

U.S. Government Restrictions on Scientific Publications: Statutes & Federal Regulations

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Keywords

Act, Administration, Assets, atomic, biological, Bureau, censorship, chemical, classified, C.F.R., CFR, Code, confidential, Control, defense, department, destruction, encryption, engineering, espionage, equipment, export, exportation, Federal, Foreign, government, Industry, information, international, law, laws, legal, license, mass, materials, military, munitions, nuclear, OFAC, Office, policy, professional, prohibited, publication, publications, publishing, regulation, regulations, research, restricted, science, scientific, secrecy, secret, secrets, Security, service, services, software, States, statute, statutes, technology, Treasury, United, U.S., USA, U.S.C., USC, weapons, WMD

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Introduction

My essay, *U.S. Government Restrictions on Scientific Publications*, at: <http://www.rbs2.com/OFAC.pdf> discusses the legal basis for the U.S. Government's restrictions on scientific, engineering, and other scholarly publications, specifically:

1. prohibition of publishing government secrets,
2. prohibition on publishing instructions for producing weapons of mass destruction (e.g., chemical, biological, or nuclear weapons),
3. restrictions on distribution of encryption software, and
4. restrictions on U.S. citizens from providing prohibited services to citizens of rogue nations.

Each of these topics include related legal issues involving freedom of speech in the First Amendment of the U.S. Constitution.

This document lists some of the relevant U.S. Statutes about secrecy, lists some of the relevant Federal Regulations about secrecy and export controls, and quotes from some of these statutes and regulations. The purpose of this document is to make scientists, engineers, and professors aware of some of the legal restrictions on publication of their work.

Disclaimer

This essay is intended only to present general information about an interesting topic in law and is *not* legal advice for your specific problem. See my disclaimer at <http://www.rbs2.com/disclaim.htm> . Any citizen of the USA who is contemplating cooperation with citizen(s) of a rogue nation should consult their attorney *before* undertaking any such cooperation and *before* making any contractual commitments.

There is a bewilderingly large number of U.S. Statutes and Federal Regulations concerning government secrets and export restrictions. The list of statutes is the fruit of my quick search on 20 June 2004, and the list of federal regulations is the fruit of my quick search on 11 June 2004. I offer no assurance that these lists are complete. Your attorney should make his/her own search.

U.S. Statutes

Espionage Act of 1917, as amended

Gathering, transmitting or losing defense information **18 USC § 793**

(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense,

- (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or
- (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer —

Shall be fined under this title or imprisoned not more than ten years, or both.

(g)

18 USC § 793 (1996).

Gathering or delivering defense information to aid foreign government **18 USC § 794**

Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life,

18 USC § 794(a) (1996).

Espionage Act of 1938, as amended

Photographing and sketching defense installations **18 USC § 795**

(a) Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto,

it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installations or equipment without first obtaining permission of the commanding officer of the military or naval post, camp, or station, or naval vessels, military and naval aircraft, and any separate military or naval

command concerned, or higher authority, and promptly submitting the product obtained to such commanding officer or higher authority for censorship or such other action as he may deem necessary.

(b) Whoever violates this section shall be fined under this title or imprisoned not more than one year, or both.

18 USC § 795 (1994).

The President defined "vital military and naval installations or equipment" as:

1. All military, naval, or air-force installations and equipment which are now classified, designated, or marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret", "secret", "confidential", or "restricted" and all military, naval, or air-force installations and equipment which may hereafter be so classified, designated, or marked with the approval or at the direction of the President, and located within:

(a) Any military, naval, or air-force reservation, post, arsenal, proving ground, range, mine field, camp, base, airfield, fort, yard, station, district, or area.

(b) Any defensive sea area

(c) Any airspace reservation

(d) Any naval harbor closed to foreign vessels.

(e) Any area required for fleet purposes.

(f) Any commercial establishment engaged in the development or manufacture of classified military or naval arms, munitions, equipment, designs, ships, aircraft, or vessels for the United States Army, Navy, or Air Force.

2. All military, naval, or air-force aircraft, weapons, ammunition, vehicles, ships, vessels, instruments, engines, manufacturing machinery, tools, devices, or any other equipment whatsoever, in the possession of the Army, Navy, or Air Force or in the course of experimentation, development, manufacture, or delivery for the Army, Navy, or Air Force which are now classified, designated, or marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret", "secret", "confidential", or "restricted", and all such articles, materials, or equipment which may hereafter be so classified, designated, or marked with the approval or at the direction of the President.

3. All official military, naval, or air-force books, pamphlets, documents, reports, maps, charts, plans, designs, models, drawings, photographs, contracts, or specifications which are now marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret", "secret", "confidential" or "restricted" and all such articles or equipment which may hereafter be so marked with the approval or at the direction of the President.

Executive Order 10104, 15 F.R. 597 (1 February 1950).

Notice how the Executive Order broadened the statute, which was primarily concerned with photographs of ships and military installations, into also including classified "books, pamphlets, documents, reports, maps, charts, plans, designs, models, drawings, photographs, contracts, or specifications".

Atomic Energy Act of 1946, as amended

The Atomic Energy Act, and its amendments, are codified at 42 U.S.C. §§ 2011-2297, of which the following sections are particularly important in the context of prohibiting the release of secrets about nuclear weapons. As one law professor commented, “practically all information related to nuclear weapons and nuclear energy is ‘born classified’: it is a government secret as soon as it comes into existence.”¹

Communication of Restricted Data **42 USC § 2274**

Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data² —

(a) communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$100,000 or both;

(b) communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation, shall, upon conviction, be punished by a fine of not more than \$50,000 or imprisonment for not more than ten years, or both.

42 USC § 2274 (2000).

¹ Mary M. Cheh, “The *Progressive* Case and the Atomic Energy Act: Waking to the Dangers of Government Information Controls”, 48 *George Washington Law Review* 163, 163 (Jan 1980) (Commenting on 42 USC § 2162.). See also, Richard G. Hewlett, “‘Born Classified’ in the AEC: A Historian’s View,” *Bulletin of the Atomic Scientists*, pp. 20-27 (Dec 1981).

² “The term *Restricted Data* means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 2162 of this title.” 42 U.S.C. § 2014(y).

“The term *special nuclear material* means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 2071 of this title, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.” 42 U.S.C. § 2014(aa).

“The term *source material* means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 2091 of this title to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.” 42 U.S.C. § 2014(z).

Receipt of Restricted Data 42 USC § 2275

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, acquires, or attempts or conspires to acquire any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$100,000 or both. 42 USC § 2275 (1999).

Tampering with Restricted Data 42 USC § 2276

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, removes, conceals, tampers with, alters, mutilates, or destroys any document, writing, sketch, photograph, plan, model, instrument, appliance, or note involving or incorporating Restricted Data and used by any individual or person in connection with the production of special nuclear material, or research or development³ relating to atomic energy,⁴ conducted by the United States, or financed in whole or in part by Federal funds, or conducted with the aid of special nuclear material, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000 or both. 42 USC § 2276 (1992).

Disclosure of Restricted Data 42 USC § 2277

Whoever, being or having been an employee or member of the [Nuclear Regulatory] Commission, a member of the Armed Forces, an employee of any agency of the United States, or being or having been a contractor of the Commission or of an agency of the United States, or being or having been an employee of a contractor of the Commission or of an agency of the United States, or being or having been a licensee of the Commission, or being or having been an employee of a licensee of the Commission, knowingly communicates, or whoever conspires to communicate or to receive, any Restricted Data, knowing or having reason to believe that such data is Restricted Data, to any person not authorized to receive Restricted Data pursuant to the provisions of this chapter or under rule or regulation of the Commission issued pursuant thereto, knowing or having reason to believe such person is not so authorized to receive Restricted Data shall, upon conviction thereof, be punishable by a fine of not more than \$12,500. 42 USC § 2277 (1999).

There is a ten-year statute of limitations for crimes in 42 USC §§ 2274-2276, unless the death penalty is sought by the Government. 42 USC § 2278.

³ “The term *research and development* means (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.” 42 U.S.C. § 2014(x).

⁴ “The term *atomic energy* means all forms of energy released in the course of nuclear fission or nuclear transformation.” 42 U.S.C. § 2014(c). Nuclear transformation is “nuclear fusion”.

The Government is specifically authorized to apply for an injunction to prevent violations of the above statutes:

Whenever in the judgment of the [Nuclear Regulatory] Commission any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any regulation or order issued thereunder, the Attorney General on behalf of the United States may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Commission that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

42 USC § 2280 (1992).

See also 42 USC §§ 2161 - 2169, concerning classification and declassification of Restricted Data, access to Restricted Data, international cooperation, etc. In particular, note that the Government can prohibit the publication of *unclassified* information about atomic energy:

(a)(1) ... the Secretary of Energy (hereinafter in this section referred to as the "Secretary"), with respect to atomic energy defense programs, shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to —

(A) the design of production facilities or utilization facilities;

(B) security measures (including security plans, procedures, and equipment) for the physical protection of (i) production or utilization facilities, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or

(C) the design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Secretary (or the head of the predecessor agency of the Department of Energy) pursuant to section 2162 of this title.

(a)(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of

(A) illegal production of nuclear weapons, or

(B) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

....

(b)(1) Any person who violates any regulation or order of the Secretary issued under this section with respect to the unauthorized dissemination of information shall be subject to a civil penalty, to be imposed by the Secretary, of not to exceed \$100,000 for each such violation. The Secretary may compromise, mitigate, or remit any penalty imposed under this subsection.

....

(c) [Authorizing criminal penalties under 42 USC § 2273(a), which states:] ... upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than twenty years, or both.

42 U.S.C. § 2168 (1992).

U.S. Patents can *not* be obtained for nuclear weapons technology. 42 USC § 2181(a).

Internal Security Act of 1950

(a) It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, knowing or having reason to know that such information has been so classified, unless such officer or employee shall have been specifically authorized by the President, or by the head of the department, agency, or corporation by which this officer or employee is employed, to make such disclosure of such information.

(b)

(c) Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine of not more than \$10,000, or imprisonment for not more than ten years, or by both such fine and such imprisonment, and shall, moreover, be thereafter ineligible to hold any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

(d)

50 U.S.C. § 783 (1994).

Other Statutes

Biological Weapons Anti-Terrorism Act of 1989, as amended: 18 USC §§ 175-178.

Arms Export Control 22 USC §§ 2751-2796.

Nuclear Nonproliferation 22 USC §§ 3201-3282.

Chemical and Biological Weapons Control and Warfare Elimination Act of 1991:
22 USC §§ 5601-5605.

Nuclear Proliferation Prevention Act of 1994 22 USC §§ 6301-6324.

Chemical Weapons Convention Implementation Act of 1998 22 USC §§ 6701-6771.

Invention Secrecy Act of 1952: 35 U.S.C. §§ 181-188.

National Security: 50 USC §§ 401-442.

Defense Against Weapons of Mass Destruction Act of 1996, as amended:
50 USC § 2301-2368.

Export Administration Act: 50 U.S.C. app. §§ 2401-2420.

Executive Orders

A series of Executive Orders by presidents, beginning with F.D. Roosevelt in 1940 and continuing with almost every succeeding president, establishes rules for classifying information. The current Executive Order by President George W. Bush permits security classification (e.g., top secret, secret, confidential) of the following specific types of information:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including special activities), intelligence sources or methods, or **cryptology**;
- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) **scientific, technological**, or economic matters relating to the national security, which includes defense against transnational terrorism;
- (f) United States Government programs for safeguarding nuclear materials or facilities;
- (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism; or
- (h) **weapons of mass destruction**.

Executive Order Nr. 13292, § 1.4 (25 Mar 2003), 68 FR 15315, 15317 [bold face added].

The now superseded 1978 version of the corresponding Order by President Carter included:

- (a) military plans, weapons, or operations;
- (b) foreign government information;
- (c) intelligence activities, sources or methods;
- (d) foreign relations or foreign activities of the United States;
- (e) scientific, technological, or economic matters relating to the national security;
- (f) United States Government Programs for safeguarding nuclear materials or facilities; or
- (g) other categories of information which are related to national security and which require protection against unauthorized disclosure as determined by the President, by a person designated by the President pursuant to Section 1- 201, or by an agency head.

Executive Order Nr. 12065, § 1-301, 43 Fed.Reg. 28949, 28951 (1978),
3 C.F.R. 190, 193 (1979).

Code of Federal Regulations

Probably because the regulations were originally intended to block financial transactions with rogue nations, the implementation of 31 C.F.R. is the responsibility of the Office of Foreign Assets Control (OFAC) of the U.S. Treasury Department, which has a website at <http://www.ustreas.gov/offices/eotffc/ofac/> .

The OFAC posted a general summary of the relevant regulations at: <http://www.treas.gov/offices/eotffc/ofac/regulations/face&i.txt> .

There are many different government regulations that are relevant here.

Cuba: 31 CFR Part 515

Iran: 31 C.F.R. Part 560

Libya: 31 C.F.R. Part 550. Most of these sanctions were lifted in April 2004. However, a license is still required before “goods, software or technology (including technical data or other information)” can be exported from the USA to Libya.
See http://www.treas.gov/ofac/sanctions/libya_gl3.pdf .

Sudan: 31 C.F.R. Part 538

Syria: 15 C.F.R. § 742.9

Safeguarding of Restricted Data: 10 C.F.R. Part 1016

Export Administration Regulations: 15 C.F.R. parts 700 - 774

These Export Administration Regulations are interpreted by the U.S. Commerce Department in the U.S. Bureau of Industry and Security (<http://www.bis.doc.gov/>), which was formerly called the U.S. Bureau of Export Administration (BXA). 15 C.F.R. part 774 is the “Commerce Control List”, a list of goods, software, and technology for which an export license is required.

Munitions List: 22 C.F.R. Part 121

includes “military cryptographic software”

also includes “technical data” on munitions. 22 C.F.R. § 120.10(a).

Weapons of Mass Destruction: 31 C.F.R. Part 539.

Presentation of Scientific and Technical Papers at Meetings: 32 C.F.R. Part 249

Withholding of Unclassified Technical Data from Public Disclosure: 32 C.F.R. Part 250

Classified National Security Information: 32 C.F.R. Part 2001.

Secret U.S. Patents: 37 C.F.R. § 5.1.

Because these regulations are frequently revised, I decided not to quote the relevant portions of each regulation for each rogue nation. However, as an example of the content of such regulations, I provide the following quotations from the U.S. Government's regulations concerning exports and imports to/from Iran that were in effect on 11 June 2004.

Example of Iran

Prohibited importation of goods or services from Iran.

Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the **importation** into the United States of any goods or **services** of Iranian origin or owned or controlled by the Government of **Iran**, other than information and informational materials within the meaning of section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. § 1702(b)(3)), is prohibited.

31 C.F.R. § 560.201 (1999) [bold face added].

Prohibited exportation, ..., sale or supply of goods, technology, or services to Iran.

Except as otherwise authorized pursuant to this part, including Sec. 560.511, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the **exportation**, reexportation, 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, reexportation, 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 reexportation, 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.

31 C.F.R. § 560.204 (1999) [bold face added].

Prohibited trade-related transactions with Iran; goods, technology, or services.

Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, no United States person, wherever located, may engage in any transaction or dealing in or related to:

(1) Goods or **services** of Iranian origin or owned or controlled by the Government of Iran; or

(2) Goods, **technology, or services** for exportation, reexportation, sale or supply, directly or indirectly, to **Iran** or the Government of Iran.

31 C.F.R. § 560.206(a) (1999) [bold face added].

Exempt transactions. Information and informational materials.

(1) The importation from any country and the exportation to any country of information and informational materials as defined in Sec. 560.315, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part.

(2) This section does not exempt from regulation or authorize transactions related to information and informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting **services**. Transactions that are prohibited notwithstanding this section include, but are not limited to, payment of advances for information and informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications), and provision of **services** to market, produce or co-produce, create or assist in the creation of information and informational materials.

(3) This section does not exempt from regulation or authorize transactions incident to the exportation of software subject to the Export Administration Regulations (15 CFR parts 730-774).

(4)

31 C.F.R. § 560.210(c) (1999) [bold face added].

General Definitions: Information and informational materials.

(a) The term information and informational materials includes:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

(2) To be considered information or informational materials, artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term information and informational materials, with respect to exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2401-2420, the "EAA"), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

31 C.F.R. § 560.315 (1999).

Licenses, Authorizations and Statements of Licensing Policy: Exportation of equipment and services relating to information and informational materials.

Specific licenses may be issued on a case-by-case basis for the exportation of equipment and **services** necessary for the establishment of news wire feeds or other transmissions of information and informational materials.

31 C.F.R. § 560.523 (1999) [bold face added].

Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the "Act") (50 U.S.C. § 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act. Section 206 of the Act, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, as amended, 28 U.S.C. § 2461 note), provides that:

(1) **A civil penalty of not to exceed \$11,000 per violation may be imposed** on any person who violates any license, order, or regulation issued under the Act;

(2) Whoever willfully violates any license, order, or regulation issued under the Act shall, upon conviction be **fined not more than \$50,000**, or, if a natural person, may be **imprisoned for not more than ten years**, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment or both.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. § 3571.

(c)

(d) Attention is directed to 18 U.S.C. § 2332d, as added by Public Law 104-132, section 321, which provides that, except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, a U.S. person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act, 50 U.S.C. App. 2405, as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under title 18, United States Code, or **imprisoned for not more than 10 years**, or both.

(e) Violations of this part may also be subject to relevant provisions of the Customs laws and other applicable laws.

31 C.F.R. § 560.701 (1997) [bold face added].

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I made a quick search of C.F.R. on 11 June 2004, and a quick search of federal statutes on 20 June 2004. These federal regulations are likely to change in the future, because foreign trade policy is a highly volatile area of law.

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