

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

In the Matter of:)
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)
)
Engineering Physics Software, Inc.)
d/b/a COADE, Inc.)
12777 Jones Rd.)
Suite 480)
Houston, TX 77070)
)
)
Respondent)

ORDER RELATING TO ENGINEERING PHYSICS SOFTWARE, INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Engineering Physics Software, Inc., doing business as (“d/b/a”) COADE, Inc. (“Engineering Physics”), of its intention to initiate an administrative proceeding against Engineering Physics pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2008)) (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),² through issuance of a proposed charging letter to Engineering Physics that alleged that Engineering Physics committed 22 violations of the Regulations. Specifically, the charges are:

¹ The violations alleged to have been committed occurred between 2003 and 2006. The Regulations governing the violations at issue are found in the 2003 through 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003-2006)). The 2008 Regulations establish the procedures that apply to this matter.

² 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 July 23, 2008 (73 Fed. Reg. 43,606 (Jul 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

**Charges 1-16 15 C.F.R. § 764.2(a): Export of Software Programs to Iran without
the Required U.S. Government Authorization**

On 16 occasions between on or about February 11, 2003 and on or about March 1, 2005, Engineering Physics engaged in conduct prohibited by the Regulations by exporting engineering software programs, items subject to the Regulations,³ from the United States to Iran, via the United Arab Emirates, without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations⁴ maintained by the Department of the Treasury's Office of Foreign Assets Control ("OFAC"), an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the Iranian Transactions Regulations without authorization from OFAC. No such authorization was obtained for the exports described herein. In engaging in this activity, Engineering Physics committed 16 violations of Section 764.2(a) of the Regulations.

**Charges 17-22 15 C.F.R. §764.2(a) - Unlicensed Exports of Software Programs to a
Listed Entity**

On six occasions between on or about June 2, 2004 and on or about June 30, 2006, Engineering Physics engaged in conduct prohibited by the Regulations when it exported engineering software programs, items subject to the Regulations, to end users in India and Pakistan that were listed on BIS's Entity List⁵, without the license required by the Department of Commerce. A license was required for these exports under Section 744.1 and Supplement No. 4 to Section 744 of the Regulations. In engaging in this activity, Engineering Physics committed six violations of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Engineering Physics 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;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$130,000 is assessed against Engineering Physics, which shall be paid to the U.S. Department of Commerce as follows: \$65,000 due within 30 days of

³ These items were classified as EAR99, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2003-2006).

⁴ 31 CFR § 560 (2003-2006).

⁵ Two exports were to the Pakistan Atomic Energy Commission ("PAEC") and four exports were to Bhabha Atomic Research Center ("BARC").

the date of this Order, and the remaining \$65,000 due within 90 days of the date of this Order.

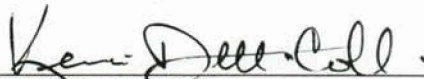
Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Engineering Physics will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Engineering Physics. Accordingly, if Engineering Physics should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Engineering Physics' export privileges for a period of one year from the date of entry of this Order.

FOURTH, 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.



Kevin Delli-Colli
Acting Assistant Secretary of Commerce
for Export Enforcement

Entered this 15th day of December, 2008.

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

In the Matter of:)
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)
Engineering Physics Software, Inc.)
d/b/a COADE, Inc.)
12777 Jones Rd.)
Suite 480)
Houston, TX 77070)
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Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Engineering Physics Software Inc., doing business as (“d/b/a”) COADE, Inc. (“Engineering Physics”), 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 (currently codified at 15 C.F.R. Parts 730-774 (2008)) (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),²

¹ The violations alleged to have been committed occurred between 2003 and 2006. The Regulations governing the violations at issue are found in the 2003 through 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003-2006)). The 2008 Regulations establish the procedures that apply to this matter.

² 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 July 23, 2008 (73 Fed. Reg. 43,603 (Jul. 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

WHEREAS, Engineering Physics filed a voluntary self-disclosure with BIS's Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning certain transactions at issue herein;

WHEREAS, BIS has notified Engineering Physics of its intention to initiate an administrative proceeding against Engineering Physics, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Engineering Physics that alleged that Engineering Physics committed 22 violations of the Regulations, specifically:

Charges 1-16 15 C.F.R. § 764.2(a): Export of Software Programs to Iran without the Required U.S. Government Authorization

On 16 occasions between on or about February 11, 2003 and on or about March 1, 2005, Engineering Physics engaged in conduct prohibited by the Regulations by exporting engineering software programs, items subject to the Regulations,³ from the United States to Iran, via the United Arab Emirates, without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations⁴ maintained by the Department of the Treasury's Office of Foreign Assets Control ("OFAC"), an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the Iranian Transactions Regulations without authorization from OFAC. No such authorization was obtained for the exports described herein. In engaging in this activity, Engineering Physics committed 16 violations of Section 764.2(a) of the Regulations.

Charges 17-22 15 C.F.R. §764.2(a) - Unlicensed Exports of Software Programs to a Listed Entity

On six occasions between on or about June 2, 2004 and on or about June 30, 2006, Engineering Physics engaged in conduct prohibited by the Regulations when it exported engineering software programs, items subject to the Regulations, to end users in India

³ These items were classified as EAR99, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2003-2006).

⁴ 31 CFR § 560 (2003-2006).

and Pakistan that were listed on BIS's Entity List⁵, without the license required by the Department of Commerce. A license was required for these exports under Section 744.1 and Supplement No. 4 to Section 744 of the Regulations. In engaging in this activity, Engineering Physics committed six violations of Section 764.2(a) of the Regulations.

WHEREAS, Engineering Physics has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, Engineering Physics 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, Engineering Physics enters into this Agreement voluntarily and with full knowledge of its rights;

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

WHEREAS, Engineering Physics neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Engineering Physics wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Engineering Physics agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Engineering Physics, under the Regulations, in connection with the matters alleged in the proposed charging letter.

⁵ Two exports were to the Pakistan Atomic Energy Commission ("PAEC") and four exports were to Bhabha Atomic Research Center ("BARC").

2. The following sanction shall be imposed against Engineering Physics in complete settlement of the alleged violations of the Regulations relating to the transactions detailed in the voluntary self-disclosure and the proposed charging letter:

a. Engineering Physics shall be assessed a civil penalty in the amount of \$130,000, which shall be paid to the U.S. Department of Commerce, with \$65,000 of this penalty amount due within 30 days of the date of this Order, and the remaining \$65,000 due within 90 days of the date of this Order

b. The timely payment of the civil penalty agreed to in paragraph 2.a is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Engineering Physics. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Engineering Physics' export privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Engineering Physics 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 entered), 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 entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$130,000 civil penalty, BIS will not initiate any further administrative proceeding against Engineering Physics in

connection with any violation of the Act or the Regulations arising out of the transactions identified in the voluntary self-disclosure and the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.


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 entered, 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 entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

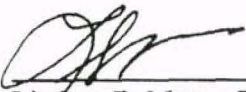
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

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


Thomas Madigan
Director
Office of Export Enforcement

Date: December 11, 2008

ENGINEERING PHYSICS SOFTWARE,
INC.


Lindsay B. Meyer, Esq.
William H. Devaney, Esq.
Venable LLP
Attorneys for Engineering Physics
Software Inc.

Date: Dec. 11, 2008

PROPOSED CHARGING LETTER

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Engineering Physics Software, Inc.
d/b/a COADE, Inc.
12777 Jones Rd.
Suite 480
Houston, TX 77070

Attn: Mr. Thomas J. Van Laan

Dear Mr. Van Laan:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Engineering Physics Software, Inc., doing business as ("d/b/a") COADE, Inc. of Houston, Texas ("Engineering Physics"), has committed 22 violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the "Act").² Specifically, BIS charges that Engineering Physics committed the following violations:

Charges 1-16 15 C.F.R. § 764.2(a): Export of Software Programs to Iran without the Required U.S. Government Authorization

As described in greater detail in the attached Schedule of Violations, which is incorporated herein, on 16 occasions between on or about February 11, 2003 and on or about March 1, 2005, Engineering Physics engaged in conduct prohibited by the Regulations by exporting engineering software programs, items subject to the Regulations,³ from the United States to Iran, via the United Arab Emirates, without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations⁴ maintained by the Department of the

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2008). The charged violations occurred between 2003 and 2006. The Regulations governing the violations at issue are found in the 2003-2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003-2006)). The 2008 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). 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 July 23, 2008 (73 Fed. Reg. 43,606, Jul. 25 2008), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) ("IEEPA"). The Act and the Regulations are available on the Government Printing Office website at: <http://www.access.gpo.gov/bis/>.

³ These items were classified as EAR99, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2003-2006).

⁴ 31 CFR § 560 (2003-2006).

Treasury's Office of Foreign Assets Control ("OFAC"), an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the Iranian Transactions Regulations without authorization from OFAC. No such authorization was obtained for the exports described herein. In engaging in this activity, Engineering Physics committed 16 violations of Section 764.2(a) of the Regulations.

Charges 17-22 15 C.F.R. §764.2(a) - Unlicensed Exports of Software Programs to a Listed Entity

As described in greater detail in the attached Schedule of Violations, which is incorporated herein, on six occasions between on or about June 2, 2004 and on or about June 30, 2006, Engineering Physics engaged in conduct prohibited by the Regulations when it exported engineering software programs, items subject to the Regulations, to end users in India and Pakistan that were listed on BIS's Entity List, without the license required by the Department of Commerce. A license was required for these exports under Section 744.1 and Supplement No. 4 to Section 744 of the Regulations. In engaging in this activity, Engineering Physics committed six violations of Section 764.2(a) of the Regulations.

* * * * *

Accordingly, Engineering Physics 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 any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation, 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.

If Engineering Physics 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 (2008). If Engineering Physics defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Engineering Physics. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Engineering Physics 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 (2008). Engineering

⁵ *See* International Emergency Economic Powers Enhancement Act, Pub. L. No. 110-96 (2007).

Physics is also 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 (2008).

Engineering Physics is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Engineering Physics 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 Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18 (2008). Should Engineering Physics have a proposal to settle this case, Engineering Physics or its representative should transmit it to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Engineering Physics' answer must be filed in accordance with the instructions in Section 766.5(a) (2008) of the Regulations with:

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

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

Chief Counsel for Industry and Security
Attention: Gregory Michelsen
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Gregory Michelsen is the attorney representing BIS in this case; any communications that Engineering Physics wish to have concerning this matter should occur through him. Mr. Michelsen may be contacted by telephone at (202) 482-5301.

Sincerely,

Thomas Madigan
Director
Office of Export Enforcement

**ENGINEERING PHYSICS SOFTWARE, INC.
SCHEDULE OF VIOLATIONS**

Charge	Export Date	Invoice	Item¹	Ultimate Destination or End-User	Violation
1	2/11/2003	2003-012	Engineering Software Program	Iran	15 CFR 764.2(a)
2	5/6/2003	2003-51	Engineering Software Program	Iran	15 CFR 764.2(a)
3	5/23/2003	2003-55	Engineering Software Program	Iran	15 CFR 764.2(a)
4	8/28/2003	2003-94	Engineering Software Program	Iran	15 CFR 764.2(a)
5	9/10/2003	2003-99	Engineering Software Program	Iran	15 CFR 764.2(a)
6	9/29/2003	2003-103	Engineering Software Program	Iran	15 CFR 764.2(a)
7	10/2/2003	2003-104	Engineering Software Program	Iran	15 CFR 764.2(a)
8	10/7/2003	2003-106	Engineering Software Program	Iran	15 CFR 764.2(a)
9	12/23/2003	2003-128	Engineering Software Program	Iran	15 CFR 764.2(a)
10	12/29/2003	2003-129	Engineering Software Program	Iran	15 CFR 764.2(a)
11	6/2/2004	2004-54	Engineering Software Program	Iran	15 CFR 764.2(a)
12	6/15/2004	2004-59	Engineering Software Program	Iran	15 CFR 764.2(a)
13	7/7/2004	2004-62	Engineering Software Program	Iran	15 CFR 764.2(a)
14	10/4/2004	2004-95	Engineering Software Program	Iran	15 CFR 764.2(a)
15	1/12/2005	2004-122	Engineering Software Program	Iran	15 CFR 764.2(a)
16	3/1/2005	2005-18	Engineering Software Program	Iran	15 CFR 764.2(a)

¹ All the items exported were engineering software programs classified as EAR99.

**ENGINEERING PHYSICS SOFTWARE, INC.
SCHEDULE OF VIOLATIONS**

17	6/2/2004	2004-47	Engineering Software Program	BARC ²	15 CFR 764.2(a)
18	12/21/2004	2004-107	Engineering Software Program	BARC	15 CFR 764.2(a)
19	7/7/2005	Evaluation	Engineering Software Program	PAEC ³	15 CFR 764.2(a)
20	4/13/2006	2006-48	Engineering Software Program	BARC	15 CFR 764.2(a)
21	5/23/2006	Evaluation	Engineering Software Program	PAEC	15 CFR 764.2(a)
22	6/30/2006	2006-113	Engineering Software Program	BARC	15 CFR 764.2(a)

² Bhabha Atomic Research Center located in India.

³ Pakistan Atomic Energy Commission.