

# ***NCBFAA***

**“How to Properly Make  
a Voluntary Disclosure  
for Export Violations  
to DDTC, BIS &  
the Census Bureau “**

**February 5, 2013**



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Do you have questions about importing/exporting?

<http://www.grcustomslaw.com>

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TUESDAY, JUNE 12, 2012

### New CBP Regulation for Suspected Counterfeit Merchandise



Peter Quinter

Finally, after years of debate, on April 24, 2012, CBP amended its regulations regarding the detention and seizure of suspected imported counterfeit merchandise. In my opinion, it provides a good balance between the rights of legitimate importers, and the need for CBP to examine, detain, and seize merchandise that violates the trademark rights of companies that have registered their trademarks with the U.S. Patent and Trademark Office and then recorded those trademarks with CBP. The interim rule is entitled "Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border," and amends 19 CFR Parts 133 and 151.

[In summary, here are the important changes:](#)

1. Merchandise may be detained by CBP for up to 30 days from the date the merchandise is presented for examination to CBP.
2. The U.S. importer will receive written notification from CBP within 5 days of the detention of the merchandise by CBP.
3. The U.S. importer then has 7 days to establish to CBP's satisfaction that the detained merchandise is not counterfeit.
4. CBP may provide to the trademark owner, at any time, written notice of the date

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**September 11, 2001  
Act of Terrorism  
World Trade Center  
New York City**

# Export Enforcement Federal Agencies

1. OFAC



2. BIS



3. TSA



Transportation  
Security  
Administration

4. CBP



5. U.S. Census Bureau



6. Homeland Security Investigations (HSI)



# Federal Agency Penalty Process

- Step 1- transportation of shipment
- Step 2- violation
- Step 3- penalty or voluntary disclosure
- Step 4- Federal agency administrative resolution

## **FedEx settles with BIS – Charges of Causing, Aiding and Abetting Unlicensed Exports**

- FedEx paid \$370,000 in Civil Penalty to BIS to settle allegations it committed six (6) violations of EAR when it facilitated attempted transport of electronic components of companies on the Commerce Department's Entity List.





## Freight Forwarders – Aiding and Abetting Export Violations

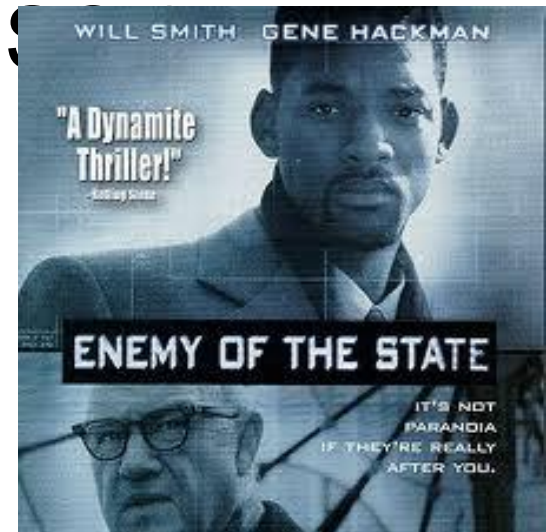
- RAM International, Inc. of St. Louis Missouri, paid \$40,000 to settle allegations it violated the EAR when it aided and abetted the unlicensed export of merchandise (scrap steel) to a company on the Entity List.





# Federal Investigations – Legal Authority

1. Trading with the Enemy Act of 1917, 22 U.S.C. § 2778
2. International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1701-1705





# Federal Investigations

1. Visit by Special Agent to workplace
2. Summons by BIS or ICE
3. Administrative subpoena by OFAC
4. Federal Court subpoena
5. Federal court seizure, search or arrest warrant

# Federal Investigations for Export Activities

- Criminal
- Administrative

# OFAC Sanctions Program

1. Specially Designated National List (SDN List)
2. Counter Terrorism Sanctions
3. Counter Narcotics Trafficking Sanctions
4. Non-proliferation sanctions
5. Country specific sanctions (Cuba, Iran, Syria, etc).



# OFAC Subpoena Power 31 C.F.R. 501.602

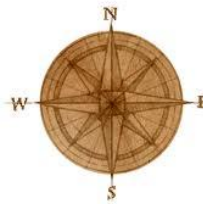


- **Broad Subpoena Power.** “Every person is required to furnish under oath... at any time as may be required... complete information relative to any transaction... subject to the provision of this chapter or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect.”

# 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





# Persons Subject to the Jurisdiction of the United States – 31 CFR 515.329

- The term person subject to the jurisdiction of the United States includes:
  - (a) Any individual, wherever located, who is a citizen or resident of the United States;
  - (b) Any person within the United States as defined in § 515.330;
  - (c) Any corporation, partnership, association, or other organization organized under the laws of the United States or of any State, territory, possession, or district of the United States; and
  - (d) Any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by persons specified in paragraphs (a) or (c) of this section.]



# 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




# Enforcement Guidelines OFAC Economic Sanctions

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



# Base Penalty Matrix

## Egregious Case

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

# OFAC Civil Penalty Process

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



## 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.



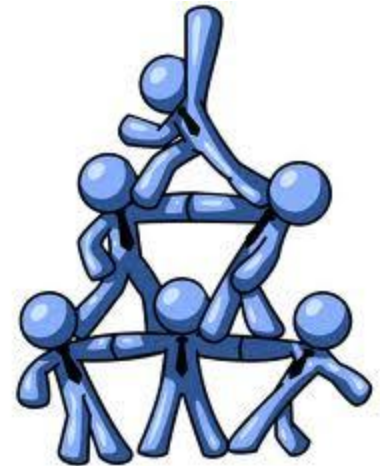
## Special Mitigating Factors

1. Voluntary Self-Disclosure
2. Effective export compliance program
3. Violation was isolated occurrence
4. License would have been issued
5. Cooperating with Agency



# Elements of an Effective Export Management and Compliance Program

1. Management Commitment
2. Continuous Risk Assessment
3. Formal written export management and compliance program
4. Ongoing training and awareness
5. Follow recordkeeping requirements
6. Periodic internal and external audits
7. Reporting procedure to export compliance problems.







DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

You must attach this sheet to the front of your written response to the  
U.S. Department of the Treasury's Office of Foreign Assets Control.

Attention: Office of Enforcement

ENF # 408  (Hinton)



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

DEC 28 2012

ENF

Miami, FL

Re: Administrative Subpoena

Dear Mr. :

The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") has reason to believe you may have exported or imported goods or services to or from Iran. OFAC is conducting a civil investigation into such potential exports or imports.



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

ENF:

Peter A. Quinter  
GrayRobinson, P.A.  
1221 Brickell Avenue, Suite 1600  
Miami, FL 33131

FEB 1 2013

Subject: Cautionary Letter to

Dear Mr. Quinter:

The Department of the Treasury's Office of Foreign Assets Control ("OFAC") appreciates your assistance during its investigation of your client, ]

OFAC has decided to address this matter by issuing the enclosed Cautionary Letter to Mr. ]  
Please ensure that your client receives this Cautionary Letter.

Should you have any questions, please contact me at (202) 622-6059 or at  
[Matthew.Glass@treasury.gov](mailto:Matthew.Glass@treasury.gov).

Sincerely,

Matthew Glass  
Enforcement Officer  
Office of Foreign Assets Control

Enclosure



**DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220**

**CAUTIONARY LETTER**

**ENF**

FEB 1 2013

Dear Mr. \_\_\_\_\_ :

Thank you for your response of April 5, 2011 to an administrative subpoena of February 14, 2011 from the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") regarding a potential violation of the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560.

OFAC has completed its review the eight transactions detailed in your response, three of which involved personal remittances to parties in Iran and five of which involved payments to \_\_\_\_\_ . Engaging in commercial transactions with entities who do not utilize transparent payment methods poses an increased risk for U.S. persons as the lack of transparency makes it difficult for U.S. persons to ensure compliance with the Regulations.

OFAC has decided to address this matter by issuing you this Cautionary Letter instead of pursuing a civil monetary penalty. This Cautionary Letter represents a final enforcement response to the apparent violations but does not constitute a final agency determination as to whether violations occurred, nor does it preclude OFAC from taking future enforcement action should new or additional information warrant renewed attention. Under applicable law, each violation of the Regulations is subject to a civil monetary penalty of up to the greater of \$250,000 or twice the value of the transaction.

Should you have any questions, you may contact Enforcement Officer Matthew Glass at (202) 622-6059.

Sincerely,

Maura K. Rezendes  
Enforcement Section Chief  
Office of Foreign Assets Control





DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

**CAUTIONARY LETTER**

ENF

APR 29 2011

Peter Quinter  
Becker & Poliakoff  
P.O. Box 9057  
Fort Lauderdale, FL 33310-9057

Dear Mr. Quinter:

Thank you for your letter of April 1, 2011, on behalf

This letter serves as a notice that the Office of Foreign Assets Control ("OFAC") has reviewed attempted funds transfer to Country Pleasures Fly Fishing for the purpose of travel to Cuba, without authorization from OFAC. Pursuant to the Cuban Assets Control Regulations, 31 C.F.R. part 515 (the "Regulations"), U.S. persons, such as \_\_\_\_\_ are prohibited from travelling to Cuba, unless authorized by OFAC. \_\_\_\_\_ attempted payment for travel to Cuba. For more information, please visit [www.treas.gov/ofac](http://www.treas.gov/ofac).

OFAC has decided to address this matter by issuing \_\_\_\_\_ this Cautionary Letter. This Cautionary Letter represents a final enforcement response unless OFAC later learns of other relevant facts. It does not constitute a final agency determination as to whether a violation has occurred.

OFAC considers Regulations compliance by U.S. persons to be a critical part of the effectiveness of U.S. sanctions. We trust that \_\_\_\_\_ will act in accordance with the Regulations, and all other OFAC regulations, in the future. Please note that \_\_\_\_\_ compliance history will be factored into any matters that come to our attention in the future, including any patterns of noncompliance.

Should you have any questions, please contact Andrew Viloría, OFAC Enforcement Investigations Officer, at (202) 622-2430 or [andrew.viloría@treasury.gov](mailto:andrew.viloría@treasury.gov) or visit [www.treas.gov/ofac](http://www.treas.gov/ofac).

Sincerely,

Elton A. Ellison  
Acting Assistant Director  
Office of Enforcement  
Office of Foreign Assets Control

## **Voluntary Self-Disclosures to BIS:**

BIS encourages the submission of Voluntary Self Disclosures (VSDs) by parties who believe they may have violated the EAR. VSDs are an excellent indicator of a party's intent to comply with U.S. export control requirements and may provide BIS important information on other ongoing violations. BIS carefully reviews VSDs received from disclosing parties to determine if violations of the EAR have occurred and to determine the appropriate corrective action when violations have taken place. Most VSDs are resolved by means other than the issuance of an administrative penalty. In instances in which BIS determines that the issuance of an administrative penalty is appropriate for the resolution of a VSD, BIS affords the submission of a VSD "great weight" in assessing and mitigating the penalty. In appropriate cases, fines and other administrative penalties may be significantly reduced.

Pursuant to Part 764.5 of the EAR, the information constituting a VSD or any other correspondence pertaining to a VSD may be submitted to:

Director, Office of Export Enforcement  
1401 Constitution Ave., Room H4514  
Washington, DC 20230  
Tel: (202) 482-1208  
Facsimile: (202) 482-5889

## BIS Penalty Procedure

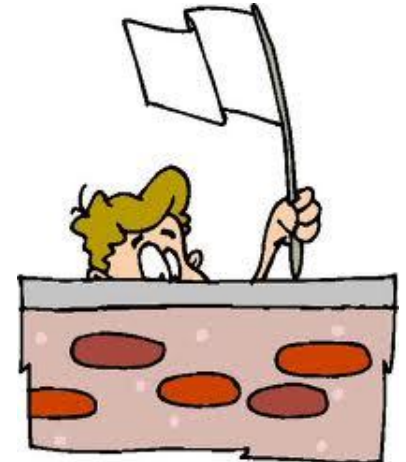
- Supplement No. 1 to Part 766 – Guidance on Charging and Penalty Determinations in settlement of Administrative Enforcement Cases.
- Factors
  - Degree of willfulness
  - Destination involved
  - Related violations
  - Timing of Settlement





# Voluntary Self-Disclosure

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



## 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



Voluntary Self- Disclosures to  
Directorate of Defense Trade Controls  
U.S. Department of State

United States of America Department of State  
Application/License for Permanent Export of Unclassified  
Defense Articles and Related Unclassified Technical Data

22. Applicants Statement-

- An empowered official (22 CFR § 120.25) or an official of a foreign government entity in the U.S., hereby apply for a license to complete the transaction above; warrant the truth of all statements made herein; and acknowledge, understand and will comply with the provisions of Title 22 CFR § 120-130, and any conditions and limitations imposed.

**§ 127.1 - Violations.**

(a) It is unlawful:

- (1) To export or attempt to export from the United States, or to reexport or retransfer or attempt to reexport or retransfer from one foreign destination to another foreign destination by a U.S. person of any defense article or technical data or by anyone of any U.S. origin defense article or technical data or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Directorate of Defense Trade Controls;
- (3) To conspire to export, import, reexport or cause to be exported, imported or reexported, any defense article or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Directorate of Defense Trade Controls;
- (4) To violate any of the terms or conditions of licenses or approvals granted pursuant to this subchapter.

**§ 127.6 - Seizure and forfeiture in attempts at illegal exports.**

- (a) Whenever it is known or there is probable cause to believe that any defense article is intended to be or is being or has been exported or removed from the United States in violation of law, such article and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition as provided in section 401 of title 22 of the United States Code.



**§ 127.12 Voluntary disclosures.**

*General policy.* The Department strongly encourages the disclosure of information to the Directorate of Defense Trade Controls by persons, firms, or any organizations that believe they may have violated any export control provision of the Arms Export Control Act, or any regulation, order, license, or other authorization issued under the authority of the Arms Export Control Act. Voluntary Self-Disclosure may be considered a voluntary disclosure as a mitigating factor in determining the administrative penalties, if any, that should be imposed. Failure to report a violation may result in circumstances detrimental to U.S. national security and foreign policy interests, and will be an adverse factor in determining the appropriate disposition of such violations.

*Limitations.* –

(2) The provisions of this section apply only when information is received by the Directorate of Defense Trade Controls for review **prior to such time** that either the Department of State or any other agency, bureau, or department of the United States Government obtains knowledge of either the same or substantially similar information from another source and commences an investigation or inquiry that involves that information, and that is intended to determine whether the Arms Export Control Act or these regulations, or any other license, order, or other authorization issued under the Arms Export Control Act has been violated.

(3) The violation(s) in question, despite the voluntary nature of the disclosure, may merit penalties, administrative actions, sanctions, or referrals to the Department of Justice to consider criminal prosecution. In the latter case, the Directorate of Defense Trade Controls will notify the Department of Justice of the voluntary nature of the disclosure, although the Department of Justice is not required to give that fact any weight. The Directorate of Defense Trade Controls has the sole discretion to consider whether “voluntary disclosure,” in context with other relevant information in a particular case, should be a mitigating factor in determining what, if any, administrative action will be imposed.

Some of the mitigating factors the Directorate of Defense Trade Controls may consider are:

- (1) Whether the transaction would have been authorized, and under what conditions, had a proper license request been made;
- (2) Why the violation occurred;
- (3) The degree of cooperation with the ensuing investigation;
- (4) Whether the person has instituted or improved an internal compliance program to reduce the likelihood of future violation;
- (5) Whether the person making the disclosure did so with the full knowledge and authorization of the person's senior management. (If not, then the Directorate will not deem the disclosure voluntary as covered in this section.)



**United States Department of State**  
*Bureau of Political-Military Affairs*  
*Directorate of Defense Trade Controls*  
Washington, D.C. 20520-0112

In reply refer to  
DTCC Case: 13

NOV 06 2012

The Office of Defense Trade Controls Compliance, Enforcement Division (“DTCC/END”) is in receipt of an initial voluntary disclosure letter from [redacted] dated October 29, 2012. In accordance with § 127.12(c)(1)(i) of the International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. Parts 120-130), please submit [redacted] full disclosure with the case number noted within sixty (60) calendar days of the date of this letter.

To conduct a critical assessment of any ITAR violation(s), we require a complete understanding of the violation(s). Section 127.12(c)(2) of the ITAR enumerates the information that should be included in a voluntary disclosure.

This case has been assigned to Ms. Danielle Pressler, Compliance Specialist, Enforcement Division. If you have any questions please contact Ms. Pressler at (202) 632-3386.

Please note our reference number in any future correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read 'Glenn E. Smith', written over a white background.

Glenn E. Smith  
Chief, Enforcement Division  
Office of Defense Trade Controls  
Compliance

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