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2023 ANNUAL INCREASES TO OFAC, ITAR AND EAR CIVIL PENALTIES ANNOUNCED

The annual ritual of adjusting civil monetary penalties for violations of U.S. export control and sanctions programs upwards for inflation is here. Here are the new numbers for: (i) the Department of Treasury, Office of Foreign Assets Control (“OFAC”), which administers U.S. financial sanctions programs; (ii)

the Department of Commerce, Bureau of Industry and Security (“BIS”), which administers the Export Administration Regulations (“EAR”); and (iii) the Department of State, Directorate of Defense Trade Controls (“DDTC”), which administers the International Traffic in Arms Regulations (“ITAR”).

Agency & Office	Fed Reg Citation	Effective Date	Statute / Regulatory Provision	2022 Maximum Civil Penalty	New Maximum Civil Penalty
Treasury OFAC	88 FR 2229	01/13/23	TWEA ^[1] (Cuba sanctions)	\$ 97,529	\$ 105,083
			IEEPA ^[2] (most other US sanctions programs)	\$ 330,947	\$ 356,579
			AEDPA ^[3] (counter terrorism sanctions)	\$ 87,361	\$ 94,127
			FNKDA ^[4] (counter narcotics trafficking sanctions)	\$ 1,644,396	\$ 1,771,754
			CDTA ^[5] (rough diamond trade controls)	\$ 14,950	\$ 16,108
Commerce BIS	88 FR 3	01/3/23	ECRA ^[6] , cf. 15 CFR 764.3 (Violations of the EAR)	\$ 328,121	\$ 353,534 or twice the transaction value
State DDTC	88 FR 1505	01/11/23	AECA ^[7] , 22 U.S.C. 2778e, cf. 22 CFR 127.10(a)(1)(i) (Unauthorized exports and imports of defense articles)	\$ 1,272,251	\$ 1,200,000 ^[8] or twice the transaction value
			AECA, 22 U.S.C. 2779a, cf. 22 CFR 127.10(a)(1)(ii) (Violations of ITAR Part 130)	\$ 925,041	\$ 996,685 or five times the prohibited payment
			AECA, 22 U.S.C. 2780k, cf. 22 CFR 127.10(a)(1)(iii) (Transactions with countries supporting international terrorism)	\$ 1,101,061	\$ 1,186,338

[1] Trading With the Enemy Act (TWEA), 50 USC 4301

[2] International Emergency Economic Powers Act (IEEPA), 50 USC 1701

[3] Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 8 USC 1189, 18 USC 2339B

[4] Foreign Narcotics Kingpin Designation Act (FNKDA), 21 USC 1901

[5] Clean Diamond Trade Act (CDTA), 19 USC 3901

[6] Export Control Reform Act (ECRA), 50 U.S.C. 4819

[7] Arms Export Control Act (AECA), 22 USC 2778

[8] The maximum civil penalty under this provision decreased as a result of language in the recently passed 2023 National Defense Authorization, which included language to more closely align the Arms Export Control Act's civil penalties with the Export Control Reform Act's civil penalties.

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.