



## **Export Controls Compliance and Penalties**

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# OFAC Sanctions Programs

- Balkans-related Sanctions
- Belarus Sanctions
- Burma Sanctions
- Cote d'Ivoire (Ivory Coast)-related Sanctions
- Counter Narcotics Trafficking Sanctions
- Counter Terrorism Sanctions
- Cuba Sanctions
- Democratic Republic of the Congo-related Sanctions
- Diamond Trading Sanctions
- Iran Sanctions
- Iraq-related Sanctions
- Former Liberian Regime of Charles Taylor Sanctions
- Lebanon-related Sanctions
- Non-proliferation Sanctions
- North Korea Sanctions
- Sudan Sanctions
- Syria Sanctions
- Zimbabwe Sanctions

# Enforcement Guidelines

## OFAC Economic Sanctions

- Final Rule Issued November 9, 2009
- Appendix “A” to 31 CFR Part 501

# OFAC Enforced Statutes

- Trading with the Enemy Act  
(TWEA)
- International Emergency Economic Powers Act  
(IEEPA)

# OFAC Responses to Apparent Violations

An OFAC Investigation May Lead to:

- No Action
- Request for Further Information
- Cautionary Letter
- Finding of Violation (Non-Monetary)
- Civil Monetary Penalty
- Criminal Referral
- Other
  - License Suspension
  - Cease and Desist Order

# General Factors

1. Willful or Reckless Violation of Law.
2. Awareness of Conduct at Issue.
3. Harm of Sanctions Program.
4. Individual Characteristics of Violator.
5. Remedial Response.
6. Cooperation with OFAC.

# Failure to Furnish Requested Information to OFAC Pursuant to 31 CFR 501.602

1. \$20,000 Penalty
2. \$50,000 Penalty if value involves more than \$500,000

# OFAC Civil Penalty Process

1. Pre-Penalty Notice
2. Response to Pre-Penalty Notice
3. Penalty Notice
4. Referral to DOJ for Collection.

# Base Penalty Matrix

## Egregious Case

		No	Yes
Voluntary Self-Disclosure	Yes	<p>(1)</p> <p>One-Half of Transaction Value (Capped at \$125,000 per violation/ \$32,500 per TWEA violation)</p>	<p>(3)</p> <p>One-Half of Applicable Statutory Maximum</p>
	No	<p>(2)</p> <p>Applicable Schedule Amount (capped at \$250,000 per violation/ \$65,000 per TWEA violation)</p>	<p>(4)</p> <p>Applicable Statutory Maximum</p>

## Voluntary Self-Disclosure

- Turning yourself in: Bureau of Industry and Security
- Outline: Violations, The Process, Sanctions, & Disclosure v. Non-Disclosure



## Voluntary Self-Disclosure

- Export Administration Act (EAA)
- Export Administration Regulations (EAR)
- Bureau of Industry and Security

## Voluntary Self-Disclosure: What is a Violation?

- (a) *Engaging in prohibited conduct*
- (b) *Causing, aiding, or abetting a violation*
- (c) *Solicitation*
- (d) *Conspiracy*
- (e) *Acting with knowledge of a violation*
- (f) *Possession with intent to export illegally*
- (g) *Misrepresentation and concealment of facts*
- (h) *Evasion*
- (j) *License alteration*
- (k) *Acting contrary to the terms of a denial order*



## VSD: The Process

- ALL Voluntary Self-Disclosures should be made to the BIS Office of Export Enforcement
- OEE: Procedures
- VSD: Only a Mitigating Factor
- Other Mitigating and Aggravating Factors

# VSD: Procedural Requirements

## Initial Disclosure:

- Initial notification

## After the initial notification:

- Narrative account
  - The kind of violation involved
    - Explanation of violation
    - Identities
    - Description of Items involved
    - Supporting documents, shipping documents & mitigating circumstances

## VSD: Sanctions

- Civil Penalty
- Denial of Export Privileges
- Exclusion from Practice
- Criminal Sanctions



# Case Analysis

- Gusmer Europe, S.L.
- \* *VSD filed*
- \* *Following VSD*
- \* *Settlement Agreement*
- Select Engineering, Inc.
- \* *VSD filed*
- \* *Following VSD*
- \* *Settlement Agreement*

# Case Analysis

- America II Electronics, Inc.
- David Rainvill

# VSD: Recent Case Analysis

- MedSystems Scenario:

- \*Heart Monitor Equipment Shipped to Iran*

- \*Export Violations Purely Technical*

- \*BIS Attacks the VSD*

## MedSystems Case: Lessons to Learn

- If a VSD is filed: Make sure it is completely accurate
- An effective voluntary disclosure requires more than simple disclosure
- Properly educate overseas staff



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