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LATEST EXPORT CONTROLS AND COMPLIANCE UPDATE

June 2010

This newsletter is a listing of the latest changes in US export control regulations from June 7 to June 30, 2010. The newsletter is provided as a complimentary service to assist readers with their ITAR and EAR export compliance responsibilities. It provides a summary of recent changes to US export control regulations or other regulatory matters of interest that may impact your company's international trade and export compliance functions. Call us at 703-847-5801 or email info@fdassociates.net with questions or comments.

See also our "Latest Sanctions Fines & Penalties" section below for an update on companies and persons denied export privileges by the United States Government.

REGULATORY UPDATES

Department of Commerce

June 16, 2010 – 75 Fed. Reg. 33989: The Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) to correct two typographical errors that appeared in a recent amendment (June 4, 2010 – 75 Fed. Reg. 31678 – See May 2010 Update). The only significant correction changed the NS Reason for Control for ECCN (Export Control Commodity No.) 2B001 from NS Column 1 to NS Column 2.

June 25, 2010 – 75 Fed. Reg. 36482: BIS published an interim final rule making substantial changes in the review and classification procedures for encryption exports. Among other changes, the rule

- Replaces the 30-day wait for a technical review before exporting most mass market encryption products and other encryption products of lesser national security concern with a registration requirement and makes encryption technology eligible for export and re-export under License Exception ENC except to countries of highest concern.
- Adds a note that excludes products that use cryptography from being controlled as "information security" items and deletes the term "ancillary encryption" accordingly. This note identifies that "information security" controls apply to the use of encryption for computing, communications, networking and information security commodities and software.

See http://www.bis.doc.gov/news/2010/encryption_rule_summary.pdf . Comments on this rule are due by August 24, 2010.

June 28, 2010 -- 75 Fed. Reg. 36511: Continuing its implementation of the results of a review of the Commerce Control List (CCL) BIS amended the following provisions:

- Sec. 734.4(b)(1): adds ECCN 5A002(a)(9) to list of items subject to special de minimis requirements for certain encryption items;
- Sec. 740.7: removes paragraph restricting physical access to areas housing a computer in a distributed computing environment;

This newsletter is provided as a service to our clients and is not intended to replace the ITAR or EAR as a reference source. If you have questions concerning the correct interpretation of the regulations please call us at (703) 847-5801 or email us at info@fdassociates.net.

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- Sec. 740.7: revises the Weighted TeraFLOPS (WT) level in paragraph (c)(3)(ii) from 0.1 WT to 0.5 WT;
- Part 738, Supp. No. 1: removes license requirement for Regional Stability (RS 2) from Austria, Finland, Ireland, Sweden and Switzerland;
- ECCN 0E108, 4E992, and 4E993: revises headings;
- ECCN 4E993, 8A018, 9A018, and 9A991: revises paragraphs in “items” sections; and
- ECCN 3A992, 4A003, 7A008, 8A018, and 9E003: makes other changes.

June 28, 2010 – 75 *Fed. Reg.* 36516: BIS amended the Entity List, EAR Part 744, Supp. No. 4, by adding 24 persons from Belarus, China, Hong Kong, Iran, Malaysia, New Zealand, Norway, South Africa and United Kingdom and removing Asia Link Kowloon, Hong Kong.

June 30, 2010 – 75 *Fed. Reg.* 37742: BIS proposed the addition of a new ECCN 6A981 to the CCL to control passive infrasound sensors because of their military and commercial utility. ECCN 6D991 and 6E991 would be amended to cover software and technology for these products. All three ECCNs would be controlled for Regional Security (RS) and Antiterrorism (AT) reasons. Comments are due by August 30, 2010.

Department of State

June 8, 2010: The Directorate of Defense Trade Controls (DDTC) published its report “End-Use Monitoring of Defense Articles and Defense Services—Commercial Exports FY 2008” at http://pmdrtc.state.gov/reports/documents/End_Use_FY2008.pdf. The report describes the actions taken by the Department of State during fiscal year 2008 to implement the “Blue-Lantern” end-use monitoring program.

June 23, 2010: DDTC posted a notice that the name of Tasman Aviation Enterprises (Queensland) Pty Limited had changed to TAE Gas Turbines Pty Ltd. See the notice at http://www.pmdrtc.state.gov/licensing/documents/WebNotice_TAE.pdf

Department of the Treasury

June 18, 2010 – 75 *Fed. Reg.* 34630: The Office of Foreign Assets Control (OFAC) amended the Iranian Transactions Regulations (ITR), 31 CFR Part 560, by expanding the scope of the definition of “Government of Iran,” whose property and agents are prohibited destinations regardless of where they are located. The rule also adds 22 persons and removes one person from the list of persons OFAC has determined to be included in the term “Government of Iran.”

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LATEST SANCTIONS FINES & PENALTIES

*This section of our newsletter provides information on the latest sanctions, fines and penalties for export violations or matters of non-compliance with the ITAR or EAR issued by the US government enforcement agencies. It is provided as a service to clients and associates of FD Associates to remind them of the importance of extreme due diligence in all international trade and export compliance matters, particularly those involving exports subject to the ITAR or the EAR. **Don't let this happen to you or your company!** Call us with questions or concerns at 703-847-5801 or email info@fdassociates.net.*

Sanctions

Department of Commerce

June 9, 2010 – 75 Fed. Reg. 32740: BIS denied export privileges to Aaron Robert Henderson and Valhalla Tactical Supply, both of Liberty, IA, for 10 years following Henderson's guilty plea on one charge of knowingly and willfully exporting an EO Tech sighting device to Taiwan without obtaining the required export license. Following his guilty plea in the criminal case, Henderson was sentenced to time served, two years of supervised release, and a \$100 special assessment.

June 9, 2010 – 75 Fed. Reg. 32741: BIS denied export privileges to Shu Quan-Sheng of Newport News VA, currently in federal prison in Anthony, TX, for 5 years following his guilty pleas on charges of violating the Arms Export Control Act (AECA) and the Foreign Corrupt Practices Act (FCPA) by illegally exporting space launch technical data and defense services to the People's Republic of China (PRC) and offering bribes to Chinese officials. Following his guilty plea, Quan-Sheng was sentenced to 51 months in prison, 2 years supervised release, and a \$300 special assessment. He was also placed on the Debarred List of the Department of State.

June 9, 2010 – 75 Fed. Reg. 32742: BIS denied export privileges to Joseph Piquet of Miami and Port St. Lucie, FL, currently in federal prison in Miami, FL for 10 years as a consequence of his conviction of violations of the International Emergency Economic Powers Act (IEEPA) and AECA in connection with unlicensed exports of controlled military and dual-use electronic components to Hong Kong and PRC. In the criminal case, Piquet was sentenced to 60 months in federal prison, two years supervised release, and a \$700 special assessment. He was also placed on the Debarred List.

June 9, 2010 – 75 Fed. Reg. 32743: BIS denied export privileges to Green Supply Inc., Robert Leland Green, and William Robert Green, all of Vandalia, MO, for 5 years following Green Supply's guilty plea for violations of IEEPA and the AECA involving unauthorized exports of night vision goggles, global positioning systems, and firearms. In the criminal case, Green Supply was sentenced to 2 years of probation, a \$17,500 fine, and an \$800 special assessment.

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Department of State

June 25, 2010 – 75 Fed. Reg. 35872: The Secretary of State designated Doku Umarov as a Specially Designated Global Terrorist.

Fines and Penalties

June 8, 2010: Nader Modanlo of Potomac, MD, an Iranian-born U.S. citizen and reportedly a former NASA scientist, was indicted by a federal grand jury in Maryland for conspiring to illegally provide satellite hardware and technology to Iran, resulting in the launch of Iran's first satellite in 2005. Five Iranian nationals who remain at large were also indicted. The scheme also involved a contract with an aerospace enterprise company owned by the government of the Russian Federation and an Iranian party to design, develop, test, and launch a small spacecraft and install a ground station. The indictment seeks the forfeiture of \$10 million, the alleged proceeds of the offense, from each of the defendants. The defendants also face possible prison sentences of up to 20 years for each of several counts of the indictment.

June 9, 2010: Messina, Inc. of Dallas, TX agreed to pay a civil penalty of \$10,800 to settle charges by BIS of two violations of the antiboycott rules involving furnishing information concerning its or another person's business relationships with Israel to the United Arab Emirates (UAE).

June 17, 2010: Omid Khalili, an Iranian national, pleaded guilty in federal court in Mobile, AL to charges that he had attempted to illegally export military aircraft parts from the U.S. to Iran. Khalili was arrested in March 2010 in Miami. A second defendant, known only as "Masun," remains at large. Khalili and Masun allegedly contacted an undercover agent in November 2009 seeking replacement parts for a military aircraft that had been sold to Iran before the 1979 Iranian revolution. Khalili faces a maximum penalty of 10 years in prison and a \$10 million fine.

June 17, 2010: John O'Toole, a retired Air Force colonel, and Chanoch Miller, an Israeli aeronautics engineer, were indicted in federal court for the Southern District of Florida in connection with an alleged plan to ship 700 AK-47 rifles to Somalia without the required authorization. Miller allegedly was to procure and sell the rifles, while O'Toole allegedly was mainly involved in arranging their transportation. The charges against Miller and O'Toole included engaging in a conspiracy to export restricted defense articles designated on the U. S. Munitions List (USML) without a license; attempting to export the defense articles without a license; and engaging in brokering activities involving defense articles designated on the USML without first having registered with and obtained a license from DDTC. Both defendants are also charged with money laundering violations.

June 21, 2010: Plane Cargo Inc., a freight forwarder located in Houston, TX, agreed to pay a civil penalty of \$5,200 to settle charges that it had violated the antiboycott provisions of the EAR in connection with the sale and transfer of goods from the U.S. to Syria by furnishing an invoice to a Syrian company certifying that the goods were not of Israeli origin.

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June 21, 2010: Patrick Gaillard of Hicksville, NY, owner and president of Oyster Bay Pump Works, also of Hicksville, agreed to pay \$300,000 to settle charges by BIS of 6 violations involving unauthorized exports to Cuba via Germany and to Iran via the UAE. In a companion settlement, Oyster Bay Pump Works also agreed to pay a civil penalty of \$300,000 to settle one charge by BIS involving an unauthorized export to Cuba via Germany.

June 22, 2010: Rocky Mountain Instrument Co. pleaded guilty in federal court for the district of Colorado to a charge of knowingly and willfully exporting prisms and optical technical data for military applications to Turkey, South Korea, PRC, and Russia without obtaining the required licenses from the Department of State. RMI was sentenced to a criminal fine of \$1 million and 5 years of probation. Earlier, in October 2007, the Defense Criminal Investigative Service had raided RMI's headquarters and taken away computers and files. In July 2009, RMI filed for Chapter 11 bankruptcy, citing the effect of the raid on its business as well as the global recession.

June 25, 2010: OFAC announced an \$860,000 settlement with Agar Corporation, Inc. regarding Agar's export of oil and gas production equipment for use in Sudan without the license required by the Sudanese Sanction Regulations. This settlement was part of a global settlement in which Agar also entered a guilty plea in a criminal case in federal court for the Southern District of Texas to a charge that it had knowingly and willingly facilitated the unauthorized exportation to Sudan of 16 multi-phase flow meters by its sister company in Venezuela. As part of the plea agreement, Agar agreed to pay a criminal fine of \$760,000, forfeit \$380,000, serve four years of probation, and institute an economic sanctions compliance program
