

Renewed Emphasis on Enforcement of Export Controls

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The U.S. Commerce Department's Bureau of Industry and Security (BIS) recently issued a reminder to the industry regarding export requirements. This reminder, titled "Don't Let This Happen to You," includes examples of significant enforcement actions resulting from failure to follow export control regulations, including enforcement of regulations concerning "deemed exports."

The BIS implements the Commerce Department's Export Administration Regulations (EAR), and leads federal efforts controlling exports of a wide range of goods and technology, including some "balance of plant" components and technology at nuclear power plants. Generally, the U.S. Nuclear Regulatory Commission (NRC) regulates the export of nuclear material and reactor components, while the U.S. Department of Energy (DOE) regulates the export of nonpublic information and technology related to uranium enrichment and the "nuclear island." We have noted increases in attention to export controls by both of these agencies as well. Examples of enforcement actions are provided below.

The industry should be mindful of the regulations and precedents related to "deemed exports." These exports occur when export-controlled technology is transferred to a foreign national (non-U.S. citizen or permanent resident alien) inside the United States. Such transfers are deemed to be an export to the home country of the foreign national. Such deemed exports could occur through a foreign national reviewing blueprints of a controlled item (for example, when preparing a bid specification), or being trained on the "development" or "use" of a controlled item. Deemed exports may require a license or authorization under BIS's or DOE's regulations. "Don't Let This Happen to You" lists five enforcement cases taken against companies for making "deemed exports" without a license by sharing technology with foreign nationals from various countries, including China, Italy, India, and Iran. The penalties ranged from a civil fine of \$30,000 to four years' imprisonment.

All foreign nationals are subject to the "deemed export" rule, except a foreign national who (1) is granted permanent residence, as demonstrated by the issuance of a green card; or (2) is a "protected person" under U.S. immigration law relating to political refugees or political asylum holders.

Federal agencies have recently reported the following enforcement actions regarding nuclear-related exports:

- In July 2010, an individual was found guilty of conspiracy to illegally export specialized vacuum pump equipment out of the United States in violation of the EAR. The individual conspired to procure and ship export-controlled vacuum pumps, which have potential nuclear application, to Iran on seven different occasions in 2007 and 2008. These exports involved shipping the

equipment from the United States to a company in the United Arab Emirates, which would then forward (retransfer) the equipment to Iran.

- In March 2010, the NRC issued a Notice of Violation to a construction test equipment company for failure to obtain a required specific license prior to exporting nuclear gauges containing byproduct material to Iraq. Such an export requires a specific license that can only be obtained following a regulatory review by the NRC. Although the NRC could have assessed a civil penalty of \$16,250 for the violation, the agency decided not to impose the penalty because of the company's prompt and comprehensive corrective action.
- In October 2009, a U.S. specialty metals company paid a \$700,000 civil penalty for exporting nickel powders without the required licenses to the People's Republic of China, Singapore, Taiwan, Thailand, India, Israel, the Dominican Republic, and Mexico. Nickel powders are considered controlled items for nuclear nonproliferation reasons. The exporter also agreed to complete an internal export compliance audit.
- In September 2009, the NRC issued a Notice of Violation to a supplier of radiation sources that had shipped two sealed sources to a customer in Australia. A subsequent NRC review determined that the company had failed to confirm that the foreign recipient was authorized to possess the byproduct material prior to shipment, in violation of the NRC export regulations.
- In March 2009, two individuals were found guilty of conspiring to violate the EAR by exporting and attempting to export high modulus carbon fiber material to China without the appropriate license. The carbon fiber can be used for uranium enrichment. The two exporters were sentenced to prison terms of one and four years, respectively.
- In March 2008, a U.S. company specializing in materials testing was found guilty of exporting seismic testing equipment to India. The exporter had knowledge that the equipment could be used for testing on behalf of Indian nuclear facilities. In one instance, the exporter omitted information that the funding for the transaction had been provided by India's Department of Atomic Energy, which is listed on BIS's "Entity List" of restricted export destinations. The exporter was sentenced to two years' probation and a \$400,000 criminal fine.
- In October 2007, a U.S. engineering services company was found guilty of conspiring to falsify documents and make false statements regarding an illegal export of graphite products to a trading company in the United Arab Emirates, from which the graphite products were ultimately shipped to Pakistan. Such graphite products can be used in nuclear reactors. The exporter attempted to mislead federal investigators when questioned about the shipment and the documents. The result was a \$40,000 criminal fine.

A review of these recent export enforcement actions serves as a reminder of the importance of an effective export controls program. Exporters should consider reviewing their export compliance program in light of these enforcement actions.

For further information about the regulation of the export of nuclear-related components and technology, please contact any of the following Morgan Lewis attorneys:

Washington, D.C.

Paul M. Bessette	202.739.5796
John E. Matthews	202.739.5524
Timothy P. Matthews	202.739.5527
Alex S. Polonsky	202.739.5830

pbessette@morganlewis.com
jmatthews@morganlewis.com
tmatthews@morganlewis.com
apolonsky@morganlewis.com

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