

EXPORT ESSENTIALS: YOUR GUIDE TO THE FUNDAMENTALS OF EXPORT LAWS AND LICENSING



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OFFICE OF FOREIGN ASSETS CONTROL

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OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Statutorily based
 - ❖ Trading with the Enemy Act, 50 U.S.C.A. App. §§ 1 – 44
 - ❖ International Emergency Economic Powers Act, 50 U.S.C.A. App. § 1701, *et seq.*



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Office of Foreign Assets Control
 - ❖ Administers and enforces economic sanctions programs against countries, individuals, and/or entities
 - ❖ Sanctions are both targeted and broad



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Regulations
 - ❖ 31 C.F.R. part 515 – Cuba
 - ❖ 31 C.F.R. part 560 – Iranian Transactions
 - ❖ 31 C.F.R. part 537 – Burma
 - ❖ 31 C.F.R. part 538 – Sudan
 - ❖ 31 C.F.R. part 540 – Non-proliferation Restrictions/ Weapons of Mass Destruction



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Premised on “embargo” concept
 - ❖ Not limited to “controlled goods” – expansively prohibits all conduct related to embargoed destinations or parties
 - ❖ Affects financing, shipment, transfers, any U.S. participation, discussions, hiring and retention of embargoed foreign nationals and exports or imports



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Premised on “embargo” concept (cont'd)
 - ❖ Case-by-case review with limited approvals
 - ❖ Provides exception for certain materials considered protected under the First Amendment (books, periodicals, literature)
 - ❖ Concept is one of “denial”



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

■ Licensing

❖ General License

- Pre-approved authorization to conduct activity if all elements of general license exist
- Requires no written approval from OFAC
- Generally covers activities which are considered appropriate from a legal, regulatory, and policy perspective



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Licensing (cont'd)
 - ❖ Specific License
 - Requires specific written approval from OFAC prior to conducting any activity controlled under the regulations
 - Covers broad scope and may address requests to approve “prohibited transactions” – e.g., “trade or financial transactions and other dealings in which U.S. persons may not engage unless authorized by OFAC or expressly exempted by statute.”
www.treas.ofac.gov



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Licensing (cont'd)
 - ❖ Specific License
 - Requested in letter form addressed to the Licensing Division of OFAC
 - Requires review of the regulations that directly pertain to the destination and/or entity involved – e.g., review Iranian transaction Regulations for an export or activity destined for Iran



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Licensing (cont'd)

- ❖ Specific License

- May be covered in some instances by authorities obtained from the Department of Commerce under circumstances where overlapping jurisdiction exists
- Approvals provide specific and direct provisos and limitations regarding the activity or transaction approved



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Licensing (cont'd)

- ❖ Specific License

- Applicants are encouraged to wait at least two (2) weeks before calling the agency to ask about the status of the application
 - Licensing Division phone number: 202-622-2480

- Interagency review process

- OFAC does not review applications in a vacuum
 - Foreign policy and national security concerns are coordinated with other agencies, including, but not limited to, the Departments of State and Commerce



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Licensing (cont'd)

- ❖ Policy Considerations

- Unlike Commerce and/or State, policy considerations embedded in statutes and regulations control
- Great discretion within OFAC to determine whether approving the transaction is in the interests of the United States and its policies
- May appear arbitrary



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

■ Licensing (cont'd)

❖ Denials

- No official or formal denial process exists for review of a denied application
- A denied license is considered a “final agency action”
- OFAC will reconsider its determination for “good cause”



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Violations
 - ❖ OFAC assertively enforces the OFAC regulations
 - ❖ Enforcement is not limited to commercial or profit-making enterprises
 - ❖ Enforcement has affected, for example, humanitarian groups, financial institutions, sports teams, law firms, banks, public companies, foreign companies, and individuals:



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Recordkeeping Requirements
 - ❖ Standard
 - ❖ Required for all documents subject to these regulations
 - ❖ Five-year period, or at the discretion of the agency
 - ❖ Records may be maintained in any form reasonably accessible upon request (e.g., written microfiche, computerized, CD-ROM, or other similar media)



OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Reporting Requirements
 - ❖ Regulations require reports for certain transactions related to:
 - blocked property
 - denied or Specially Designated Nationals List parties
 - licenses
 - rejected transactions