



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

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**OFAC Settles with Newmont Corporation for \$141,442 Related to Apparent Violations of the Cuban Assets Control Regulations**

Newmont Corporation (“Newmont”) is a multinational mining firm headquartered in Denver, Colorado with operations and assets across the globe. Newmont has agreed to pay \$141,442 to settle potential civil liability relating to Newmont subsidiary Newmont Suriname’s purchase of Cuban-origin explosives and explosive accessories from a third-party vendor, in apparent violation of the Cuban Assets Control Regulations. Newmont wholly owned, controlled, and managed Newmont Suriname, f/k/a Surgold, during the period in question. The settlement amount reflects OFAC’s determination that Newmont and Newmont Suriname’s conduct was non-egregious and voluntarily self-disclosed.

**Description of the Apparent Violations**

In 2013, Newmont and the Government of Suriname entered into a “Mineral Agreement” that granted Newmont the right to mine gold in Suriname. On August 11, 2014, the government of Suriname granted Newmont, through Newmont Suriname, an exploitation license for a mine known as Merian. Through a bidding process, Newmont Suriname selected a Suriname-based distributor affiliated with a third-party U.S. corporation to supply explosive materials for the construction of the mine. On Newmont Suriname’s behalf, the distributor imported Cuban-origin explosives and explosive accessories for the mine from *Unión Latinoamericana de Explosivos* (“ULAEX”), a Cuban entity, on at least four occasions. As the wholly owned subsidiary of a U.S. person, Newmont Suriname was generally prohibited from dealing in Cuban-origin goods.<sup>1</sup>

On or about July 5, 2016, in the course of the first transaction, a Newmont Suriname assistant manager exchanged shipping documents with an operations manager for Newmont Suriname’s distributor. The shipping documents clearly identified the goods were provided by ULAEX and sourced from Cuba. Subsequently, Newmont and Newmont Suriname received assurances that no Cuban origin products would be used to fill their orders. Nevertheless, Newmont Suriname’s distributor fulfilled two additional orders from ULAEX, without Newmont’s awareness. The bills of lading associated with all four transactions at issue, however, clearly identified ULAEX and its address in Cuba as the source of the explosives and explosive accessories.

These additional shipments from Cuba came about because a Newmont Suriname employee failed to understand the implications of engaging in transactions related to merchandise of Cuban origin.

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<sup>1</sup> The Cuban Assets Control Regulations, 31 C.F.R. part 515 (“CACR”), generally prohibit dealings in Cuban-origin goods by any “person subject to the jurisdiction of the United States,” which is defined to include any corporation organized under the laws of the United States or of any State, territory, possession, or district of the United States, as well as any corporation, wherever organized or doing business, that is owned or controlled by a U.S. citizen or resident or corporation organized under the laws of the United States. See CACR, § 515.329(c)-(d).

Newmont Suriname's employee involved in the first transaction had not participated in the U.S. export and trade sanctions training provided by Newmont compliance personnel and, at least partly as a result, did not understand the relevant sanctions prohibitions. Prior to learning about the conduct at issue, Newmont Suriname's purchase orders did not contain express statements that no items provided to Newmont Suriname may originate from embargoed jurisdictions, nor did Newmont Suriname ask for country-of-origin information for the goods acquired from its suppliers.

In total, OFAC identified four apparent violations by Newmont Suriname when it purchased Cuban-origin explosives and explosive accessories from a third-party vendor, in apparent violation of §§ 515.201 and 515.204 of the CACR (the "Apparent Violations"). Newmont Suriname is generally prohibited from dealing in Cuban-origin goods because its ultimate parent is a U.S. person.

### **Penalty Calculations and General Factors Analysis**

The statutory maximum civil monetary penalty applicable in this matter is \$367,264. OFAC determined that Newmont and Newmont Suriname voluntarily self-disclosed the Apparent Violations, and that the Apparent Violations constitute a non-egregious case. Accordingly, under OFAC's Economic Sanctions Enforcement Guidelines ("Enforcement Guidelines"), the base civil monetary penalty amount applicable in this matter equals the sum of one-half of the transaction value for each apparent violation, which is \$176,803.

The settlement amount of \$141,442 reflects OFAC's consideration of the General Factors under the Enforcement Guidelines.

OFAC determined the following to be **aggravating factors**:

- (1) Newmont and Newmont Suriname failed to exercise a minimal degree of caution or care with respect to U.S. sanctions requirements when it acquired goods from Cuba through a third party. Newmont and Newmont Suriname reasonably should have known, based on all readily available information and with the exercise of reasonable due diligence, that its conduct would lead to an apparent violation;
- (2) Newmont, with its subsidiaries and affiliates worldwide, is a large and sophisticated organization operating globally as a leading gold producer with experience and expertise in international transactions;

OFAC determined the following to be **mitigating factors**:

- (1) Newmont and Newmont Suriname have not received a Penalty Notice or Finding of Violation from OFAC in the five years preceding the earliest date of the transactions giving rise to the apparent violations;

- (2) The volume and total amount of payments underlying the apparent violations were not significant compared to the total volume of transactions undertaken by Newmont and Newmont Suriname on an annual basis;
- (3) Newmont and Newmont Suriname cooperated with OFAC's investigation, including by submitting a voluntary self-disclosure on behalf of Newmont and Newmont Suriname, and signing a tolling agreement with OFAC; and
- (4) Newmont, with its subsidiaries and affiliates worldwide, has represented that it is currently implementing remedial measures in response to the apparent violations by conducting comprehensive training for export compliance and country-specific embargoes, denied persons screening, and export license requirements as well as developing a set of formal written policies and procedures to prevent transactions with unauthorized destinations, parties, or activities.

### **Compliance Considerations**

This case demonstrates the importance of U.S. companies with a global presence maintaining robust sanctions compliance programs throughout their entire corporate structure, including among their foreign subsidiaries and affiliates. Inadequate training among staff at foreign subsidiaries and affiliates can result in missed red flags, such as references to the country-of-origin of products, that can result in prohibited transactions or dealings.

This case also emphasizes the importance of instituting strong controls with suppliers, and of conducting sufficient transactional due diligence to identify and promptly remediate compliance deficiencies. Compliance efforts in such circumstances should include a thorough examination of risks such as geographic location, type of industry, as well as assessing the status and compliance controls of key partners involved in a company's transactions, including joint ventures, affiliates, subsidiaries, customers, and suppliers.

### **OFAC Enforcement and Compliance Resources**

On May 2, 2019, OFAC published [A Framework for OFAC Compliance Commitments](#) in order to provide organizations subject to U.S. jurisdiction, as well as foreign entities that conduct business in or with the United States or U.S. persons, or that use goods or services exported from the United States, with OFAC's perspective on the essential components of a sanctions compliance program. The *Framework* also outlines how OFAC may incorporate these components into its evaluation of apparent violations and resolution of investigations resulting in settlements. The *Framework* includes an appendix that offers a brief analysis of some of the root causes of apparent violations of U.S. economic and trade sanctions programs OFAC has identified during its investigative process.

Information concerning the civil penalties process can be found in the OFAC regulations governing each sanctions program; the Reporting, Procedures, and Penalties Regulations, 31 C.F.R. part 501; and the Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app. A. These references, as well as recent civil penalties and enforcement information, can be found on

OFAC's website at: <https://home.treasury.gov/policy-issues/financial-sanctions/civil-penalties-and-enforcement-information>.

For more information regarding OFAC regulations, please go to: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>.