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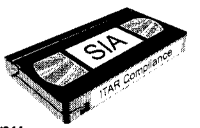
NewsNotes

SOCIETY FOR INTERNATIONAL AFFAIRS, INC.

SIA Compliance Video Ready For Sale



The SIA Compliance video is aimed at the management level for companies that manufacture and/or export commodities controlled by the ITAR. With presentations by DTC Director William Lowell, Deputy Director Rose Biancaniello, and Deputy Director Mike Dixon this video packs a powerful message into a short-and-to-the-point presentation.

The video can be purchased for $50 per copy. You may order the video by mailing your check (made payable to The Society for International Affairs) to: The Society for International Affairs, P.O. Box 9466, Arlington, VA 22209-9998. Your video will be forwarded to you by mail within two weeks of receipt of order. Please include your name, full address, company name, fax and phone number, e-mail address and indicate whether or not you are an SIA Associate or General member. ■

IN THIS ISSUE

Export Controls Compliance: Don't Neglect OFAC (Part 1)

Office of Foreign Assets Control, Department of Treasury

In trying to cope with U.S. export controls, exporters face a myriad of agencies, laws, and regulations, and most exporters tend to focus their compliance efforts on the primary licensing agency with which they deal. Companies engaged in defense trade generally concentrate on compliance with ITAR procedures and requirements, while those who export dual-use commodities focus on the EAR. Companies which fall under both regulatory regimes often develop effective programs for coping with both the State Department's Office of Defense Trade Controls and the Commerce Department's Bureau of Export Administration. Many exporters, however, fail to devote sufficient resources to compliance with U.S. sanctions administered by the Treasury Department's Office of Foreign Assets Control (OFAC).

Economic sanctions are powerful weapons in the fight to safeguard the economy and security of America, but their success requires the active participation and support of all U.S. corporations. U.S. sanctions cut across every export control regime. Effective OFAC compliance is critical, whether a company exports weapons or widgets. The ramifications of non-compliance with sanctions regulations, inadvertent or otherwise, can be serious not only because of potential penalties but also for jeopardizing the national security of the United States. Despite the stark consequences, many exporters seem to take OFAC compliance for granted because they believe that it is enough to know the countries that are subject to U.S. sanctions and simply avoid dealing with them. As one company representative put it, "I know that we can't do business with Iran, Iraq, Libya, North Korea, Sudan, and Cuba, and we don't." Unfortunately, compliance with U.S. sanctions is not that simple.

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The Search Is On For a New Editor

SIA is searching for a new *NewsNotes* editor. Do you have strong communications skills? Are you interested in licensing issues? Are you actively working in the export licensing arena? Are you a self-starter? Do you enjoy working with other people? If you answered yes to these questions, SIA may be looking for you. Interested parties should contact the Communications Director Stuart Quigg, at Q International Group, e-mail address: qintgroup@juno.com. ■

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OFAC Mandates and Operations:

OFAC is responsible for developing, administering, promulgating, and enforcing sanctions under eight basic statutes: 1) Trading With The Enemy Act (TWEA); 2) International Emergency Economic Powers Act (IEEPA); 3) Iraqi Sanctions Act (ISA); 4) United Nations Participation Act (UNPA); 5) International Security and Development Cooperation Act (ISDCA); 6) The Cuban Democracy Act (CDA); 7) The Cuban Liberty and Democratic Solidarity Act (LIBERTAD); 8) The Antiterrorism and Effective Death Penalty Act (AEDPA). It receives foreign policy guidance from the National Security Council and the U.S. Department of State and carries out its enforcement responsibilities in close cooperation with other government agencies, including the U.S. Customs Service and the Bureau of Export Administration of the Department of Commerce.

Sanctions Targets and Restrictions:

The sanctions administered by OFAC are imposed, modified, or lifted based on U.S. foreign policy and national security objectives, and therefore, each sanctions regime has different levels of restrictions. Current sanctions programs are targeted against Cuba, Libya, Iraq, Iran, North Korea, Sudan, the Federal Republic of Yugoslavia (Serbia & Montenegro), the UNITA faction in Angola, Burma (Myanmar), and (to a limited extent) Syria, as well as designated international narcotics traffickers, terrorists, and Foreign Terrorist Organizations, and involve prohibiting trade, blocking assets, prohibiting certain types of commercial, financial, and investment transactions, or a combination of these measures. Many sanctions regimes have been multilateralized. Although historically U.S. sanctions have been imposed against countries, recently U.S. sanctions have also been imposed against specific entities which pose a threat to national security. *Exhibit 1* provides a general overview of trade restrictions under each sanctions regime. The overview is for reference purposes only and does not constitute a replacement for the regulations contained in Chapter V of Title 31 of the Code of Federal Regulations.

Specially Designated Nationals:

U.S. sanctions programs go far beyond the borders of the targeted countries. In addition to persons blocked directly by the applicable Executive Orders and other governing authorities (Blocked Persons), the U.S. Government has identified and listed thousands of front organizations known as "Specially Designated Nationals," or "SDNs", to further the effectiveness of the sanctions regimes. SDNs are individuals and entities located anywhere in the world that are owned or controlled by, or acting for or on behalf of, the Government of a sanctioned country, as well as designated international narcotics traffickers and terrorists targeted by the United States Government. SDNs include companies, banks, vessels, and individuals that, at first glance, may not appear to be related to the sanctions targets they actually represent. Many of these SDNs have innocuous names and are located in countries with which the United States enjoys harmonious trade relations, which is why it is important to carefully screen all parties involved in trade transactions using OFAC's list of SDNs and Blocked Persons (the SDN list). All property and interests in property of a SDNs and Blocked Persons that come into the possession of a U.S. corporation must be blocked.

As the following examples illustrate, neglecting to incorporate OFAC into an export compliance program, and especially failing to screen parties to an export transaction against the SDN list, can put exporters who have otherwise followed proper State or Commerce Department export licensing procedures in jeopardy:

- A New York manufacturer shipped a container of air purifiers to a customer in the United Arab Emirates and presented documents for payment under a letter of credit issued by the Arab Bank for Investment and Foreign Trade in Abu Dhabi. Not only was the company not paid for the sale, but an $11,000 civil penalty was levied against the company by OFAC for dealing with an SDN bank under the Libyan Sanctions.
- A California company, working through a broker, chartered a vessel to ship fishmeal from Chile to Japan. The chartered vessel, the M/V Emerald Islands, is owned by Bettina Shipping Co. Ltd. and both the vessel and the owner are Cuban SDNs. The inadvertent chartering of the vessel by the California company resulted in a $50,000 civil fine.
- A Milwaukee trading company made six shipments of television sets to Trover S.A. of Cristobal, Panama. Trover S.A. is an SDN of Cuba and the Milwaukee company was fined $300,000 for violating the Trading with the Enemy Act.

OFAC Jurisdiction:

Persons subject to OFAC jurisdiction include all U.S. citizens and permanent residents, companies organized in the United States, foreign branches of U.S. companies, individuals and entities located in the United States (including domestic affiliates of foreign companies), and for sanctions against Cuba and North Korea, foreign subsidiaries owned or controlled by U.S. persons. Such persons may not facilitate or assist foreign companies (e.g., as financiers, brokers, or other intermediaries) with transactions in which they themselves could not participate directly, and U.S. employees of foreign companies must ensure that they do not engage in transactions on behalf of their employer which would be prohibited if the company was American.

Blocked Property:

Blocking or "freezing" property immediately imposes an across-the-board prohibition against transfers or transactions of any kind with regard to the property. While title to blocked property remains with the designated country or national, the exercise of the powers and privileges normally associated with ownership is prohibited without authorization from OFAC. Anything of value involved in a prohibited export transaction is considered blockable under OFAC-administered sanctions. Examples of property specific to export transactions could include, but are not limited to: money, checks, drafts, debts, obligations, notes, letters of credit, warehouse receipts, bills of sale, evidences of title, negotiable instruments, trade acceptance, contracts, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, and anything else real, personal, or mixed, tangible or intangible, "or interest or interests therein, present, future, or contingent." Likewise, "property interest" is defined as any interest whatsoever, direct or indirect.

Reporting Procedures and Requirements:

Whenever a corporation blocks a prohibited payment, it must report the action to OFAC within 10 days, describing the block-

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Exhibit I

An Overview of OFAC Sanctions Programs and Restrictions as of 10-98

PROGRAM	BLOCKING TARGETS	TRADE RESTRICTIONS
Cuba	* Cuban nationals, wherever located. * Persons and entities located in Cuba. * Government of Cuba. * SDNs of Cuba.	- No exports of goods or services to Cuba. - No imports of goods or services from Cuba. - No dealing in Cuban origin goods. - No brokering of Cuban trade contracts. - Informational materials exempted from export and import prohibitions. - Food donations to NGOs exempted from export prohibitions. - Gift parcels exempted from export prohibitions; for-profit orgs. licensed by U.S. Commerce may consolidate & ship multiple gift parcels. - Humanitarian exports licensed by U.S. Commerce.
North Korea	* North Korean nationals, wherever located. * Persons and entities located in North Korea. * Government of North Korea. * SDNs of North Korea.	- No exports of goods or services to North Korea. - No imports of goods or services from North Korea. - No dealing in North Korean origin goods. - No brokering of North Korean trade contracts. - Gift parcels exempted from export prohibitions; for-profit orgs. licensed by U.S. Commerce may consolidate & send multiple gift parcels. - Informational materials exempted from export and import prohibitions. - Humanitarian exports licensed by U.S. Commerce. - Transactions in support of light-water reactor power plants licensed by OFAC.
Libya	* Government of Libya. * SDNs of Libya.	- No exports of goods or services to Libya. - No imports of goods or services from Libya. - No brokering of Libyan trade contracts. - Publications exempted from import and export prohibitions. - Donated humanitarian goods exempted from export prohibitions.
Iraq	* Government of Iraq. * SDNs of Iraq.	- No exports of goods or services to Iraq. - No imports of goods or services from Iraq. - No dealing in Iraqi origin goods. - No brokering of Iraqi trade contacts. - Humanitarian exports licensed by OFAC.
Federal Republic of Yugoslavia (Serbia and Montenegro)	* Governments of Federal Republic of Yugoslavia, Serbia and Montenegro * Banks located in the FRY(S&M) * State- or socially-owned entities organized or located in the FRY(S&M) * SDNs of the FRY(S&M) * Assets blocked prior to December 7, 1995	- No financial transactions unless conducted exclusively through domestic banking system in dinars or with bank notes or barter. - No new investment in FRY(S&M)
Iran	* No new blocking provisions after 1981.	- No exports of goods or services to Iran. - No imports of goods or services from Iran. - No dealing in Iranian origin goods. - No facilitation of Iran-related transactions by third-country firms. - Informational materials exempted from export and import prohibitions.
Angola (UNITA)	* UNITA * Designated senior officials of UNITA & designated adult members of their immediate families	- No sale or supply of aircraft, aircraft components, arms and related materiel, petroleum or petroleum products, equipment used in mining, motorized vehicles, watercraft, or parts for motorized vehicles or watercraft to the territory of Angola other than through designated points of entry. - No sale or supply of mining services or ground or waterborne transportation services to persons in designated areas of Angola. - No importation of diamonds exported from Angola unless controlled through Certificate of Origin regime of Angolan Govt of Unity & Natl Reconciliation.
Syria	Banks must retain transfers identified as being terrorism.	- No receipt of unlicensed donations from govt. by U.S. persons. - No financial transaction with govt. in which U.S. person knows or has reasonable cause to believe there is risk of furthering terrorist acts in U.S.
Terrorism	* Specially Designated Terrorists.	- No dealings in support of Specially Designated Terrorists.
Narcotics	* Specially Designated Narcotics Traffickers.	- No dealings in support of Specially Designated Narcotics Traffickers.
Sudan	* Government of Sudan. * SDNs of Sudan.	- No exports of goods or services to Sudan. - No imports of goods or services from Sudan. - No brokering of Sudanese trade contracts. - Publications exempted from import and export prohibitions. - Donated humanitarian goods exempted from export prohibitions.
Burma (Myanmar)	No blocking provisions.	- No new investments. - Most trade in goods, services and technology is exempt.

ing of the property, including a copy of any relevant documentation. It must inform OFAC by immediate fax in the event of litigation involving blocked assets. In addition, all holders of blocked property must file a comprehensive annual report of blocked property (form TDF 90-22.50) by September 30 of each year.

Sanctions Violations - The Penalties:

Awareness of the substantial civil and criminal penalties, as well as the associated negative publicity resulting from a company's violation of U.S. sanctions, can prove to be strong motivational factors in getting a company to devote the appropriate time and resources to implementing quality OFAC compliance procedures. Over the past several years, OFAC has imposed millions of dollars in civil penalties involving U.S. corporations. The majority of the fines resulted from corporations' failure to recognize and block prohibited trade transactions when there was a reference to a targeted country or SDN. Civil penalties are $11,000 per prohibited transaction in most cases, but civil penalties can reach up to $275,000 per infraction under the sanctions against Iraq.

In cases where there is criminal intent to violate sanctions regulations, criminal penalties can be imposed against violators. Depending on the sanctions program involved, criminal violations of the statutes administered by OFAC can result in corporate and personal fines of up to $1 million and 12 years in jail. Criminal violations of U.S. sanctions lead to automatic debarment and loss of exporting privileges under the ITAR, and may lead to denial of export privileges under the EAR as well.

OFAC Licensing:

OFAC has the authority to license, or authorize, transactions which would otherwise be prohibited under specific sanctions provisions. OFAC's Licensing Division reviews all license applications on a first-in, first-out, case-by-case basis and issues or denies licenses based on U.S. foreign policy and national security goals. Filing a complete application will expedite processing, but there are no guarantees that a license will be issued just because one is requested.

Unlike State and Commerce Department licensing regimes, OFAC does not provide standard forms to complete. Generally, where a specific license is required, an exporter must determine the applicable regulatory basis, submit a detailed letter application outlining the specifics of the proposed transaction, and provide copies of all supporting documentation. Where OFAC shares concurrent licensing jurisdiction with BXA, it may be necessary to obtain a specific license from BXA in order to qualify for an exception under OFAC regulations. In rare cases it is necessary to obtain licenses from both agencies.

Though most U.S. sanctions impose sweeping prohibitions against trade with their targets, exceptions do exist. Most of the sanctions programs have provisions to allow humanitarian exports of food, clothing, and medicine in one form or another, sometimes conditioned on obtaining specific approval from either BXA or OFAC, or in some cases from both agencies. In addition, other than for the sanctions against Iraq, there is an across-the-board exception permitting transactions related to trade in information and informational materials, which includes most books, magazines, and other publications; prerecorded video and audio tapes; and CD-ROMS. Controlled technical data and controlled software do not fall within this exception.

The OFAC Licensing Division can be reached at (202) 622-2480 by telephone and (202) 622-1657 by fax for further licensing information, applications, or about the status of a pending application.

Note From the Editor: The preceding article was submitted to SIA by the Office of Foreign Assets Control. Due to the length of the article, it has been submitted in two parts. Part 1 (January 1999 *NewsNotes*) covers the regulations and their requirements and Part 2 (March 1999 *NewsNotes*) includes practical suggestions and resources to use for successful compliance with those regulations. ■

Federal Register Notices

VOLUME: 64, No. 11 DATE: January 11, 1999

THE FEDERAL REGISTER

BUREAU OF POLITICAL-MILITARY AFFAIRS

DEPARTMENT OF STATE

Bureau of Political-Military Affairs [Public Notice 2968]

SUBJECT: Suspension of Munitions Export Licenses and Other Approvals Destined for Russian Companies and Related Matters.

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to Section 38 of the Arms Export Control Act and section 126.7 of the International Traffic in Arms Regulations, all licenses and other approvals for defense articles and defense services involving certain Russian entities, identified below, are suspended, effective immediately. Notice is further given that it is the policy of the United States to deny licenses, other approvals, exports and temporary imports of defense articles and defense services destined for these Russian entities.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Deputy Director, Department of State, Office of Defense Trade Controls, 703-812-2568.

SUPPLEMENTARY INFORMATION: On January 8, 1999, the U.S. Government decided to suspend immediately any U.S. Government program or assistance, to impose trade restrictions on certain Russian entities involved in proliferation activities. Section 126.7 of the International Traffic in Arms Regulations (ITAR) provides that any application for an export license or other approval under the ITAR may be disapproved, and any license or other approval or exemption granted under the ITAR may be revoked, suspended or amended without prior notice under various circumstances, including whenever such action is deemed to be in furtherance of world peace, the national security or the foreign policy of the United States or is otherwise advisable.

Pursuant to section 126.7(a)(1) of the ITAR, it is deemed that suspending the following foreign entities from participating in any activities subject to Section 38 of the Arms Export Control Act would be in furtherance of the national security and foreign policy of the United States. Therefore, until further notice, the Department of State is hereby suspending all licenses and other approvals for: (a) Exports and other transfers of defense