City University of New York
Export Control Administration Orientation
Co-Presented with
Fischer & Associates
February 22, 2013
> Training Agenda

1. Introduction: Why is Awareness Critical to CUNY’s Staff and Researchers?
2. What Are Export Controls? How Do They Work? How Are They Enforced?
3. How Do Controls Impact PIs, Researchers and Administrators?
4. How Does CUNY Remain Compliant and Operate within a “Business as Normal” Context?
5. OFAC Regulations: Purpose, Scope, and Enforcement
6. Q & A
1. Introduction: Why is Awareness Critical to CUNY’s Staff and Researchers?

Export Control enforcement activity by Federal agencies among research institutions is now at significantly higher level than it was several years ago:

- Penalties (civil and criminal) and sanctions can be enforced at both the institutional and individual (PI) levels.
  - Science-based/engineering departments (such as Biomedical, Computer Science, Electrical & Computer, Space Research, Materials Science) are particularly vulnerable
  - Increased presence of foreign national researchers on campus as well as international collaborations compound risk
  - Highly decentralized campus structure underscores control requirements
  - H1 Visa Certifications now required regarding access to export controlled data in research laboratories

- However: compliance can be accomplished without impeding fundamental research efforts or fabrication/service contracts with industry partners.
  - Requires faculty’s and administration’s awareness of requirements and transparent procedures to address issues across all affected departments and staff functions.

- In response, CUNY has significantly increased enhanced its export compliance program, resulting in, among other things, this training.
  - Strongest mitigating factors: oversight, training and documented processes
2. What Are Export Controls? How Do They Work? How Are They Enforced?

What Types of Items Can be Controlled?
- Commodities, materials, software, technical data, technology (further discussion below on specific types of items)-bottom line: broadest possible range of items are potentially controlled.

How is the Term “Export” Defined for Purposes of These Regulations?
- Outbound transfer of controlled items from the U.S. or knowingly facilitating the export in a domestic transfer or re-export
  - Physical shipments of such items abroad by any means, including cargo transport, courier, electronic data transmission, spoken communication, hand carried articles.
- Access to Items in the U.S. through “deemed export” or release of information/disclosure:
  - Use of and/or visual or computer access to controlled items, technology or data, occurring in the U.S by foreign nationals, defined as persons who are neither U.S. citizens, permanent residents ("green card" holders) or political asylum recipients: i.e. temporary immigrants – H, J, F, O, B visa beneficiaries
  - Export is “deemed” to occur through the access, taking into account that the foreign national will return home at the termination of visa period
  - Intention to obtain permanent residence or being in process to obtain does not change foreign national status for purposes of export control regulations
  - Definition of “access” is nuanced depending on the regulatory jurisdiction, as described more fully below.
> 2. WHAT ARE EXPORT CONTROLS? HOW DO THEY WORK? HOW ARE THEY ENFORCED?

How Are Export Controls Regulated?

**EAR-Commerce Department “Dual use” controls (15 CFR 700-799):**

- Commodity/hardware, software, technical data designed and used for civilian applications but which inherently could have a non-civilian use - generally defense or nuclear proliferation capabilities.

- Technical data/technology: blueprints, plans, diagrams, models, formulae, tables, engineering designs, and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape read-only memories.

- Exports of certain commodities (whether hardware, software, technology or technical data) identified on the Commerce Control List (CCL) with an Export Control Commodity Number (ECCN) require prior written authorization — an “export license” — or must meet an allowable exception.
  - Licenses take at least 30 plus days to obtain and are often issued with mandatory end use/user conditions.

- Licensing depends on three factors:
  - Type of item;
  - Reason(s) for control e.g., anti-nuclear proliferation (NP), missile technology (MT), national security (NS), chemical biological control (CB), or several other types of control could be placed on it; and
  - Whether country exported to is controlled for an item with that level of control, based on CCL Country Chart.
> 2. WHAT ARE EXPORT CONTROLS? HOW DO THEY WORK? HOW ARE THEY ENFORCED?

How Are Export Controls Regulated? (Continued)

EAR-Commerce Department “Dual use” controls (15 CFR 700-799):

- Commerce Control List (CCL) 15 CFR 774 Categories 0-9:
  - 0) Nuclear Materials, Facilities, Equipment
  - 1) Materials, Chemicals, Microorganisms, Toxins
  - 2) Materials Processing (includes laboratory instruments used in materials processing)
  - 3) Electronics (includes integrated circuit technology and development)
  - 4) Computers
  - 5) Telecommunications and Information Security (includes materials for telecommunications and encryption technology)
  - 6) Lasers and Sensors (includes many detection devices and related technology)
  - 7) Navigation and Avionics
  - 8) Marine
  - 9) Propulsion Systems, Space Vehicles and Related Equipment

- Within each category 0-9 above, items are arranged according to the same five groups, A-E below:
  - A. Equipment, Assemblies and Components
  - B. Test, Inspection and Production Equipment
  - C. Materials
  - D. Software
  - E. Technology

**Note:** Just because an item is purchased in the US and is commercially available, does not render it uncontrolled for purposes of these regulations were it exported.
2. WHAT ARE EXPORT CONTROLS? HOW DO THEY WORK? HOW ARE THEY ENFORCED?

How Are Export Controls Regulated? (Continued)

EAR-Commerce Department “Dual use” controls (15 CFR 700-799):

- Examples of controls and licensable destinations
  - Example - ECCN 2B230
    Pressure Transducers capable of measuring absolute pressures at any point in the range of 0 to 13 kPa and having both of the following characteristics (See List of Items of Controlled)
    Reasons for Control: NP and AT
    Examples of countries controlled for NP - license required: Singapore, China
    **Note:** “Know-how” technology is also controlled for deemed export purposes
  - Example - ECCN 6A002
    Optical sensors
    Reasons for Control: NS, MT, CC, RS, UN and AT
    Nearly all countries controlled for NS

- Check Country Chart to determine whether your intended destination is controlled for export of your particular item.
### Commerce Country Chart

#### Reason for Control

<table>
<thead>
<tr>
<th>Countries</th>
<th>Chemical &amp; Biological Weapons</th>
<th>Nuclear Nonproliferation</th>
<th>National Security</th>
<th>Missile Tech</th>
<th>Regional Stability</th>
<th>Firearms Convention</th>
<th>Crime Control</th>
<th>Anti-Terrorism</th>
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<td>CB 1</td>
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**Reason for Control**

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<td>Kenya</td>
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</table>

See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.
2. WHAT ARE EXPORT CONTROLS? HOW DO THEY WORK? HOW ARE THEY ENFORCED?

How Are Export Controls Regulated? (Continued)

ITAR- State Department controls (22 CFR 120-130): Defense Directorate for Trade Controls (DDTC)

Defense Article:
- Hardware, software and technical data specifically designed, developed, configured, adapted or modified for a military application, and
- Does not have predominant civilian applications, and
- Does not have a performance equivalent (defined by form, fit or function) to those of an article or service used for civil applications; or
- Is specifically designed, developed, configured, adapted or modified for a military application, and has significant military or intelligence applicability such that control under this subchapter is necessary.

Defense service:
- Providing technical assistance (including training) to foreign persons (whether in the U.S. or abroad) in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;
- Providing to foreign persons any technical data controlled under this subchapter (see below) whether in the U.S. or abroad;
- Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the U.S. or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice.

Technical Data:
- Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles; Invention covered by a secrecy order; and software directly related to a defense article.
2. WHAT ARE EXPORT CONTROLS? HOW DO THEY WORK? HOW ARE THEY ENFORCED?

How Are Export Controls Regulated? (Continued)

ITAR- State Department controls (22 CFR 120-130): Defense Directorate for Trade Controls (DDTC)

- Based on U.S. Munitions List (USML – 22 CFR 121) pertaining to definitions of defense article, service, or technical data defined above (including certain items “specially designed or modified for military application”). Categories include:

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>I.</td>
<td>Firearms</td>
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<tr>
<td>II.</td>
<td>Guns and Armament</td>
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<tr>
<td>III.</td>
<td>Ammunition/Ordnance</td>
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<tr>
<td>IV.</td>
<td>Launch Vehicles, etc.</td>
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<tr>
<td>V.</td>
<td>Explosives, Energetic Materials, Propellants, Incendiary Agents and their constituents</td>
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<tr>
<td>VI.</td>
<td>Vessels of War and Special Naval Equipment</td>
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<td>VII.</td>
<td>Tanks and Military Vehicles</td>
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<tr>
<td>VIII.</td>
<td>Aircraft and Associated Equipment</td>
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<td>IX.</td>
<td>Military Training Equipment</td>
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<td>X.</td>
<td>Protective Personnel Equipment</td>
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<td>XI.</td>
<td>Military Electronics</td>
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<tr>
<td>XII.</td>
<td>Fire Control, Range Finder, Optical and Guidance Control</td>
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<tr>
<td>XIII.</td>
<td>Auxiliary Military Equipment</td>
</tr>
<tr>
<td>XIV.</td>
<td>Toxicological Agents/Equipment, Radiological Equipment</td>
</tr>
<tr>
<td>XV.</td>
<td>Spacecraft Systems and Associated Equipment</td>
</tr>
<tr>
<td>XVI.</td>
<td>Nuclear Weapons, Design and Testing Related equipment</td>
</tr>
<tr>
<td>XVII.</td>
<td>Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated</td>
</tr>
<tr>
<td>XVIII.</td>
<td>Directed Energy Weapons</td>
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<tr>
<td>XIX.</td>
<td>Submersible Vessels, Oceanographic and Associated Equipment</td>
</tr>
</tbody>
</table>
> 2. WHAT ARE EXPORT CONTROLS? HOW DO THEY WORK? HOW ARE THEY ENFORCED?

How Are Export Controls Regulated? (Continued)

ITAR- State Department controls (22 CFR 120-130): Defense Directorate for Trade Controls (DDTC)

Sample from US Munitions List (ITAR)

- Example of control
  Category XI-Military [and Space] Electronics
  Radar systems, with capabilities such as Search, Acquisition, Tracking, Moving target indication; Imaging radar systems; Any ground air traffic control radar which is specifically designed or modified for military application; etc.

Key difference as to outbound exports (ITAR vs. EAR)

- Under ITAR: outbound export licenses and defense service authorizations require an Empowered Official (EO)
- With respect to EAR dual use controlled items, licensing is on an item by item, country by country basis depending on the applicable control to that item X that country.
- With respect to ITAR defense articles, all countries presumed licensable and, there are numerous countries which are per se prohibited, the so-called 126.1 countries: DDTC will not issue a license under any circumstance.
  - Examples: China, Viet Nam, Zimbabwe, Belarus, and the T4s (Iran, Cuba, Syria, Sudan)
2. WHAT ARE EXPORT CONTROLS? HOW DO THEY WORK? HOW ARE THEY ENFORCED?

How Are Export Controls Regulated? (Continued)

NRC Controls

Materials used to support nuclear-related research exported from federally-funded projects are often governed by DOE requirements which exempt the institution from NRC licensing requirements. However, these exemptions are not universal, and are predicated on a number of criteria, which could include the specific material, quantity, origin of the material, etc. Because some materials and technologies are alternatively covered by the CCL, this area requires review on a case by case basis.

EAR/ITAR End User Controls/Prohibitions: Denied Party/Restricted Entity Lists

Separate from above-referenced controls, government prohibits exports to or export collaboration with certain designated individuals and entities identified as export violators both in and outside the U.S.

- Compliance requirement to screen certain parties (for example foreign institutions, industrial sponsors) against government-published lists prior to export (Denied Partied List, Restricted Entities List, Debarred Parties List, Specially Designated Nationals List).

- Impact on CUNY’s collaborations: international collaborations (off-shore) institutions to whom CUNY is providing research equipment or sharing data and research results should be screened using Visual Compliance software.


2. WHAT ARE EXPORT CONTROLS? HOW DO THEY WORK? HOW ARE THEY ENFORCED?

How Are Export Controls Enforced?

- Federal agencies have investigative authority (State - DDTC, Commerce – OEE, Border Protection) and often incorporate the FBI.
- Civil and criminal enforcement authority over EAR and ITAR violations, resulting in loss of export privileges, severe monetary fines (millions of dollars), prosecution (criminal) — against the institution and/or individual PI or administrator to whom violation is found attributable.
  - Agencies exercise broad enforcement discretion
  - Civil enforcement action: 5 year look-back rule
  - Nationwide, numerous institutions have been investigated and/or are participating in voluntary audits of their export control programs
    - Audits are both expensive and time-consuming, and often require ongoing status reporting to federal agencies
- Numerous institutions have been fined with civil penalties for licensing and access violations:
  - Most common reason for compliance failure is lack of consistent awareness among faculty and research administrators about licensing requirements for both outbound transfers and controlled access
- Criminal Prosecutions
  - US – Chinese business partnership incorporating university PIs to pursue unauthorized export of semiconductor technology to China
  - Thomas Butler, Chief of Infection Disease Division, Texas Tech Dept. of Internal Medicine: Select Agent violations/export to Tanzania
  - J. Reece Roth, Professor Emeritus, University of Tennessee, Knoxville/technology transfer to foreign graduate students (China and Iran) contrary to explicit contractual provisions
    - UT itself not indicted based on mitigating record
3. How Do Controls Impact PIs, Researchers, and Administrators?

Key Point

- All outbound exports: must be classified for license determination
- As to laboratory access: the situation depends on whether CUNY is conducting fundamental research and, if so, whether this research uses any research tools classified under ITAR or proprietary tools or data restricted under an NDA and export controlled under either the EAR or ITAR.
  - CUNY’s current policy is to conduct only fundamental research: however, some “legacy” programs may be restricted

Fundamental Research Exclusion (FRE) – EAR/Public Domain -ITAR

- Basic and applied research in science and engineering conducted at a U.S. research institution, the results of which ordinarily are published and shared broadly within the scientific community
  - “Applied” here is defined as activity short of proprietary commercialization.

Public Domain Definition (ITAR)

Generally accessible to the public through:

- Publication in periodicals, books, print, electronic, or other media available for general distribution (including websites that provide free uncontrolled access) or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution;
- Readily available at libraries open to the public or at university libraries;
- Patents and published patent applications available at any patent office;
- Release at an open conference, meeting, seminar, trade show, or other open gathering held in the U.S. (under ITAR) or anywhere (under EAR). Note, a conference or gathering is "open" if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record of the proceedings and presentations.
- ITAR: general descriptions/marketing material relating to function/purpose of defense article.
> 3. HOW DO CONTROLS IMPACT PIS, RESEARCHERS, AND ADMINISTRATORS?

**Benefit to These Exemptions**

- Even if results of the research might otherwise be export controlled under the EAR and ITAR and, therefore, subject to deemed export restrictions as to who could participate in the research, the FRE/Public Domain exclusions allow access by foreign nationals to research results.
  - Positions the research on the same footing as self-invention or unrestricted, CUNY-funded research

**Caveat**

Absolutely no restrictions can be accepted from a corporate or government sponsor (prime of flow-down) that:

- Directly or indirectly prohibits dissemination or publication of research results, or
- Mandates foreign national restrictions as to who can access research (if there will be foreign national participation).

**Certain Temporary Restrictions Do Not Compromise the FRE**

- Limited pre-publication review by research sponsors is acceptable within a reasonable timeframe but only to:
  - Prevent inadvertent divulgence of proprietary information or government classified information (as having been mutually defined) and provided by the sponsor, or
  - Ensure that pre-defined proprietary content will not compromise the sponsor’s patent rights.

**CUNY’s Position on Accepting Restricted Funding**

- University primarily conducts fundamental research without publication or citizenship restrictions: vast majority of research programs contain no restricted clauses
> 3. HOW DO CONTROLS IMPACT PIS, RESEARCHERS, AND ADMINISTRATORS?

**What About Research Instruments Necessary to Conduct the Research?**

- If the research instrument or operational data being used falls under the EAR dual use regulations, then the FRE allows unrestricted access by foreign nationals to such items for research purposes: no deemed export results, requiring prior license authority.
- However, if the research instrument or operational data falls under ITAR jurisdiction, the FRE or public domain exclusion does not apply to the ITAR research tool or operational data: access remains restricted to foreign nationals until such time as the university obtains license or authorization to allow access or disclose the data
  - Options: use or defense service license
  - Technology Control Plan (TCP) to restrict access
- **Key thing to remember:** The ITAR access restriction applies, notwithstanding the fact the no publication or citizenship restrictions were accepted as part of the Agreement, i.e. the research results are still eligible for publication.
- **Bona fide employee exemption under ITAR:** where foreign national is a full time university employee, is not a foreign national of the 126.1 prohibited countries, and resides in the US - - for example, an H1 visa holder, then this employee may have access to ITAR restricted data (not otherwise restricted by funding Agreement) for background purposes:
  - However, employee is subject to same non-transfer, technology control restrictions that a US person would.

**Educational Information Exclusion - EAR and ITAR**

- “Educational information” released by instruction in catalogue courses or professional conferences where all technically qualified members of the public are eligible to attend and attendees are permitted to take notes of proceedings.
- However, same ITAR principle applies to research tools and operational data where incorporated into course of study.

**Conference Exclusion**

- Research results may be presented at professional conferences abroad, addressing data published or to be published
  - Does not cover a “defense service” - - disclosure of ITAR data otherwise restricted or knowingly training a foreign military entity or representative on EAR applications for a defense purpose.
4. How Does CUNY Remain Compliant and Operate within a “Business as Normal” Context?

Remain Knowledgeable of Export Requirements
- Make sure that all personnel affected by these regulations are sufficiently trained to identify export issues that arise during the course of normal research activities.

Avoid Restrictive Clauses in Sponsored Agreements (including post Agreement scope modifications)
- These may occur in contracts, grants or cooperative agreements:
  - Federal sponsor (primary or flow through via industry or other research institution)
  - Industrial sponsor (as initiated by industrial sponsor or flow through from federal sponsor)
  - Research institution (flow through from industry or federal agency)

Seek Help in Obtaining Licenses for Outbound Transfers and ITAR Access Prior to Export Activity
- Work with CUNY’s Export Control Administrator, Farida Lada, to scope license requirement
  - Shipment of Equipment Abroad – Since the FRE only applies to technology and technical data, a license may be necessary to export equipment depending on ITAR or EAR requirements.
  - Carrying or transmitting export controlled technical data or development software - for example, loading cryptography development software or proprietary export controlled information on a laptop or sending it abroad to a destination for which the data is controlled.
    - Distinguishable from exporting FRE data results (must be uncontrolled results only) which does not require a license
  - See Section 5 about specific OFAC licensing requirements.
  - Access by foreign nationals to ITAR research tools or instruments used in fundamental research
  - Expanding allowable access (beyond US PI) under an NDA which covers export controlled data or instruments

- CUNY’s staff support plays an important role in identifying potentially controlled activities: Procurement, HR, International Programs, IT, Tech Transfer, etc.
> 4. HOW DOES CUNY REMAIN COMPLIANT AND OPERATE WITHIN A “BUSINESS AS NORMAL” CONTEXT?

Managing Non-Disclosure Agreements (NDA):

An NDA containing a confidentiality clause and/or an export control clause (should the data being provided be controlled) does not per se compromise FRE or public domain status, provided that:

- Purpose of the NDA is to safeguard proprietary background information and does not restrict research results
- Where the purpose of the NDA is to safeguard data that is both proprietary and export controlled, PI and sponsor need to discuss amount of information and the extent to which the project can be performed with either no transfer of data to the PI, or transfer to only one or two PI’s, but not the balance of the research team — i.e., consistent with the data being used strictly for background purposes.
- Note: As a practical matter it is better not to accept export controlled data where it can be avoided. Accepting ITAR data, even for background purposes, will require the PI or researcher to assume the responsibility of safeguarding the technology from inappropriate IT and physical access.

What Can I Take with Me When I Travel?

Use License Exception TMP (Tools of Trade)

- Applies to usual and reasonable kinds/quantities of tools (commodities/software) for use by exporter.
- Must remain under effective control exporter or exporter’s employee (physical possession, locked in safe, guarded).
  - Would generally not apply to laboratory equipment that cannot be protected.
- Must accompany exporter when traveling or be shipped within one month before departure or any time after departure, and be returned no later than one year post export.
- Does not apply to
  - OFAC terrorist supporting embargoed countries such as Cuba and Sudan (See OFAC rules below)
  - ITAR instruments
> 4. HOW DOES CUNY REMAIN COMPLIANT AND OPERATE WITHIN A “BUSINESS AS NORMAL” CONTEXT?

Fabrication and Service Contracts

- Fabrication and Service activity for an industry partner or federal sponsor outside fundamental research does not qualify for the FRE:

- Hence access to certain laboratory instruments, tech data and results may be restricted from foreign nationals who might otherwise participate in fundamental research activities.
  - Particular attention should be paid to whether laboratory instruments and fabrication results are export controlled under EAR and/or ITAR.
  - Bona fide employee ITAR exemption does not qualify in this scenario
4. HOW DOES CUNY REMAIN COMPLIANT AND OPERATE WITHIN A “BUSINESS AS NORMAL” CONTEXT?

Special Considerations Applicable to Software and Encryption

Make self-created software “publicly available” so as to be excluded from the EAR

- Must have arisen during or resulted from fundamental research as defined by the EAR.
- Source code and machine readable code must be publicly available
- Software and related technical data are published when available for general distribution/community subscription either for free or at a registration price that does not exceed the cost of reproduction and distribution.
- Contract terms for release of the developed software
  - There should be no conditions placed on the research
  - Should be the intent of the research team to publish its findings in scientific literature or elsewhere
  - If the contract requires that a 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. The research is not considered fundamental.

Special Encryption Rules

- Encryption software is consistently called out in the EAR to alert that stricter rules apply; government takes a conservative approach to cryptographic controls, including removing some items from the Fundamental Research Exclusion (“FRE”)
  - Where the FRE does not apply, a “deemed export” situation arises with regard to T4 foreign nationals
- Encryption software is controlled for its functional capacity – not for the informational content it supports
- Category 5, Part 2 captures cryptography and where it has a higher level of control, supersedes other CCL categories that may have otherwise applied to underlying software
- Items not covered by the FRE/Public Domain exclusions
  - Software and related technology controlled under ECCN 5D002 for “EI” (Encryption Items) reasons
  - Mass market encryption software with symmetric key length exceeding 64-bits, controlled under ECCN 5D002
5. OFAC Regulations: Purpose, Scope, and Enforcement

What Are the OFAC Regulations? What Are They Intended to Accomplish?

- Office of Foreign Assets Control (OFAC) falls under the Department of the Treasury
- Regulations are found in Title 31 CFR, Parts 500-599
  - Broadly regulate and restrict transactions with embargoed countries plus certain nongovernmental organizations to implement strategic foreign policy
  - Restrict transfer and exchange of items and services
  - Restrict commercial, industrial, and financial relationships benefitting countries
  - Restrict travel (Cuba) subject to certain exceptions
  - Prohibit transactions with certain end users – OFAC’s Specially Designated Nationals List (present in the U.S. or abroad)

- Approximately twenty-five embargoed countries plus certain non-governmental organizations: most comprehensive controls apply to the following:
  - Cuba, Iran, Syria, N. Korea and Sudan
  - Regulations are country-specific
  - OFAC regulations operate independently of other export control regulations (dual-use/EAR, military defense/ITAR)
    - An activity that might not be controlled under EAR or ITAR may be controlled under OFAC
  - OFAC Sanctions Programs: Terrorism
    - Regulations include Executive Order and several sanctions (31 CFR 594-597)
    - Sanctions apply to certain listed entities
How Are OFAC Regulations Enforced?

- All regulated activity requires prior authorization in the form of an OFAC license issued by the Department of Treasury
- While OFAC publishes some country-specific guidance on regulatory interpretation, such guidance is not comprehensive; in general, questions in doubt are handled through requests for Advisory Opinions or License Applications
  - Data provided in advisory opinions is treated as proprietary and confidential upon request
- Treasury deploys its own investigative enforcement team, and operates jointly with the FBI and the Commerce Department’s Office of Export Enforcement (OEE)
- Sanctions include civil and criminal monetary penalties which can be assessed against the individual violator and/or the institution. Cases can be referred to the Department of Justice for criminal investigation
  - Monetary penalties can range up to the greater of $250,000 or twice the value of the transaction, per violation
- The most common violations in the academic and research community involve the following:
  - Cuba-based research and independent travel
  - Outbound and collaborative Iranian transactions (see below for further detail)
  - Access to restricted research tools in the U.S. by OFAC-restricted foreign nationals
  - Failure to screen OFAC-restricted end-users
> 5. OFAC REGULATIONS: PURPOSE, SCOPE, AND ENFORCEMENT

How Specific Research Activities Trigger Requirements: Common Scenarios

- Travel to an OFAC-restricted country
  - Note: Only Cuba requires licenses for personal and certain professional travel; for all other countries, no license is required for personal travel

- Providing a restricted “service”

  This concept is common to the regulations across the five most heavily sanctioned nations, as excerpted below from the Iran sanctions:

  “§560.204 Except as otherwise authorized pursuant to this part, including §560.511, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the exportation, re-exportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran is prohibited, including the exportation, re-exportation, sale, or supply of any goods, technology, or services to a person in a third country undertaken with knowledge or reason to know that:

  (a) Such goods, technology, or services are intended specifically for supply, transshipment, or re-exportation, directly or indirectly, to Iran or the Government of Iran; or

  (b) Such goods, technology, or services are intended specifically for use in the production of, for commingling with, or for incorporation into goods, technology, or services to be directly or indirectly supplied, transshipped, or reexported exclusively or predominantly to Iran or the Government of Iran.”
> 5. OFAC REGULATIONS: PURPOSE, SCOPE, AND ENFORCEMENT

- Common scenarios involving restricted services include the following:
  - Exporting research data which is not publicly available
    - “Export” is defined as a transfer: electronic, conversational or hard copy media
    - “Publicly available” means published on a website or through scholarly publication, etc.
    - An Iranian download of a Website publication containing research results is allowable; however, providing technical assistance upon request from an Iranian individual or institution based in Iran triggers a license requirement
  - Importing samples or materials for analysis/provision of data results
    - Even where the samples or materials are strictly for research purposes and results are intended for publication, importation without a license is prohibited
    - Note: Importing any item from Iran requires license authorization; other countries have item-specific requirements
  - Data exchange with OFAC foreign national researchers and scholars based in OFAC countries
    - Note export prohibition above: issuing data or research results that is unrelated to publication may constitute a restricted export
    - Serving on collaborative research committees or boards: No issue, unless “service” is being provided: common sense standard – discussions should be limited to what has been published or general discussions pertaining to collaboration
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