



ECCO

**DOE HQ Annual MPC&A
Export Control Training**

**Lawrence Livermore National
Laboratory**

**Presented by: Evelyn Prestosh
June 2014**

AGENDA

- Statistics
- ICL Update
- OFAC Sanctions
- All MPC&A Contracts Expiring: 12/31/2014
- Review of EAR §744.2 Activities (Civilian, Commercial, Military Determinations)
- White House Interagency Review Process
- Sample Licensing Scenarios for Training
- Questions



STATISTICS

○ ICL S000030 – April 2006 to Present

- ICL Requests Processed: 5,299
- *Quantity of Items: 889,597
- Number of Line Items: 45,497
- Total Dollar Value: \$1.73B

○ ICL S000005 – 11/1997 through 3/2006

- ICL Requests Processed: 2,204
- *Quantity of Items: 1,752,586
- Number of Line Items: 19,892
- Total Dollar Value: \$375M

*Data is skewed due to line items entered as '1 lot'

STATISTICS CONT'D

- Disposition Requests (DRs)
 - Since 9/19/2011
 - 54 DRs received
 - 46 DRs processed
 - 8 DRs still open

ICL UPDATE

- ICL #S000030
 - DOC granted 1 year extension
 - ICL will expire on 3/31/2015
- Important Factors to the Extension
 - DOC proposed rule to eliminate SCL/ICL license type from EAR
 - CUESS licensing system to replace SNAP-R
 - SNAP-R SCL module re-opened for MPC&A Program to continue entry of ICL application
 - OFAC sanctions of Russian officials, members of Putin's inner circle, etc

OFAC SANCTIONS

- OFAC sanctions Russian government officials, members of Putin's inner circle, bank, etc
 - Sneakers
 - Majority ownership rule and the insurance policy example
 - Missing data
- Extensive 'marketing' of MPC&A Program initiated
- MPC&A pursuit to export ITAR-controlled Tactical Engagement Simulation Systems (TESS) training equipment – ON HOLD
- OFAC updated its SDN Search Tool
- Sanctions List Search has replaced SDN Search and is available at this link:

<https://sdnsearch.ofac.treas.gov/>



OFAC

Office of Foreign Assets Control

Sanctions List Search

This Sanctions List Search application ("Sanctions List Search") is designed to facilitate the use of the Specially Designated Nationals and Blocked Persons list ("SDN List") and the Foreign Sanctions Evaders List ("FSE List"). The Sanctions List Search tool uses approximate string matching to identify possible matches between word or character strings as entered into Sanctions List Search, and any name or name component as it appears on the SDN List and/or the FSE List. Sanctions List Search has a slider-bar that may be used to set a threshold (i.e., a confidence rating) for the closeness of any potential match returned as a result of a user's search. Sanctions List Search will detect certain misspellings or other incorrectly entered text, and will return near, or proximate, matches, based on the confidence rating set by the user via the slider-bar. OFAC does not provide recommendations with regard to the appropriateness of any specific confidence rating. Sanctions List Search is one tool offered to assist users in utilizing the SDN list and/or the FSE List; use of Sanctions List Search is not a substitute for undertaking appropriate due diligence. The use of Sanctions List Search does not limit any criminal or civil liability for any act undertaken as a result of, or in reliance on, such use.

[Download the SDN List](#)

[Visit The OFAC Website](#)

[Download the FSE List](#)

Lookup

Type:

Name:

ID #:

Program:
BALKANS
BELARUS
BPI-PA

Minimum Name Score:

Address:

City:

State/Province*:

Country:

List:

Lookup Results:

Name	Address	Type	Program(s)	List	Score
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* U.S. states are abbreviated on the SDN and FSE lists. To search for a specific U.S. state, please use the two letter U.S. Postal Service abbreviation.

SDN List last updated on: 5/30/2014 1:37:38 PM
FSE List last updated on: 2/6/2014 10:46:08 AM

ALL CONTRACTS EXPIRING 12/31/2014

- Rosatom issued decree --- no contracts past 12/31/2014
- Why? Potential Rosatom control point
- MPC&A Issue: limited deliverables can be accomplished in six months
- Potential Solution: use appropriate due date for deliverables that can be accomplished by 12/31; use 'TBD' for other due dates
- Allows contracts to be written for work that may occur in 2015
- Tom Wander and team to meet with Rosatom in July to present potential solution
 - Mayak can use TBD; contracts signed

REVIEW OF EAR §744.2 ACTIVITIES

REVIEW OF EAR §744.2 ACTIVITIES

- As we review EAR §744.2 activities, also known as the Prohibited Nuclear Activities, I want you to look for these words in the regulations
 - civil
 - commercial
 - military
 - peaceful
 - nuclear power plants

REVIEW OF EAR §744.2 ACTIVITIES

§744.2 Restrictions on Certain Nuclear End-Uses

- §744.2(a) **General Prohibition** – In addition to the license requirements for items on the CCL, you may not export, re-export, or transfer (in-country) to any destination , other than countries in Supplement #3, any item subject to the EAR without a license if you know that the item will be used directly or indirectly in any one or more of the activities described in §744.2(a) (1), §744.2(a)(2) and §744.2(a)(3)
- Please Note: Russia and China are not listed in Supplemental #3

REVIEW OF EAR §744.2 ACTIVITIES

Supplement No. 3 to Part 744 – Countries Not Subject to Certain Nuclear End-Use Restrictions in §744.2(a)

- Australia Italy (+ San Marino & Holy See)
- Austria Japan
- Belgium Luxembourg
- Canada Netherlands
- Denmark New Zealand
- Finland Norway
- France Portugal
- Germany Spain
- Greece Sweden
- Iceland Turkey
- Ireland United Kingdom

REVIEW OF EAR §744.2 ACTIVITIES CONT'D

§744.2 Restrictions on Certain Nuclear End-Uses

○ §744.2(a)(1) **Nuclear Explosive Activities** –

Activities include:

- RESEARCH on or
- DEVELOPMENT,
- DESIGN,
- MANUFACTURE,
- CONSTRUCTION,
- TESTING, or
- MAINTENANCE of

any nuclear explosive device, or components or sub-systems of such a device

REVIEW OF EAR §744.2 CONT'D

§744.2 Restrictions on Certain Nuclear End-Uses

○ §744.2(a)(2) **Unsafeguarded Nuclear Activities** - Activities including:

- RESEARCH on, or
- DEVELOPMENT,
- DESIGN,
- MANUFACTURE,
- CONSTRUCTION,
- OPERATION, or
- MAINTENANCE of

any nuclear reactor, critical facility, facility for the fabrication of nuclear fuel, facility for the conversion of nuclear material from one chemical form to another, or separate storage installation, where there is no obligation to accept International Atomic Energy Agency (IAEA) safeguards...

REVIEW OF EAR §744.2 CONT'D

§744.2 Restrictions on Certain Nuclear End-Uses

- §744.2(a)(3) Safeguarded and Unsafeguarded Nuclear [FUEL CYCLE] Activities - include:
 - RESEARCH on or DEVELOPMENT, DESIGN, MANUFACTURE, CONSTRUCTION, OPERATION or
 - MAINTENANCE of any of the following facilities, or components for such facilities:
 - (i) Facilities for the chemical processing of irradiated special nuclear or source material;
 - (ii) Facilities for the production of heavy water;
 - (iii) Facilities for the separation of isotopes of source and special nuclear material; or
 - (iv) Facilities for the fabrication of nuclear reactor fuel containing plutonium

REVIEW OF EAR §744.2 ACTIVITIES

CONT'D

- So, in this review of §744.2 activities, who saw these words written in the regulations?
 - civil,
 - commercial,
 - military
 - peaceful
 - nuclear power plant(s)

REVIEW OF EAR §744.2 ACTIVITIES CONT'D

- No one did. §744.2 does not contain the words civil, commercial, military, peaceful or nuclear power plants
- As we reviewed §744.2 , whose brain may have interspersed or associated the projects they are working on into the words of the regulations?
- What does all this mean to your licensing determination?

REVIEW OF EAR §744.2 ACTIVITIES CONT'D

- Nowhere in §744.2 are the terms, civil, commercial, peaceful, military, nuclear power plant, used to describe or differentiate activities that may or may not trigger a license
- Instead of specifying "nuclear power plants" in §744.2, the regulation lists “reactors, critical facility, facility for the fabrication of nuclear fuel, facility for the conversion of nuclear material from one chemical form to another, or separate storage installation”, etc

REVIEW OF EAR §744.2 ACTIVITIES CONT'D

The word exercise should remind all that...

- you need to base your export licensing determination on the site's §744.2 activities
- it is the §744.2 activities that determine the licensing requirement, not the type of facility
- §744.2 was written to control the activities
- The good intentions of a program do not offset the licensing requirements
- Good programs, well-supported programs help streamline the license approval process; but we still need to ask for permission

REVIEW OF EAR §744.2 ACTIVITIES CONT'D

The word exercise should remind all...

- not to get lulled into making an incorrect licensing determination based on softer words like *civil nuclear power plant*, *commercial nuclear power plant*, *peaceful use* or even references to *military* believing we are pursuing peaceful cooperation
- that we are not authorized to make interpretations that only the Commerce Department can officially make.

REVIEW OF EAR §744.2 ACTIVITIES CONT'D

- Quiz: A DOE or DoD program, or any other USG agency's program, requests any of the national labs' Export Compliance team to determine if a license is required to share MPC&A nuclear security best practices with China's civil nuclear power plants or complexes.
- **What do you need to know?**

REVIEW OF EAR §744.2 ACTIVITIES CONT'D

- You need to know:
 - The names of the nuclear power plants/complexes, companies, sites, etc. in order to conduct DPL screening, Listed Entity screening, OFAC screening, etc
 - The assorted activities that are conducted at these sites
 - If any of the activities fall under §744.2
 - If China is a country listed in Supplement No. 3 of §744
 - If the civil nuclear power plants are designated as IAEA safeguarded

REVIEW OF EAR §744.2 ACTIVITIES CONT'D

- You need to know:
 - What the export classifications of the technologies being shared are
 - If the technology subject to the EAR
 - The jurisdiction of the technology
 - Country of origin of the technology
 - Whether or not the technology and/or presentations are in the public domain (and be able to cite the sources)
 - If we are only transferring funds

REVIEW OF EAR §744.2 ACTIVITIES CONT'D

○ Quiz Answer:

- It depends on all the answers, to all of those questions, and then some.
- Please be careful when you hear any deviation of the following, “We’re only dealing with, helping, talking to, working with, funding, etc. the civil nuclear power plants, or the commercial power plants.” This is my new **red flag**.

WHITE HOUSE INTERAGENCY REVIEW PROCESS

WH INTERAGENCY REVIEW (IR) PROCESS

- Expanded interactions with a country require White House/National Security Council (NSC)/National Security Staff (NSS) approval
- NSC has or will create specific country teams with representation from each agency to review and approve expanded interaction requests
- Weighted agency approval based on export classification of commodity
- NSC approved MPC&A expanded interactions Israel and India (but we still needed to ask)

WH INTERAGENCY REVIEW (IR) PROCESS

- Required Data Points: list of all participants, justification of interaction, proposed benefits, copies of all presentations, technology transfer hard line limits, and any NSC required information
- NSC determines if the request is within the scope of DOS's C-175 approved arrangements, and within USG policy and U.S. National Security Objectives. NSC Country Teams determine the proper export licensing requirements. IR Process streamlines license approval process, if license is required.

WH INTERAGENCY REVIEW (IR) PROCESS

- “White House Authorization”, while necessary to proceed with the expanded interaction, is never an exemption from obtaining the necessary export licenses.

EXAMPLE LICENSING
SCENARIOS FOR
TRAINING WORKSHOPS
(for technology transfers
subject to the EAR)

SCENARIO #1

- The MPC&A Program is funding a workshop.
 - Presenters/Trainers are from the U.S. only or the U.S. and Russia.
 - Attendees are representatives from the MPC&A Program's ICL consignee list only (all Russians)
 - The presentations' ECCNs fall within the bounds of our ICL.
- What is the licensing protocol the MPC&A Program should follow?

SCENARIO #1 – DETERMINATION

- Licensing Requirement:
 - An ICL Request listing all attendees and all ECCNs is required to transfer the technology our consignees
 - Please Note: In the MPC&A Program, it's pretty safe to say that any time a U.S. person is involved with a site that conducts 744.2 activities, an ICL Request must be entered or an IVL obtained

SCENARIO #2

- The MPC&A Program is funding a workshop.
 - Presenters/Trainers are from the U.S. only or the U.S. and Russia.
 - Attendees are representatives from the MPC&A Program's ICL consignee list **and other non-ICL attendees.**
 - The ECCNs of the technology in all the presentations fall within the bounds of our ICL.
- What is the licensing protocol the MPC&A Program should follow?

SCENARIO #2 - DETERMINATION

- Licensing Requirements:
 - An ICL Request listing all ICL consignees attending and all ECCNs is required to transfer the technology to our consignees
 - **IF** the non-ICL attendees conduct §744.2 activities, an IVL listing all non-ICL attendees and ECCNs is required to transfer the technology (attend the training)
 - **IF** the non-ICL attendees do **NOT** conduct §744.2 activities, use the standard licensing rules (ECCN, Reasons for Control, Country Chart) to determine the proper licensing requirements

SCENARIO #2 - QUIZ

- What is the licensing requirement if the training topic is securing site perimeters and some of the non-ICL attendees include representatives from the local police department who wish to fence their property, as well as representatives from Chem Bio Plant #2, a site that conducts §744 activity?

SCENARIO #2 - QUIZ ANSWERS

- Police Dept. Licensing Determination:
 - Use the standard licensing rules (ECCN, Reasons for Control and the Country Chart) to determine the proper licensing requirements. An IVL may not be required to transfer technology subject to the EAR to the police department.
- Chem Bio Plant #2 Licensing Determination:
 - Since Chem Bio Plant #2 is caught under the §744.2 activities, an IVL is required to transfer technology subject to the EAR to these attendees.

SCENARIO #3

- The MPC&A Program is funding a workshop
 - Presenters/Trainers are from Russia only
 - Attendees are representatives from the MPC&A Program's ICL consignee list
 - The presentations' ECCNs fall within the bounds of our ICL.

- What is the licensing protocol the MPC&A Program should follow?

SCENARIO #3 – DETERMINATION

- Licensing Requirement:
 - An ICL Request listing all attendees and all ECCNs is required to transfer the technology to our consignees.

SCENARIO #4

- The MPC&A Program is funding a workshop
 - Presenters/Trainers are from Russia only
 - Attendees are representatives from the MPC&A Program's ICL consignee list **and other non-ICL attendees**
 - The presentations' ECCNs fall within the bounds of our ICL
- What is the licensing protocol the MPC&A Program should follow?

SCENARIO #4 – DETERMINATION A

- Licensing Requirement for ICL Consignees
 - An ICL Request listing all ICL consignees attending and all ECCNs is required to transfer the technology our consignees.

SCENARIO #4 – DETERMINATION B

- Licensing Requirements for non-ICL attendees, from Russian sites who conduct §744.2(a) nuclear activities.
 - **Issue:** Is the MPC&A ICL established with the intent to allow the U.S. to train the consignees to train other Russian non-ICL facilities who conduct §744.2(a) nuclear activities only?

SCENARIO #4 – DETERMINATION C

- Licensing Requirements for non-ICL attendees, from Russian sites, who conduct §744.2 activities beyond just §744.2(a) nuclear activities, e.g. chemical and biological, nuclear propulsion, etc
 - IVL is required to retransfer U.S. origin technology subject to the EAR to participants who conduct §744 activities beyond the §744.2(a) nuclear activities.

SCENARIO #4 – DETERMINATION D

- Licensing Requirements for non-ICL attendees, from Russian sites, who DO NOT conduct any §744 activities
 - LMEM should use the standard licensing rules (ECCN, Reason for Control, and the Country Chart) to determine the proper licensing requirements for these parties to attend. (See police dept. example in Scenario 2 Quiz)

SCENARIO #4 – DETERMINATION E

- Licensing Requirements for non-ICL attendees from other countries, whose sites conduct any of the §744 activities
 - Gather information of attendees to includes attendee's full name, passport information, facility name and country
 - DOE HQ PM to begin Interagency Review Process to gain White House/NSC approval. This is to guard against any misconceptions that NNSA is funding training for North Korea nuclear programs, for example.
 - Upon approval, obtain necessary IVLs

SCENARIO #4 – DETERMINATION F

- Licensing Requirements for non-ICL attendees from other countries, whose sites do NOT conduct any of the §744 activities
 - LMEM should use the standard licensing rules (ECCN, Reason for Control, and the Country Chart) to determine the proper licensing requirements for these parties to attend.

HELPFUL PHRASES

- I love you all, but not enough to go to jail for you.
- Would you be willing to put that in writing and have it notarized?
- If you have trouble following the directions to microwave a pack of Ramen Noodles, do not attempt to conduct your own export licensing determinations. Contact your lead Export Compliance Officer immediately for assistance.

DOE HQ EXPORT CONTROL CONTACT

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ANY QUESTIONS?



Thank You!