FOREIGN NATIONALS RESPONSIBILITIES cont.

- Ensure that a Request for Export form is filled out and approved when shipping any letter, packages, etc. outside of the US.
- Fill out and submit a Foreign Visitor Request form to Export Compliance Administrator for any Foreign Nationals scheduled to visit our facility with a detailed description of the subjects to be discussed.

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## FACTS IN HAND

- What is your item?
- Where is it going?
- Who will receive it?
- What will be the end-use?
- What else does my end-user do?

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## AUDIT

When audited by outside agencies the two most likely violations relate to:

- Deemed Exports to Foreign Nationals.
- Failure to control exports via fax, phone and e-mail.

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## DEEMED EXPORTS/REEXPORTS

- Release of technology and source code to Foreign National in the U.S. or abroad is considered to be an export to the person's home country.
- Does not apply to U.S. citizens, individuals granted permanent resident status, or protected individuals

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## WHAT IS CONTROLLED TECHNICAL DATA?

- Technical data is controlled when it relates to products that are:
  1. Specifically Designed for military applications.
  2. Have both commercial and military applications (DUAL USE)
  3. Are included in the U.S. Commerce Control List. (CCL)

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## TECHNICAL DATA INCLUDES ANY OF THE FOLLOWING ITEMS:

- Drawings, signs, Specifications
- Engineering Discussions (conversations)
- Performance capabilities
- Inventions
- Other technical information

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## Definition of a Foreign Person:

A non-U. S. citizen or non-permanent U. S. resident

- Transfer of controlled technology can only be permitted to U.S. citizens or permanent U. S. residents.
- This includes applicants for employment (including temporary employment), vendors, and customers.

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## IN-HOUSE FOREIGN NATIONALS: WHO ARE THEY? WHERE ARE THEY?

- Foreign owned so have in-house Foreign Nationals – Japan.
- Engineering group also has other Foreign Nationals e.g.: India, China, Taiwan, Korea, Europe.
- IT Dept. has several other Foreign Nationals, with access to the most sensitive and controlled information in our system.

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## WHAT TECHNOLOGY DO WE HAVE TO CONTROL AT EACH FACILITY?

- Answer is different at each location because products are different.
- Examples are drawings, specifications, routing sheets, etc. Some of these follow the parts through the manufacturing process and access to them needs to be controlled even when on shop floor.

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## ACTIONS TAKEN:

- All drawings locked and only ECA can grant access to the cabinets. No Foreign Nationals granted access without appropriate licenses or exceptions.
- Created firewalls and password protections for engineering systems, manufacturing systems, and controlled access. No access permitted for Foreign Nationals without appropriate licenses or exceptions.
- Logs are maintained of access with license exceptions or an applicable license.

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## ACTIONS TAKEN (cont.):

- Drafted formal proceedings in each facility regarding Deemed Exports, including visitor tracking form and procedures.
- Trained all sales, all quality, and all managers on their role and responsibilities for Foreign Nationals and procedures
- Trained all Foreign Nationals
- Trained HR on their role and responsibilities with deemed export when hiring new employees.
- Modified annual audit procedure to include these new processes.

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## Deemed Export ...

- **Foreign persons are prevented access to all controlled documents of military customers.**
- **For this reason these documents are retained in a locked environment.**

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## Hosting a Foreign Visitor

- Prior to hosting a non U.S. citizen/non U.S. permanent resident all employees are required to fill out a Foreign Visitor Request form located within Lotus Notes.
- This request will be sent to the Export Control Administrator who will advise the employee if it has been approved or not approved. The receptionist staff will be notified of all approved, not approved or pending requests.

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Visit On	Us	Name	Company	Visit On	Visit Time In	Visit Time Out	Reason For Visit
No Date Selected							
	NMB	young kim					
08/17/2005							
	NMB	Frank Jones	ABC Corp	08/17/2005	10:00:00 AM	04:00:00 PM	Evaluation of product specifications
08/15/2005							
	NMB	MFL KOICHI DOSHIO	MINEBEA JAPAN	08/15/2005	09:00:00 AM	12:00:00 PM	Customer visit with Fan Team
	NMB	Naohiro Shiota	Minebee Co. Ltd.	08/15/2005	08:00:00 AM	05:00:00 PM	Meetings in Chatsworth
08/09/2005							
	NMB	Koichi Takeshita	Minebee Co.	08/09/2005	07:45:00 AM	05:30:00 PM	meeting for KB
08/08/2005							
	NMB	Koichi Takeshita	Minebee Co., Ltd.	08/08/2005	01:00:00 PM	05:00:00 PM	Meetings in Chatsworth and Logitech SABR meeting in San Jose
	NMB	Linda Donaldson	NMB-Minebee UK	08/08/2005	08:00:00 AM	05:00:00 PM	Attend meetings in Chatsworth and Logitech SABR meeting in San Jose, CA
	NMB	Tomohiko Hirasawa	Minebee Co., Ltd.	08/08/2005	08:00:00 AM	05:00:00 PM	Meetings in Chatsworth & Logi SABR meeting in San Jose
	NMB	Yesuo Hayashi	NMB Minebee SK	08/08/2005	03:30:00 PM	05:00:00 PM	Meetings in Chatsworth and Logitech SABR meeting in San Jose
08/05/2005							
	NMB	Michiya Kagami	Minebee Co.Ltd-Hamamatsu	08/05/2005	08:00:00 AM	05:00:00 PM	R & D Meeting
	NMB	Ryusuke Mizukami	Minebee Co.Ltd	08/05/2005	08:00:00 AM	05:00:00 PM	R & D Meeting
08/04/2005							
	NMB	Ryusuke Mizukami	Minebee Co.Ltd	08/04/2005	12:00:00 PM	05:00:00 PM	Legal Meeting
07/29/2005							
	NMB	Ron Parvizi	National Process Inc	07/29/2005	10:09:00 AM	02:00:00 PM	account review
07/27/2005							
	NMB	Hiromichi Kodaira	Minebee Co., Ltd.	07/27/2005	03:49:00 PM	07:00:00 PM	

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## Foreign Visitors Badge:

- Foreign visitors will be asked to sign the register located at the reception area.
- They will be asked to sign in and will be given a “Foreign Person” badge that must be visible at all times.

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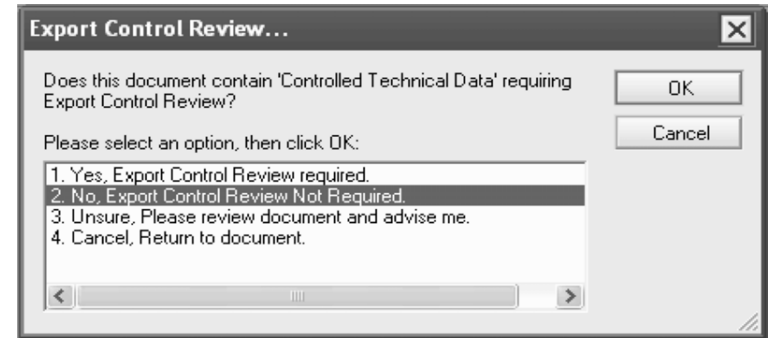
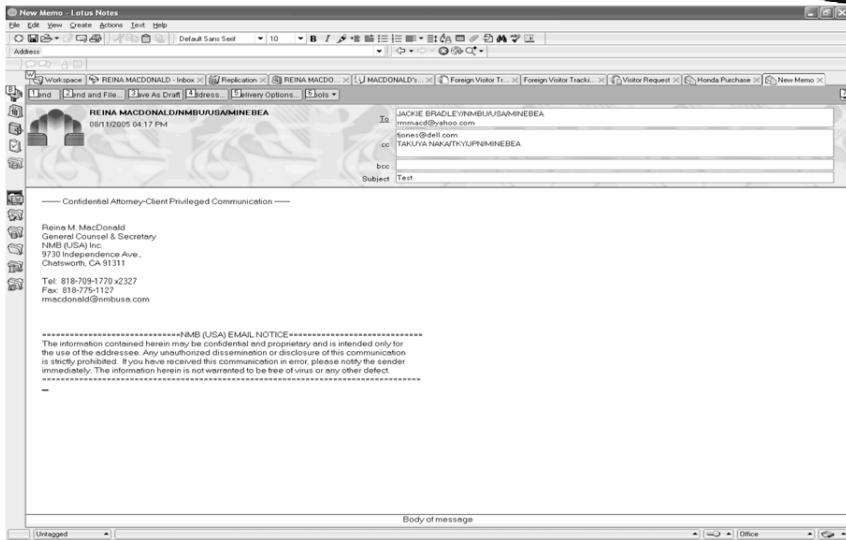
## Unplanned Foreign Visitors

- Unplanned visits by a non U.S. citizen or non permanent U. S. resident will not be approved until the company Export Control Administrator receives all required information that is requested on the foreign visitor form from the foreign visitor.
- If the visit is approved, the point of contact employee will be notified that the individual is waiting for them in the lobby.
- Foreign visitors who are not approved access to the facility will be informed of this decision by the Export Control Administrator.

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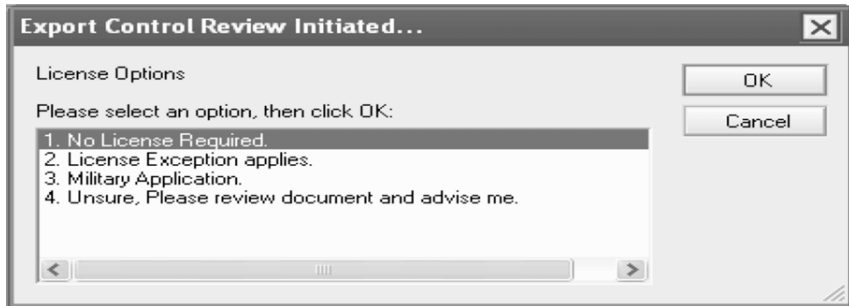


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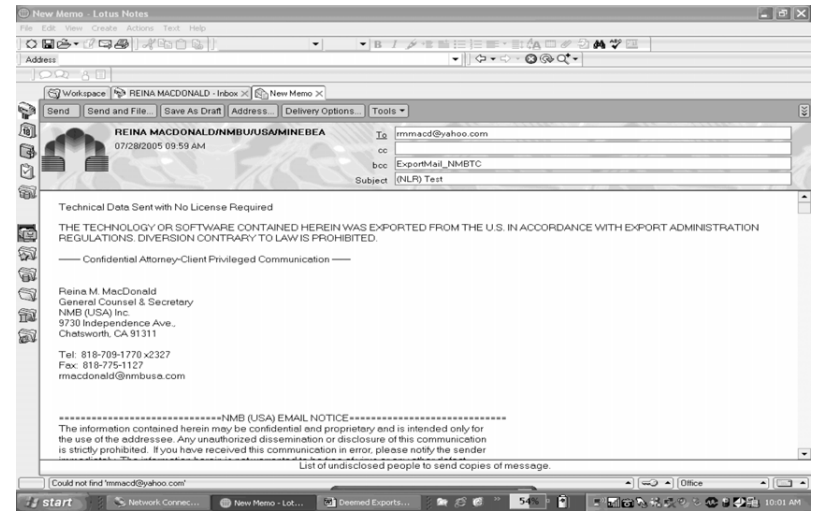
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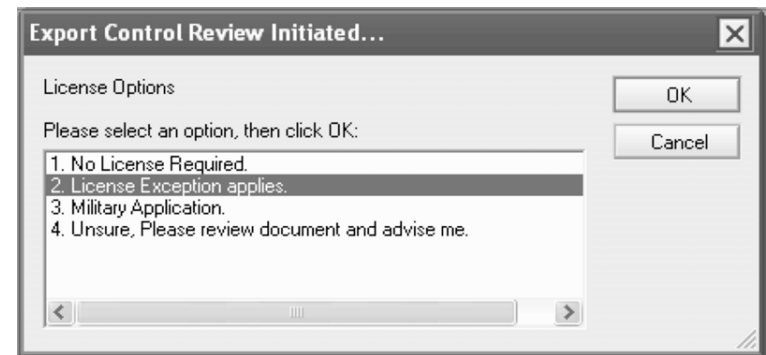
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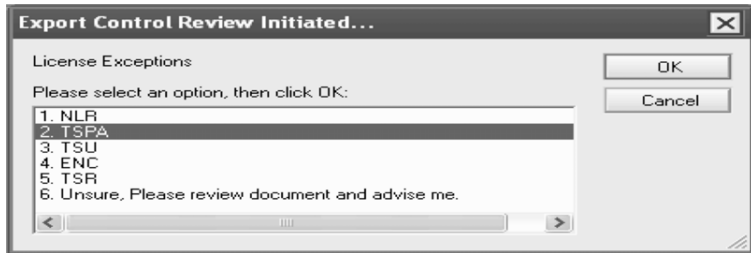


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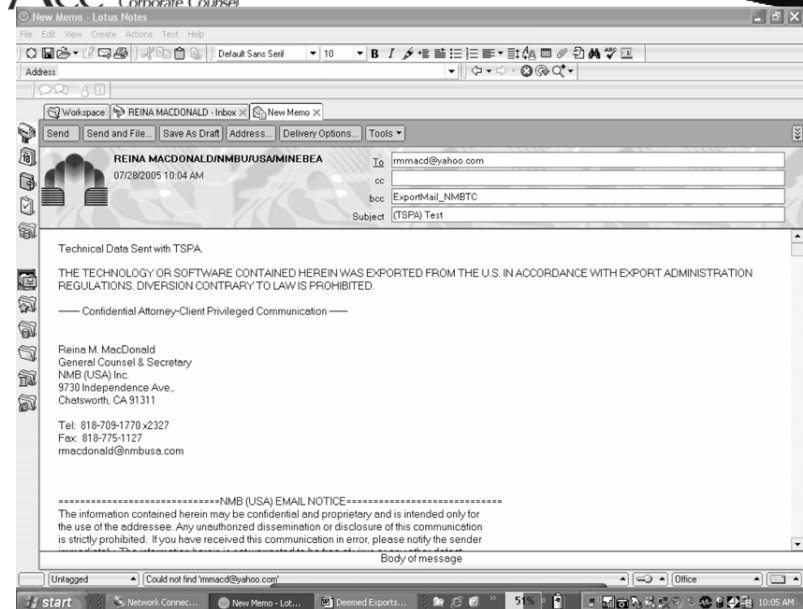
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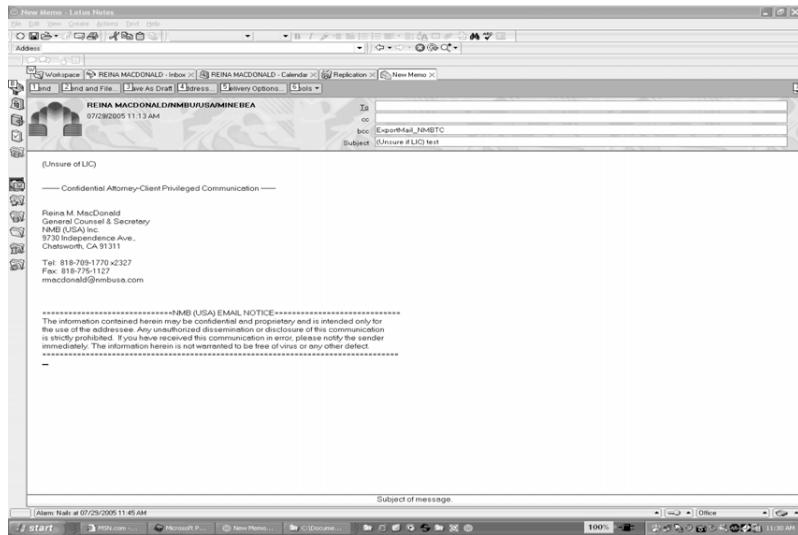
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## STATISTICS:

### E-MAILS:

- Procedure setup about 21/2 years ago.
- 99% of e-mails do not contain technology and are not subject to export control
- Of the remaining 1%, 90% are sent NLR and not reviewed.
- In Last 3 months 120 e-mails were reviewed by ECA—most are sent NLR. A few were sent with license exceptions.
- We have never needed to apply for an individual validated license.

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## STATISTICS:

### VISITORS:

Procedure implemented in January 2005

- Since that time we have had more than 100 Foreign Nationals visit our facilities
- All are admitted as NLR
- We have not applied for any individual licenses.

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# NMB

TECHNOLOGIES CORPORATION

CORPORATE HEADQUARTERS  
9730 Independence Avenue  
Chatsworth, CA 91311-4373  
(818) 709-1770 (818) 709-0387

### I. STATEMENT OF CORPORATE POLICY

The following statement by Myron D. Jones, President of NMBTC, is intended to convey NMBTC's clear commitment to export its products and know-how in compliance with all applicable U.S. export control regulations. This statement is being and should be distributed to all relevant personnel via interoffice mail, E-mail, and posted on all Customer Service Department, Shipping Department, and Export Department bulletin boards at all NMBTC facilities. The statement will be updated and reissued as necessary.



**CORPORATE HEADQUARTERS**  
 9730 Independence Avenue  
 Chatsworth, CA 91311-4373  
 (818) 709-1770 (818) 709-0387

TO: All Employees  
 FROM: Myron D. Jones *MJ*  
 SUBJECT: Complying with U.S. Export Controls

The U.S. Department of Commerce and the U.S. Department of State have classified some NMBTC products and know-how as strategic. According to U.S. export control regulations, NMBTC must obtain specific licenses prior to exporting these products or technology. To prevent any unauthorized export, it is crucial that all NMBTC employees, from top management down, be aware of and strictly comply with these regulations.

The penalties for not complying can severely damage the company, and have serious consequences for individuals involved in the export. For example, NMBTC could lose its authorization to export products and know-how and could face fines of up to \$1,000,000 per violation. Individuals who violate export regulations risk dismissal, imprisonment, and fines of up to \$250,000. It is, therefore, crucial that all employees, especially those involved in sales, traffic, training or working with foreign nationals, be aware of the importance of export controls and NMBTC's responsibility and commitment to comply with these controls.

Our Customer Service Department must handle and our Export Control Administrator must review all exports of NMBTC, whether as finished products, parts, documents or technical information in the form of training. The Customer Service Department and Export Control Administrator will follow all necessary procedures and obtain all necessary licenses and forms.

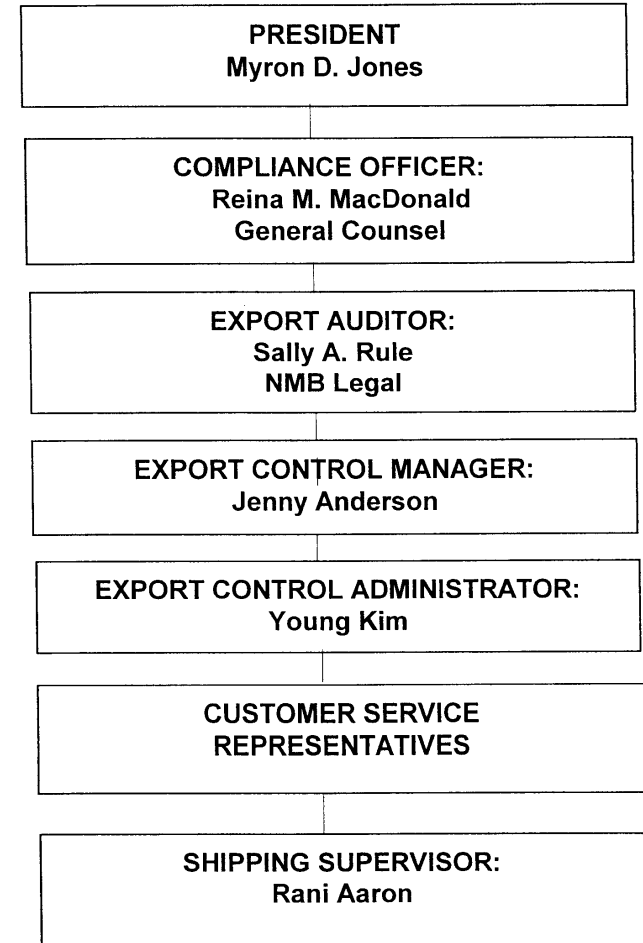
Under no circumstances will exports be made contrary to U.S. export control regulations.

If you have any questions concerning the applicability of U.S. export controls to a specific transaction, the legitimacy of a sale, or a violation or possible violation of U.S. export or regulations, we request that you bring such concerns to the attention of our Export Control Administrator listed below, or if you prefer, contact our outside legal counsel on export matters to report on an anonymous basis concerns you have regarding export controls.

II. EXPORT CONTROL RESPONSIBILITY

NMB Technologies Corporation

The following organizational chart designates the corporate lines of authority and responsibility for complying with U.S. export regulations:



Matter #0109-71-10-01594  
 Trim Doc. #0109-71-70-04017119

EXPORT CONTROL RESPONSIBILITY  
OF KEY PERSONNEL

- I. UPPER MANAGEMENT: **President**  
Myron D. Jones
- Ultimate responsibility for ensuring NMBTC's compliance with U.S. export control regulations.
- II. SENIOR MANAGEMENT: **Compliance Officer:**  
Reina M. MacDonald  
General Counsel
- Export Auditor:**  
Sally A. Rule  
NMB Legal
- Responsible for:
- Overseeing the execution and administration of export control management system, including development of internal procedures for NMBTC;
  - Delegating responsibilities to appropriate individuals;
  - Verifying that all necessary functions and documentation are completed;
  - Notifying the Office of Export Enforcement, Department of Commerce, Office of Foreign Assets Control, Department of Treasury, or Office of Defense Trade Controls, Department of State, of violations of U.S. export regulations; and
  - Auditing NMBTC's compliance.
- III. OPERATIONAL LEVEL:
- A. **Export Control Manager:**  
Jenny Anderson
- B. **Export Control Administrator:**  
Young Kim
- Responsible for:
- Ensuring that NMBTC complies with U.S. export control regulations, including the Department of Commerce Export Administration Regulations ("EAR") and the

B. **Export Control Administrator:**  
Young Kim

Responsible for:

- Ensuring that NMBTC complies with U.S. export control regulations, including the Department of Commerce Export Administration Regulations ("EAR") and the Department of State International Traffic in Arms Regulations ("ITAR");
- Filing necessary export licenses or ensuring filing by freight forwarders;
- Filing classification requests;
- Ensuring compliance with applicable restrictions and recordkeeping requirements;
- Keeping up-to-date on export regulations affecting NMBTC;
- Communicating requirements and changes to appropriate NMBTC individuals and entities;
- Following the day-to-day procedures to ensure that all orders are checked against: 1) the Denied Persons List ("DPL") (Formerly Table of Denial Orders ("TDO")); 2) Specially Designated Nationals List; 3) the Debarred List; 4) High Risk Diversion Profile; 5) Chemical and Biological Weapons Restrictions; 6) Missile Restrictions; 7) Nuclear Restrictions; 8) Embargoes; and 9) Antiboycott compliance;
- Assuring that all orders destined for export have the required license prior to shipping from a NMBTC facility;
- Generating, maintaining and distributing the NMBTC Export Control Compliance Manual;
- Training personnel involved in exports;
- Communicating effectively with NMBTC personnel regarding their export-related responsibilities and regulations that control the sale, export and reexport of NMBTC products and know-how;

- Maintaining and distributing within NMBTC the DPL (Formerly TDO), Specially Designated Nationals List and Debarred List updates and correspondence on export regulatory requirements, and maintaining records of this correspondence as required;
- Verifying the implementation of and compliance with NMBTC's export control procedures; and
- Assisting and performing annual export control audits.

**C. Customer Service Representatives:**

Responsible for:

- Upon receipt of orders, performing DPL (Formerly TDO), Specially Designated Nationals List and Debarred List checks and screening orders for "red flag" factors in the High Risk For Diversion Profile; and
- Ensuring compliance with other applicable export restrictions by performing checks against chemical and biological weapons restrictions; missile restrictions; Munitions List; nuclear restrictions; embargoes; and antiboycott compliance.

**D. Engineering:**

Responsible for:

- Classifying all technical data;
- Assisting Customer Service in classifying NMBTC products; and
- Keeping accurate daily export facsimile log.

**E. Credit:**

Responsible for:

- Checking red flag indicators/factors.

**F. Shipping Supervisor:  
Rani Aaron**

Responsible for:

- Completing Shipper's Export Declarations;
- Comparing shipping documents with applicable export licenses to ensure that they conform;
- Reviewing all international invoices for correctness and ensuring that a proper destination control statement is on all invoices, both domestic and international;
- Reviewing all international invoices to ensure compliance with the Antiboycott Regulations;
- Checking order against the DPL (Formerly TDO), Specially Designated Nationals List and Debarred List immediately prior to shipping; and
- Maintaining shipping records.

**BACK-UP POSITIONS:**

Position: Export Auditor and Export Control Manager  
Backup: Export Control Administrator

Position: Export Control Administrator  
Backup: Export Control Manager

Position: Customer Service Representatives  
Backup: Shipping Supervisor

Position: Shipping Supervisor  
Backup: Customer Service Representatives



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News

Policies And Regulations

## "Deemed Export" Questions and Answers

Key Regulatory Areas

Regional Considerations

Export Administration Regulations

Licensing

Compliance And Enforcement

Seminars And Training

International Programs

Defense Industrial Base Programs

UPDATE (11/15/04): Point of clarification on the current policy regarding citizenship policy.

There is no change in the current policy regarding citizenship and permanent residents. The current policy still applies as outlined in questions 6-11 of the deemed export FAQ's.

The recently published Deemed Export license exceptions for both Microprocessors and High Performance Computers contains an error in the policy regarding citizenship and permanent residency. In the preamble under the heading "Deemed Export Revision" second to the last paragraph the last sentence reads, "Applications for foreign nationals with temporary or permanent residence status of a third country (i.e., non-U.S. and a temporary or permanent residence status other than a foreign national's country of origin) should be based on the foreign national's country of citizenship." This is not correctly stated, the policy in recognizing the most current citizenship and permanent residency still applies.

1. What is the "deemed export" rule?
2. What is a "release" of technology?
3. What is "technology"?
4. When do I need to apply for an export license for technology under the "deemed export" rule?
5. How do I know if a foreign national would be subject to the "deemed export" rule?
6. How are individuals handled who are permanent residents or citizens of countries other than those of their nationality?
7. What if the individual is a foreign national of one country, say India, but has obtained permanent residency in another, say the

U.K.?

8. If this same Indian foreign national traveled to visit facilities in a third country, say Germany, do the licensing requirements change, or is the release still treated as a transfer to the U.K. for licensing purposes?
9. What if that same Indian foreign national comes to the United States?
10. Now, what about changes in nationality? If a person was a citizen of India but subsequently became a citizen of the U.K., how is that person treated for export control purposes?
11. What if the Indian foreign national becomes a citizen of the U.K. but retains his or her Indian citizenship, as well? This is the situation of people who have dual-citizenship.
12. I have read elsewhere on your web page the requirements for information that the Bureau of Export Administration (BXA) wants in order to process a "deemed export" license application. I see that you require a lot of personal data, including citizenship and country of origin. I understand that I cannot ask for such information from my employees under the Equal Employment Opportunities Commission (EEOC) rules. How do I get that information?
13. What is a "deemed re-export"?
14. What technologies are subject to the Commerce Department controls?
15. Is software considered "technology" and is it similarly controlled?
16. What technologies are considered "fundamental research"?
17. Are cryptographic technology and software source code "deemed exports" handled the same way as other technology and software source code?
18. At our Canadian subsidiary, we develop semiconductor manufacturing technologies that are controlled by ECCN 3E001. If we transfer those technologies to a Chinese national in that facility, do we require U.S. authorization? What about transferring the same Canadian developed technologies to PRC nationals at our PRC facility?
19. We have several foreign national employees in our firm, which has several divisions and an administrative area. Two of the divisions, the Research and Development (R&D) division and the Advanced Manufacturing/Processing (ADMP) division, work with technical data for advanced materials used in electronic and jet engine manufacturing which is controlled under ECCNs 2E001, 3E001, and 9E003, and we have several foreign national engineers working there. None of the other divisions work with controlled technical data, and we have some foreign national employees in them as well. The divisions are not co-located. Do I need an

export license for all of the foreign national employees?

20. My company wants to employ an Indian foreign national who spent three years working for an Indian organization that is on the Entity List. May I do so? Do I require a license?
21. An Indian foreign national who is on sabbatical from an Indian organization that is on the Entity List wants to work with our firm in our executive training program where we will discuss proprietary technology which is not controlled to India. We have had an ongoing exchange of executives and scientists from this organization for years. Do I require a license?
22. Our university has several departments that are conducting research under contract with private corporations. Some of this research is controlled "development" technology. We often have researchers (visiting faculty, post-graduate fellows, and research assistants) who are foreign nationals working on controlled "development" technology research. Does the university need to apply for a deemed export license?
23. Our university does research under U.S. government sponsorship. We may have foreign national researchers working on this. Is a deemed export license required?

### 1. What is the "deemed export" rule?

An export of technology or source code (except encryption source code) is "deemed" to take place when it is released to a foreign national within the United States. See §734.2(b)(2)(ii) of the Export Administration Regulations (EAR). For brevity, these questions and answers refer only to "technology" but apply equally to source code.

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### 2. What is a "release" of technology?

Technology is "released" for export when it is available to foreign nationals for visual inspection (such as reading technical specifications, plans, blueprints, etc.); when technology is exchanged orally; or when technology is made available by practice or application under the guidance of persons with knowledge of the technology. See §734.2(b)(3) of the Export Administration Regulations (EAR).

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### 3. What is "technology"?

Per Part 772 of the Export Administration Regulations (EAR), "technology" is specific information necessary for the "development," "production," or "use" of a product. The General Technology Note states that the "export of technology is controlled according to the provisions of each Category." It further states that "technology required for the development, production, or use of a controlled product remains controlled even when applicable to a product controlled at a lower level." Please note that the terms "required," "development," "production,"

"use," and "technology" are all defined in Part 772 of the EAR. Controlled technology is that which is listed on the Commerce Control List.

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### 4. When do I need to apply for an export license for technology under the "deemed export" rule?

Assuming that a license is required because the technology does not qualify for treatment under EAR99 and no license exception is available, U.S. entities must apply for an export license under the "deemed export" rule when both of the following conditions are met: (1) they intend to transfer controlled technologies to foreign nationals in the United States; and (2) transfer of the same technology to the foreign national's home country would require an export license.

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## Foreign Nationals

### 5. How do I know if a foreign national would be subject to the "deemed export" rule?

Any foreign national is subject to the "deemed export" rule except a foreign national who (1) is granted permanent residence, as demonstrated by the issuance of a permanent resident visa (i.e., "Green Card"); or (2) is granted U.S. citizenship; or (3) is granted status as a "protected person" under 8 U.S.C. 1324b(a)(3). This includes all persons in the U.S. as tourists, students, businesspeople, scholars, researchers, technical experts, sailors, airline personnel, salespeople, military personnel, diplomats, etc. As noted, one exception to this general statement is a "protected person." "Protected persons" include political refugees and political asylum holders. Be aware that individuals seeking "protected person" status must satisfy all of the terms and conditions that are fully set forth in 8 U.S.C. 1324b(a)(3). It should be emphasized that although the deemed export rule may be triggered, this does not necessarily mean that a license is required. For example, the technology may be EAR99 or license exception eligible.

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### 6. How are individuals handled who are permanent residents or citizens of countries other than those of their nationality?

As noted above in Question 5, if the individual is a naturalized citizen or permanent resident of the United States, the "deemed export" rule does not apply. In other words, he or she is not subject to the provisions of the "deemed export" regulation. For individuals who are citizens of more than one foreign country, or have citizenship in one foreign country and permanent residence in another, as a general policy, the last permanent resident status or citizenship obtained governs. Questions 7 through 11 provide examples of situations involving individuals who are citizens of more than one foreign country, or have citizenship in one foreign country and permanent residence in another. If, for some reason, the status of a foreign national is not certain, then you should ask the

Bureau of Export Administration (BXA), to determine where the stronger ties lie, based on the facts of the specific case. For instance, the status of a foreign national could be uncertain in situations where information may indicate involvement with prohibited entities or activities, for example, missile or nuclear-related end-uses or end-users as identified in Part 744 of the EAR. In response to a request for the status of a foreign national, BXA will look at the foreign national's family, professional, financial, and employment ties.

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**7. What if the individual is a foreign national of one country, say India, but has obtained permanent residency in another, say the U.K.?**

Release of controlled technology to that individual in the U.K. would be treated as if the shipment were being made to the U.K. and licensing requirements, if any, would be the same as for a British national in the U.K.

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**8. If this same Indian foreign national traveled to visit facilities in a third country, say Germany, do the licensing requirements change, or is the release still treated as a transfer to the U.K. for licensing purposes?**

The Indian national's U.K. permanent residency status still drives the licensing requirements and releases of technology to him or her would be considered as transfers to the U.K.

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**9. What if that same Indian foreign national comes to the United States?**

As long as the Indian foreign national maintains his or her permanent residency status in the U.K., transfers of technology to that individual would be deemed as transfers to the U.K.

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**10. Now, what about changes in nationality? If a person was a citizen of India but subsequently became a citizen of the U.K., how is that person treated for export control purposes?**

If the former Indian national becomes a British citizen, transfers of technology would be viewed as transfers to the U.K.

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**11. What if the Indian foreign national becomes a citizen of the U.K. but retains his or her Indian citizenship, as well? This is the situation of people who have dual-citizenship.**

As a general principle, the last citizenship obtained governs. As is clear in response to Question 10 above, the individual's most recent citizenship is with the U.K. and releases of technology would be viewed as releases to the U.K.

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**12. I have read elsewhere on your web page the requirements for information that the Bureau of Export Administration (BXA) wants in order to process a "deemed export" license application. I see that you require a lot of personal data, including citizenship and country of origin. I understand that I cannot ask for such information from my employees under the Equal Employment Opportunities Commission (EEOC) rules. How do I get that information?**

The information we normally request derives from a curriculum vitae/resume or from company background checks. The information that BXA may request as part of the license application process is requested in order to determine whether BXA should authorize the release of such controlled sensitive technology. The hiring of foreign nationals is not prohibited nor regulated by the Export Administration Regulations (EAR). The EAR does not regulate employment matters. The justification for the "deemed export" rule is that there is no more effective way of disclosing sensitive technical information (e.g., design know-how) than to work side-by-side in a laboratory or on the production floor of a company. Our web page guidance[PDF] is designed to assist you in pointing out the types of relevant information that BXA examines in connection with the license application review.

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**13. What is a "deemed re-export"?**

The term "deemed re-export" is often used to indicate the transfer of controlled U.S. technology to a third-country national overseas. As an example, a U.S. exporter transfers its controlled proprietary technology to a firm in country A. The firm in country A, in turn, will employ an individual from country B who is not a permanent resident of country A, nor of the United States, and who will need the controlled proprietary technology to perform his or her assigned duties. If the U.S. exporter intends to transfer the controlled technology to the country B national who is now an employee of the country A firm, the U.S. exporter is responsible for obtaining any required deemed export license, as if it were transferring the technology to country B. If the country A firm intends to transfer the controlled technology that it received from the United States to the country B national, then the country A firm is responsible for obtaining any required deemed re-export license from BXA. Please see §734.2(b)(4) of the Export Administration Regulations (EAR).

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**Technology**

#### **14. What technologies are subject to the Commerce Department controls?**

Generally, technologies subject to the Export Administration Regulations (EAR) are those which are in the United States or of U.S. origin, in whole or in part. Most are proprietary. Technologies which tend to require licensing for transfer to foreign nationals are also dual-use (i.e., have both civil and military applications) and are subject to one or more control regimes, such as National Security, Nuclear Proliferation, Missile Technology, or Chemical and Biological Warfare.

Foreign technology with U.S.-origin technology commingled to a degree above a de minimis level is considered to be subject to the EAR. Technologies which may require an export license are those which are subject to the EAR and which are listed in the Commerce Control List, see Parts 734, 738, and 774 of the EAR.

Some technologies are under the exclusive jurisdiction of another agency of the U.S. government and are not subject to the EAR. These include defense services which are under the jurisdiction of the State Department and technology related to the production of special nuclear materials which is under the jurisdiction of the Energy Department.

Still other technologies do not require any authorization because they are already "publicly available." These include patent applications; publicly available technology and software (other than software and technology controlled as encryption items) that are already published or will be published; technology which arises during or as a result of fundamental research; or technology which is educational. See Part 734 of the EAR for details.

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#### **15. Is software considered "technology" and is it similarly controlled?**

The Export Administration Regulations (EAR) definitions distinguish between software and technology. Software is one of the groups within each of the categories of items listed on the Commerce Control List (CCL). Software which is delineated on the CCL is controlled.

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#### **16. What technologies are considered "fundamental research"?**

"Fundamental research" is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community. It is distinguished from proprietary research and from industrial development, design, production, and product utilizations, the results of which ordinarily are restricted for proprietary and/or specific national security reasons. Normally, the results of "fundamental research" are published in scientific literature, thus making it publicly available. Research which is intended for publication, whether it is ever accepted by scientific journals or not, is considered to be "fundamental research." A large

segment of academic research is considered "fundamental research." Because any information, technological or otherwise, that is publicly available is not subject to the Export Administration Regulations (EAR) (except for encryption object code and source code in electronic form or media) and thus does not require a license, "fundamental research" is not subject to the EAR and does not require a license. Please see §734.8 for a full discussion.

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#### **17. Are cryptographic technology and software source code "deemed exports" handled the same way as other technology and software source code?**

No, they are not. The encryption regulation published on January 14, 2000, changed the deemed export rule for encryption technology. The authorization for encryption technology was updated to allow some encryption technology under License Exception ENC. ENC is now also allowed for foreign employees of U.S. companies coming to the United States to work. However, ENC would not cover employees of a Romanian firm, for example, working at a U.S. company. These foreign nationals are not "employees" of the U.S. company. As far as encryption source and object code are concerned, while in the United States, foreign nationals may use any type of encryption source code and object code. The only deemed export authorization required for encryption relates to encryption technology and when a U.S. person intends to provide technical assistance to foreign nationals using source code. (Please note that Export Administration Regulations (EAR) licensing requirements may apply for transfers of encryption software in the United States to an embassy or affiliate of a foreign country.) See our related [deemed export encryption chart](#) for more guidance.

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### **More direct hypothetical situations**

#### **18. At our Canadian subsidiary, we develop semiconductor manufacturing technologies that are controlled by ECCN 3E001. If we transfer those technologies to a Chinese national in that facility, do we require U.S. authorization? What about transferring the same Canadian developed technologies to PRC nationals at our PRC facility?**

You may require a license if the technologies are considered to be of U.S. origin. If the technologies developed in your Canadian facility are commingled with or drawn from controlled U.S.-origin technology, you must decide the extent of the mix to determine if U.S. re-export controls apply. Depending on the percentage of the controlled-U.S. technology component, a license may be required for the transfer of that technology to the Chinese national, whether he or she is at your Canadian or PRC facilities. Please see §734.4(c)(3), (d)(3), and (e) of the Export Administration Regulations (EAR). Also, the EAR (Supp. 2 to 734, (b)) requires that you file a one-time review of your technology before you can use the de minimis exclusion. We strongly suggest that you consult with BXA on this question.



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**19. We have several foreign national employees in our firm, which has several divisions and an administrative area. Two of the divisions, the Research and Development (R&D) division and the Advanced Manufacturing/Processing (ADMP) division, work with technical data for advanced materials used in electronic and jet engine manufacturing which is controlled under ECCNs 2E001, 3E001, and 9E003, and we have several foreign national engineers working there. None of the other divisions work with controlled technical data, and we have some foreign national employees in them as well. The divisions are not co-located. Do I need an export license for all of the foreign national employees?**

Probably not. Your firm would likely need a license for those foreign national engineers and technical people who work in the R&D and ADMP divisions with the controlled technologies. Your firm would probably not need licenses for those individuals who do not normally come into contact with the controlled technologies, such as those in the administrative area. However, you should review the job descriptions of all your foreign national employees. For example, technical managers and technical training personnel who are NOT at the sensitive divisions may need access to the controlled technologies in order to do their jobs, and so you may need to have deemed export licenses for technology transfer to them.

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**20. My company wants to employ an Indian foreign national who spent three years working for an Indian organization that is on the Entity List. May I do so? Do I require a license?**

If he or she is properly documented for work in the United States, you may employ him or her. You must apply for an export license if you intend to release technology listed on the Commerce Control List which would require a license for export to India.

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**21. An Indian foreign national who is on sabbatical from an Indian organization that is on the Entity List wants to work with our firm in our executive training program where we will discuss proprietary technology which is not controlled to India. We have had an ongoing exchange of executives and scientists from this organization for years. Do I require a license?**

Yes, you are required to apply for a deemed export license. Under the sanctions imposed by the U.S. Government, any export which includes transfers of technology to foreign nationals requires a license to organizations on the Entity List. Because the Indian foreign national is still employed by the organization that is on the Entity List, a technology transfer to him or her is considered a technology transfer to the employer organization. Note that the sanctions apply to any technology subject to the Export Administration Regulations (EAR).

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**22. Our university has several departments that are conducting research under contract with private corporations. Some of this research is controlled "development" technology. We often have researchers (visiting faculty, post-graduate fellows, and research assistants) who are foreign nationals working on controlled "development" technology research. Does the university need to apply for a deemed export license?**

It depends. You need to look at the research and the contract terms for release of the results of the research. If there are no conditions placed on the research, and it is the intent of the research team to publish its findings in scientific literature, then it is considered "fundamental research," and no license is required. If the contract requires that the private corporation review the findings of the research team with the intent of controlling what results are to be released in open literature, then the research is considered proprietary, and a license is required.

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**23. Our university does research under U.S. government sponsorship. We may have foreign national researchers working on this. Is a deemed export license required?**

Under the Export Administration Regulations (EAR), U.S. government sponsored research is handled very much like corporate sponsored research. It may be "fundamental research", or it may be proprietary (See Question 22). See §§ 734.8 and 734.11 of the EAR for details. In addition, some U.S. government data may be subject to separate restrictions on dissemination such as security classification.

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## Using Foreign Visitor Tracking Db

**Project Resources:**

**Export Compliance Team**

- > NMBTC: Jenny Anderson @ 3226
- > NHBB/NMBTC: Young Kim @ 3409

- > NHBB: Sheryl Short @ 4471

**Reception Team**

- > Vicki Cleveland @ 4235

The main menu is broken down into 4 parts/buttons.

- 1) Employee Requests
- 2) Export Compliance - Export Compliance Administrators(ECA)
- 3) Reception
- 4) Help

**Steps of the process:**

1st Step - Create the request.	Complete the Request and "Submit for Approval" button. An email is sent out to ECA.
2nd Step - Approvals	ECA will review and approve/disapprove. An email is sent out to the requestor.
3rd Step - Reception	<ul style="list-style-type: none"> <li>&gt; When the visitor arrives, a receptionist will find the person's name.</li> <li>&gt; The visitor will sign in on the "Visitor Register"</li> <li>&gt; Receptionist can use the 'sign in' button. An email is sent to the employee and ECA.</li> <li>&gt; Sometimes the visitor cancels, receptionist can use the 'cancel' button. An email is sent to employee and ECA.</li> </ul>

From: Jenny Anderson (August 30, 2004)

**Project Progress:**

- > First Demo - August 23, 2004 by Jenny Anderson
- > Project rollout - September 7th, 2004

**IT Chatsworth:**

- August 23, 2004: Michal Alaniz: Completed Development Effort
- August 25, 2004: Michal Alaniz: Add New Role Navigators
- August 30, 2004: Team completes testing, ready for rollout.

### NEW Visitor Request

> STEP 1: Requestor - Create Request and Submit for Approval

<b>Visiting Whom</b>	
Employee Contact	Reina Macdonald
Company	NMB
Department	Legal
<b>Appointment</b>	
Visit Date	
Visit Time In	
Visit Time Out	
Reason For Visit	
Type of Visitor	
Comments	
<b>Visitor - Personal Information</b>	
Name	
Country of Citizenship	
<b>Visitor - Company Information</b>	
Name	
Title	
Address	
Country	
Phone	
Email	
Comments	

