

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

MHz Electronics, Inc.
2801 East Washington Street
Phoenix, AZ 85034

Respondent

ORDER RELATING TO
MHz Electronics, Inc.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified MHz Electronics, Inc., of Phoenix, Arizona (“MHz Electronics”), of its intention to initiate an administrative proceeding against MHz Electronics pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),² through the issuance of a Proposed Charging Letter to MHz Electronics that alleges that MHz Electronics committed two violations of the Regulations. Specifically, the charges are:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2017). The charged violations occurred in 2013. The Regulations governing the violations at issue are found in the 2013 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2017 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. §§ 4601-4623 (Supp. III 2015). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 Fed. Reg. 39,005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq.) (2012).

Charges 1-2 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct

On two occasion between on or about January 15, 2013, and on or about October 3, 2013, MHz Electronics engaged in conduct prohibited by the Regulations when it exported pressure transducers, items subject to the Regulations and classified under Export Control Classification Number (ECCN) 2B230, to China and Taiwan without the BIS export licenses required pursuant to Section 742.3 of the Regulations.³ Items classified under ECCN 2B230 are controlled under the Regulations for nuclear nonproliferation reasons and can be of significance for nuclear explosive purposes.

On or about January 15, 2013, MHz Electronics sold the first pressure transducer at issue through eBay for approximately \$1,100 and exported it to a company in Nanjing, China. On or about October 3, 2013, MHz Electronics sold the second transducer at issue through eBay for approximately \$280 and exported it to an individual in Hsinchu, Taiwan.

In connection with these exports to China and Taiwan, MHz Electronics did not seek to determine the ECCN of the pressure transducers or their intended end use or end users or otherwise determine whether an export license was required. MHz Electronics, whose website indicates that it is the largest testing equipment and used electronics dealer in the Western United States, did not have any program in place to ensure its compliance with U.S. export control laws or regulations. This failure occurred even though the U.S. Government, during a visit by FBI agents in October 2012, shortly before the first of the exports at issue, expressed concern to MHz Electronics that a different item MHz Electronics was selling on eBay at the time would have required an export license if shipped to customers outside the United States. MHz Electronics did not take any steps to begin implementing an export control compliance program of any sort until more than a year after the violations at issue took place, after an outreach visit by BIS special agents in February 2014 and after being served with an administrative subpoena by BIS in November 2014.

In so doing, MHz Electronics committed two violations of Section 764.2(a) of the Regulations.

WHEREAS, BIS and MHz Electronics have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

³ The items are also controlled for anti-terrorism reasons when going to destinations subject to anti-terrorism controls.

IT IS THEREFORE ORDERED:

FIRST, MHz Electronics shall be assessed a civil penalty in the amount of \$10,000, all of which shall be suspended for a period of two years from the date of this Order, and thereafter shall be waived, provided that during this two-year probationary period under this Order, MHz Electronics has committed no violation of the Act, or any regulation, order, license, or authorization issued thereunder. If MHz Electronics commits a violation of the Act or any regulation, order, license, or authorization issued thereunder, during the probationary period under this Order, the suspension of the civil penalty may be modified or revoked by BIS and the \$10,000 may be made due and owing immediately.

SECOND, MHz Electronics shall complete an external audit of its export controls compliance program. MHz Electronics shall hire an unaffiliated third-party consultant with expertise in U.S. export control laws to conduct the external audit of its compliance with U.S. export control laws (including recordkeeping requirements), with respect to all exports or reexports that are subject to the Regulations. The results of the audit, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, at both of the following addresses: 2601 Main Street, Suite 310, Irvine, CA 92614 (“BIS Los Angeles Field Office”) and 21711 N. 7th St, Phoenix, AZ 85024 (“BIS Phoenix FAIP”). The audit shall cover MHz Electronics activity that occurs the 12-month period beginning on January 1, 2017, and the related report shall be due to the BIS Los Angeles Field Office and BIS Phoenix FAIP no later than ninety (90) days from the conclusion of the audit period on December 31, 2017. Said audit shall be in substantial compliance with the Export Compliance Program (ECP) sample audit module found in BIS’s Export

Compliance Guidelines, and shall include an assessment of MHz Electronics' compliance with the Regulations. The Export Compliance Guidelines and ECP sample audit module are available on the BIS web site and can be accessed directly at

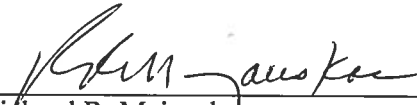
<https://www.bis.doc.gov/index.php/forms-documents/pdfs/1641-ecp/file>. In addition, where said audit identifies actual or potential violations of the Regulations, MHz Electronics shall promptly provide copies of the pertinent air waybills and other export control documents and supporting documentation to the BIS Los Angeles Field Office and BIS Phoenix FAIP.

THIRD, that the completion and submission of the audit as set forth above are hereby made a conditions to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to MHz Electronics. Accordingly, if MHz Electronics should fail to complete and submit the audit, the undersigned may issue an order denying all of MHz Electronics's export privileges under the Regulations for a period of one year from the date of failure to complete the audit and submit the audit results in a timely manner.

FOURTH, MHz Electronics shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect MHz Electronics' testimonial obligations in any proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

FIFTH, that the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Richard R. Majauskas,
Deputy Assistant Secretary of Commerce
for Export Enforcement performing
the non-exclusive functions and duties of
the Assistant Secretary of Commerce for
Export Enforcement

Issued this 11th day of January, 2018.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

MHz Electronics, Inc.
2801 East Washington Street
Phoenix, AZ 85034

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between MHz Electronics, Inc., of Phoenix, Arizona (“MHz Electronics”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (the “Act”).²

WHEREAS, BIS has issued a Proposed Charging Letter to MHz Electronics that alleges that MHz Electronics committed two violations of the Regulations, specifically:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2017). The charged violations occurred in 2013. The Regulations governing the violations at issue are found in the 2013 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2017 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. §§ 4601-4623 (Supp. III 2015). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 Fed. Reg. 39,005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq.) (2012).

Charges 1-2 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct

On two occasions between on or about January 15, 2013, and on or about October 3, 2013, MHz Electronics engaged in conduct prohibited by the Regulations when it exported pressure transducers, items subject to the Regulations and classified under Export Control Classification Number (ECCN) 2B230, to China and Taiwan without the BIS export licenses required pursuant to Section 742.3 of the Regulations.³ Items classified under ECCN 2B230 are controlled under the Regulations for nuclear nonproliferation reasons and can be of significance for nuclear explosive purposes.

On or about January 15, 2013, MHz Electronics sold the first pressure transducer at issue through eBay for approximately \$1,100 and exported it to a company in Nanjing, China. On or about October 3, 2013, MHz Electronics sold the second transducer at issue through eBay for approximately \$280 and exported it to an individual in Hsinchu, Taiwan.

In connection with these exports to China and Taiwan, MHz Electronics did not seek to determine the ECCN of the pressure transducers or their intended end use or end users or otherwise determine whether an export license was required. MHz Electronics, whose website indicates that it is the largest testing equipment and used electronics dealer in the Western United States, did not have any program in place to ensure its compliance with U.S. export control laws or regulations. This failure occurred even though the U.S. Government, during a visit by FBI agents in October 2012, shortly before the first of the exports at issue, expressed concern to MHz Electronics that a different item MHz Electronics was selling on eBay at the time would have required an export license if shipped to customers outside the United States. MHz Electronics did not take any steps to begin implementing an export control compliance program of any sort until more than a year after the violations at issue took place, after an outreach visit by BIS special agents in February 2014 and after being served with an administrative subpoena by BIS in November 2014.

In so doing, MHz Electronics committed two violations of Section 764.2(a) of the Regulations.

WHEREAS, MHz Electronics has reviewed the Proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true;

³ The items are also controlled for anti-terrorism reasons when going to destinations subject to anti-terrorism controls.

WHEREAS, MHz Electronics fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, MHz Electronics enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

WHEREAS, MHz Electronics states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, MHz Electronics neither admits nor denies the allegations contained in the Proposed Charging Letter; and

WHEREAS, MHz Electronics agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over MHz Electronics, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.
2. The following sanctions shall be imposed against MHz Electronics in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the Proposed Charging Letter:
 - a. MHz Electronics shall be assessed a civil penalty in the amount of \$10,000, all of which shall be suspended for a period of two years from the date of the Order, and thereafter shall be waived, provided that during this two-year probationary period under the Order, MHz Electronics has committed no violation of the Act, or any regulation, order, license, or authorization issued thereunder. If MHz Electronics commits a violation of the Act or any regulation, order, license,

or authorization issued thereunder, during the probationary period under the Order, the suspension of the civil penalty may be modified or revoked by BIS and the \$10,000 may be made due and owing immediately.

b. MHz Electronics shall complete an external audit of its export controls compliance program. MHz Electronics shall hire an unaffiliated third party consultant with expertise in U.S. export control laws to conduct the external audit of its compliance with U.S. export control laws (including recordkeeping requirements), with respect to all exports or reexports that are subject to the Regulations. The results of the audit, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, at both of the following addresses: 2601 Main Street, Suite 310, Irvine, CA 92614 (“BIS Los Angeles Field Office”) and 21711 N. 7th St, Phoenix, AZ 85024 (“BIS Phoenix FAIP”). The audit shall cover MHz Electronics activity that occurs the 12-month period beginning on January 1, 2017, and the related report shall be due to the BIS Los Angeles Field Office and BIS Phoenix FAIP no later than ninety (90) days from the conclusion of the audit period on December 31, 2017. Said audit shall be in substantial compliance with the Export Compliance Program (ECP) sample audit module found in BIS’s Export Compliance Guidelines, and shall include an assessment of MHz Electronics’ compliance with the Regulations. The Export Compliance Guidelines and ECP sample audit module are available on the BIS website and can be accessed directly at <https://www.bis.doc.gov/index.php/forms-documents/pdfs/1641-ecp/file>. In addition, where said audit identifies actual or potential violations of the Regulations, MHz Electronics shall promptly provide

copies of the pertinent air waybills and other export control documents and supporting documentation to the BIS Los Angeles Field Office and BIS Phoenix FAIP.

c. The timely completion of the audit and submission of the audit results in Paragraph 2.b, are hereby made conditions to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to MHz Electronics. Failure to complete the audit and submit the audit results may result in the denial of all of MHz Electronics' export privileges under the Regulations for one year from the date of the failure to complete the audit and submit the audit results in a timely manner.

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, MHz Electronics hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if issued), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. MHz Electronics also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Proposed Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until MHz Electronics has completed the audit and submitted the audit results in Paragraph 2.b.

4. MHz Electronics shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect MHz Electronics' testimonial obligations in any proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. BIS agrees that upon completion and submission of the audit in Paragraph 2.b, BIS will not initiate any further administrative proceeding against MHz Electronics in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing the Order, which

will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

10. Each signatory affirms that he/she has authority to enter into this Settlement Agreement and to bind his/her respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND
SECURITY
U.S. DEPARTMENT OF COMMERCE



Douglas R. Hassebrock
Director of Export Enforcement

MHZ ELECTRONICS, INC.



Diane Finkelstein

Date: _____

1/9/17

Date: _____

12/29/2017

Reviewed and approved by:



Melissa Proctor, Esq.
Miller Proctor Law PLLC
Counsel for MHz Electronics, Inc.

Date: _____

1/4/2018

PROPOSED CHARGING LETTER
CERTIFIED MAIL- RETURN RECEIPT REQUESTED

MHz Electronics, Inc.
2801 East Washington Street
Phoenix, AZ 85034

Attention: Diane Finkelstein, Owner

Dear Mrs. Finkelstein:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that MHz Electronics, Inc. (“MHz Electronics”), of Phoenix, Arizona, has committed two violations of the Export Administration Regulations (the “EAR” or “Regulations”),¹ which issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS alleges that MHz Electronics committed the following violations:

Charges 1-2 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct

On two occasion between on or about January 15, 2013, and on or about October 3, 2013, MHz Electronics engaged in conduct prohibited by the Regulations when it exported pressure transducers, items subject to the Regulations and classified under Export Control Classification Number (ECCN) 2B230, to China and Taiwan without the BIS export licenses required pursuant to Section 742.3 of the Regulations.³ Items classified under ECCN 2B230 are controlled under the Regulations for nuclear nonproliferation reasons and can be of significance for nuclear explosive purposes.

On or about January 15, 2013, MHz Electronics sold the first pressure transducer at issue through eBay for approximately \$1,100 and exported it to a company in Nanjing, China. On or about October 3, 2013, MHz Electronics sold the second transducer at issue through eBay for approximately \$280 and exported it to an individual in Hsinchu, Taiwan.

In connection with these exports to China and Taiwan, MHz Electronics did not seek to determine the ECCN of the pressure transducers or their intended end use or end users or

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2017). The violations alleged occurred in 2013. The Regulations governing the violation at issue are found in the 2013 version of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2013). The 2017 Regulations govern the procedural aspects of this case.

² 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (available online at <http://uscode.house.gov>). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 Fed. Reg. 39,005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq.) (2006 & Supp. IV 2010).

³ The items are also controlled for anti-terrorism reasons when going to destinations subject to anti-terrorism controls.

otherwise determine whether an export license was required. MHz Electronics, whose website indicates that it is the largest testing equipment and used electronics dealer in the Western United States, did not have any program in place to ensure its compliance with U.S. export control laws or regulations. This failure occurred even though the U.S. Government, during a visit by FBI agents in October 2012, shortly before the first of the exports at issue, expressed concern to MHz Electronics that a different item MHz Electronics was selling on eBay at the time would have required an export license if shipped to customers outside the United States. MHz Electronics did not take any steps to begin implementing an export control compliance program of any sort until more than a year after the violations at issue took place, after an outreach visit by BIS special agents in February 2014 and after being served with an administrative subpoena by BIS in November 2014.

In so doing, MHz Electronics committed two violations of Section 764.2(a) of the Regulations.

* * * * *

Accordingly, MHz Electronics is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including, but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$289,238 per violation,⁴ or twice the value of the transaction that is the basis of the violation;⁵
- Denial of export privileges; and/or
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law

If MHz Electronics fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. See 15 C.F.R. §§ 766.6 and 766.7. If MHz Electronics defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to MHz Electronics. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

MHz Electronics is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. See 15 C.F.R. § 766.6. MHz Electronics is also

⁴ See 15 C.F.R. § 6.4(b)(4). This amount is subject to annual increases pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015.

⁵ See International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. See 15 C.F.R. §§ 766.3(a) and 766.4. The Regulations provide for settlement without a hearing. See 15 C.F.R. § 766.18. Should MHz Electronics have a proposal to settle this case, MHz Electronics should transmit it to the attorney representing BIS named below.

MHz Electronics is further notified that under the Small Business Regulatory Enforcement Flexibility Act, MHz Electronics may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, MHz Electronics' answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of MHz Electronics' answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Charles Wall
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Charles Wall is the attorney representing BIS in this case; any communications that MHz Electronics may wish to have concerning this matter should occur through him. Mr. Wall may be contacted by telephone at (202) 482-1232.

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement