

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

In the Matter of:

MDA Precision LLC  
3290 Hecker Pass Road  
Gilroy, CA 95020

Respondent

ORDER RELATING TO  
MDA PRECISION LLC

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified MDA Precision LLC, of Gilroy, California (“MDA Precision”), of its intention to initiate an administrative proceeding against MDA Precision LLC pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),<sup>1</sup> through the issuance of a Proposed Charging Letter to MDA Precision that alleges that MDA Precision committed one violation of the Regulations.<sup>2</sup> Specifically:

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<sup>1</sup> The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. 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, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, *et seq.* (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2020). The charged violation occurred in 2015. The Regulations governing the violation at issue are found in the 2015 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2020 Regulations set forth the procedures that apply to this matter.

**Charge 1      15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation**

1. Between on or about April 1, 2015, and on or about April 16, 2015, MDA Precision sold and transferred an item subject to the Regulations to the United Arab Emirates (“UAE”) with knowledge that a violation of the Regulations had occurred, was occurring, or was about to occur in connection with the item. Specifically, MDA Precision sold and transferred a five-axis benchtop milling machine, an item subject to the Regulations, classified under Export Control Classification Number (“ECCN”) 2B201, controlled on nuclear nonproliferation and anti-terrorism grounds, and valued at approximately \$34,000, from the United States to the UAE without the required BIS license. Pursuant to Section 742.3 of the Regulations, a BIS export license was required for nuclear nonproliferation reasons to export the item at issue to the UAE.
2. A BIS license was required to export the item to most countries in the world, including the UAE, as MDA Precision knew or had reason to know<sup>3</sup> given that during 2013-2014, it had applied for and received BIS licenses to export its five-axis milling machines to various destinations, including Israel, Chile, and China.<sup>4</sup> However, despite its prior export licensing history, MDA Precision failed to seek or obtain a BIS license in this instance in April 2015. Moreover, in the shipper’s letter of instructions that it provided the freight forwarder, MDA Precision stated that the item was designated EAR99 and did not require a license for export to the UAE.<sup>5</sup>
3. MDA Precision also failed to obtain end-user information for this transaction despite having done so in connection with other exports involving five-axis milling machines. MDA Precision failed to obtain this information even though the five-axis milling machine at issue was paid for prior to shipment by a third party, also in the UAE, that had not been previously involved in the transaction.
4. Even absent this red flag, the risk of potential diversion by MDA Precision’s UAE customer, and the need for due diligence by MDA Precision, already existed in

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<sup>3</sup> See 15 C.F.R. § 772.1 (“Knowledge of a circumstance (the term may be a variant, such as ‘know,’ ‘reason to know’ or ‘reason to believe’) includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person’s willful avoidance of facts.”) (parenthetical and internal quotations in the original).

<sup>4</sup> A license was required to all destinations, except those Nuclear Suppliers Group member countries listed under Country Group A:4 in Supplement No. 1 to Part 740 of the Regulations. See 15 C.F.R. § 742.3(a)(1) and Country Group A:4 in Supp. No. 1 to 15 C.F.R. Part 740.

<sup>5</sup> “EAR99” is a designation for items subject to the Regulations but not listed on the CCL. See 15 C.F.R. §§ 734.3(c) and 772.1.

connection with this transaction. Items controlled on nuclear nonproliferation grounds can be of significance for nuclear explosive purposes, *see* 15 C.F.R. § 742.3(a), and the UAE was known as a transshipment point to Iran. In fact, there is reason to believe that the item at issue was destined for Iran. BIS obtained evidence during its investigation indicating that MDA Precision's customer in the UAE was seeking the same type of five-axis milling machine for or on behalf of an Iranian university, specifically the University of Tehran. In addition, MDA Precision's UAE customer on at least one occasion emailed MDA Precision from an internet protocol address in Iran, indicating that at least some of its communications originated in Iran.

5. By selling and then transferring the item to the UAE without the required export license with reason to know that a license was required, MDA Precision committed one violation of Section 764.2(e) of the Regulations.

WHEREAS, BIS and MDA Precision 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, MDA Precision shall be assessed a civil penalty in the amount of \$60,000. The payment of \$25,000 shall be made to the U.S. Department of Commerce within 30 days of the date of this Order. Payment of the remaining \$35,000 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 payment probationary period under this Order, MDA Precision has not committed a violation of the Export Control Reform Act of 2018 ("ECRA"), the Regulations, or any order, license, or authorization issued under ECRA or the Regulations, and has made full and timely payment of \$25,000 as set forth above.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2012)), 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, MDA Precision 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, MDA Precision shall complete an export compliance training on the Regulations within twelve months from the date of this Order. Before attending a training course or program, MDA Precision shall notify the Office of Export Enforcement, Special Agent in Charge of the San Jose Field Office, of the course or program selected to attend. No later than one month after attending the compliance course or program, MDA Precision shall submit a certification of attendance from the training provider to the Office of Export Enforcement, 160 W. Santa Clara Street, Suite 725, San Jose, CA 95113.

FOURTH, that the full and timely payment of the civil penalty in accordance with the payment schedule set forth above and the completion and submission of verification of attendance at an export compliance training as set forth above, 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 MDA Precision. Accordingly, if MDA Precision should fail to pay the civil penalty in a full and timely manner or complete and submit verification of attendance of an export compliance training, the undersigned may issue an order denying all of MDA Precision's export privileges under the Regulations for a period of one year from the date of failure to make such payment or complete export compliance training.

FIFTH, MDA Precision shall not dispute or deny, directly or indirectly, the allegations contained in the Proposed Charging Letter or this Order or take any position contrary thereto in any public statement. The foregoing does not affect MDA Precision's

testimonial obligations in any administrative or judicial 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.

SIXTH, 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  
KURLAND** Digitally signed by  
KEVIN KURLAND  
Date: 2021.04.30  
19:03:43 -04'00'

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Kevin J. Kurland  
Acting Assistant Secretary of Commerce  
for Export Enforcement

Issued this 30<sup>th</sup> day of April, 2021.

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

In the Matter of:

MDA Precision LLC  
3290 Hecker Pass Road  
Gilroy, CA 95020

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between MDA Precision, of Gilroy, California (“MDA Precision”), 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”).<sup>1</sup>

WHEREAS, BIS has notified MDA Precision of its intentions to initiate an administrative proceeding against MDA Precision pursuant to the Regulations;<sup>2</sup>

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<sup>1</sup> The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. 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, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, *et seq.* (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2020). The charged violation occurred in 2015. The Regulations governing the violation at issue are found in the 2015 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2020 Regulations set forth the procedures that apply to this matter.

WHEREAS, BIS has issued a Proposed Charging Letter to MDA Precision that alleges that MDA Precision committed one violation of the Regulations, specifically:

**Charge 1 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation**

1. Between on or about April 1, 2015, and on or about April 16, 2015, MDA Precision sold and transferred an item subject to the Regulations to the United Arab Emirates (“UAE”) with knowledge that a violation of the Regulations had occurred, was occurring, or was about to occur in connection with the item. Specifically, MDA Precision sold and transferred a five-axis benchtop milling machine, an item subject to the Regulations, classified under Export Control Classification Number (“ECCN”) 2B201, controlled on nuclear nonproliferation and anti-terrorism grounds, and valued at approximately \$34,000, from the United States to the UAE without the required BIS license. Pursuant to Section 742.3 of the Regulations, a BIS export license was required for nuclear nonproliferation reasons to export the item at issue to the UAE.
2. A BIS license was required to export the item to most countries in the world, including the UAE, as MDA Precision knew or had reason to know<sup>3</sup> given that during 2013-2014, it had applied for and received BIS licenses to export its five-axis milling machines to various destinations, including Israel, Chile, and China.<sup>4</sup> However, despite its prior export licensing history, MDA Precision failed to seek or obtain a BIS license in this instance in April 2015. Moreover, in the shipper’s letter of instructions that it provided the freight forwarder, MDA Precision stated that the item was designated EAR99 and did not require a license for export to the UAE.<sup>5</sup>
3. MDA Precision also failed to obtain end-user information for this transaction despite having done so in connection with other exports involving five-axis milling machines. MDA Precision failed to obtain this information even though

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<sup>3</sup> See 15 C.F.R. § 772.1 (“Knowledge of a circumstance (the term may be a variant, such as ‘know,’ ‘reason to know’ or ‘reason to believe’) includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person’s willful avoidance of facts.”) (parenthetical and internal quotations in the original).

<sup>4</sup> A license was required to all destinations, except those Nuclear Suppliers Group member countries listed under Country Group A:4 in Supplement No. 1 to Part 740 of the Regulations. See 15 C.F.R. § 742.3(a)(1) and Country Group A:4 in Supp. No. 1 to 15 C.F.R. Part 740.

<sup>5</sup> “EAR99” is a designation for items subject to the Regulations but not listed on the CCL. See 15 C.F.R. §§ 734.3(c) and 772.1.

the five-axis milling machine at issue was paid for prior to shipment by a third party, also in the UAE, that had not been previously involved in the transaction.

4. Even absent this red flag, the risk of potential diversion by MDA Precision's UAE customer, and the need for due diligence by MDA Precision, already existed in connection with this transaction. Items controlled on nuclear nonproliferation grounds can be of significance for nuclear explosive purposes, *see* 15 C.F.R. § 742.3(a), and the UAE was known as a transshipment point to Iran. In fact, there is reason to believe that the item at issue was destined for Iran. BIS obtained evidence during its investigation indicating that MDA Precision's customer in the UAE was seeking the same type of five-axis milling machine for or on behalf of an Iranian university, specifically the University of Tehran. In addition, MDA Precision's UAE customer on at least one occasion emailed MDA Precision from an internet protocol address in Iran, indicating that at least some of its communications originated in Iran.
5. By selling and then transferring the item to the UAE without the required export license with reason to know that a license was required, MDA Precision committed one violation of Section 764.2(e) of the Regulations.

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

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

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

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

WHEREAS, MDA Precision neither admits nor denies the allegations contained in the Proposed Charging Letter; and

WHEREAS, MDA Precision 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 MDA Precision, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.
2. The following sanctions shall be imposed against MDA Precision:
  - a. MDA Precision shall be assessed a civil penalty in the amount of \$60,000. The payment of \$25,000 shall be made to the U.S. Department of Commerce within 30 days of the date of the Order. Payment shall be made in the manner specified in the attached instructions. Payment of the remaining \$35,000 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 payment probationary period under the Order, MDA Precision has not committed a violation of the Act, or any regulation, order, license or authorization issued thereunder and has made full and timely payment of \$25,000 as set forth above.
  - b. MDA Precision shall complete an export compliance training on the Regulations within twelve months from the date of the Order. Before attending a training course or program, MDA Precision shall notify the Office of Export Enforcement, Special Agent in Charge of the San Jose Field Office, of the course or program selected to attend. No later than one month after attending the compliance course or program, MDA Precision shall submit a certification of attendance from the training provider to the Office of Export Enforcement, 160 W. Santa Clara Street, Suite 725, San Jose, CA 95113.

c. The full and timely payment of the civil penalty agreed to in Paragraph 2.a and the timely completion and submission of verification of attendance at an export compliance training as set forth 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 MDA Precision. Failure to make full and timely payment of the civil penalty or to complete and submit verification of attendance at an export compliance training as set forth above, may result in the denial of all of MDA Precision's export privileges under the Regulations for one year from the date of the failure to make such payment or complete export compliance training.

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof below, MDA Precision hereby waives all rights to further procedural steps in this matter (except the procedural steps set forth in Sections 766.17(c) and 766.18(c) of the Regulations with respect to the possible activation of suspended sanctions due to a violation 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. MDA Precision 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

the later of the date MDA Precision pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement or has completed and submitted verification of attendance at an export compliance training as set forth in Paragraph 2.b.

4. MDA Precision shall not dispute or deny, directly or indirectly, the allegations contained in the Proposed Charging Letter or the Order or take any position contrary thereto in any public statement. The foregoing does not affect MDA Precision's testimonial obligations in any administrative or judicial 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 full and timely payment of the civil penalty as set forth in Paragraph 2.a above and completion and submission of verification of attendance at an export compliance training as set forth in Paragraph 2.b, BIS will not initiate any further administrative proceeding against MDA Precision in connection with any violation of the Regulations arising out of the transaction 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, or appropriate designee, 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. This Agreement constitutes and contains the entire agreement and understanding among the parties, and the terms of this Agreement or the Order, if issued,

may not be varied or otherwise altered or affected by any agreement, understanding, representation, or interpretation not contained in this Agreement; 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, or appropriate designee, 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.

11. If any provision of this Settlement Agreement is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

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

  
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John Sonderman  
Director of Export Enforcement


Date: 4/30/2021

MDA PRECISION LLC

  
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Markus Menig  
Chief Executive Officer

Date: 04/30/21

Reviewed and approved by:

  
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Kyl Kirby, Esq.  
Counsel for MDA Precision

Date: 4/28/21



UNITED STATES DEPARTMENT OF COMMERCE  
Bureau of Industry and Security  
Office of Export Enforcement  
1401 Constitution Avenue, Suite 4508  
Washington, DC 20230

PROPOSED CHARGING LETTER

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

MDA Precision LLC  
3290 Hecker Pass Rd.  
Gilroy, CA 95020

Attention: Markus Menig  
Chief Executive Officer

Dear Mr. Menig,

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that MDA Precision LLC (“MDA Precision”), of Gilroy, California, has violated the Export Administration Regulations (the “Regulations”).<sup>1</sup> Specifically, BIS alleges that MDA Precision committed the following violation:<sup>2</sup>

**Charge 1 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation**

1. Between on or about April 1, 2015, and on or about April 16, 2015, MDA Precision sold and transferred an item subject to the Regulations to the United Arab Emirates (“UAE”) with knowledge that a violation of the Regulations had occurred, was occurring, or was about to occur in connection with the item. Specifically, MDA Precision sold and transferred a five-axis benchtop milling machine, an item subject to the Regulations, classified under Export Control Classification Number (“ECCN”) 2B201, controlled on nuclear nonproliferation and anti-terrorism grounds, and valued at approximately

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<sup>1</sup> The Regulations originally issued under the Export Administration Act of 1979, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which was extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2018)) (“IEEPA”). On August 13, 2018, the President signed into law John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232, which includes the Export Control Reform Act of 2018 (50 U.S.C. §§ 4801-4852 (2019)) (“ECRA”). Section 1768 of ECRA repealed the provisions of the EAA (except for three sections which are inapplicable here, and provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2020). The violation alleged occurred in 2015. The Regulations governing the violation at issue are found in the 2015 version of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2015). The 2020 Regulations currently govern the procedural aspects of this case.



\$34,000, from the United States to the UAE without the required BIS license. Pursuant to Section 742.3 of the Regulations, a BIS export license was required for nuclear nonproliferation reasons to export the item at issue to the UAE.

2. A BIS license was required to export the item to most countries in the world, including the UAE, as MDA Precision knew or had reason to know<sup>3</sup> given that during 2013-2014, it had applied for and received BIS licenses to export its five-axis milling machines to various destinations, including Israel, Chile, and China.<sup>4</sup> However, despite its prior export licensing history, MDA Precision failed to seek or obtain a BIS license in this instance in April 2015. Moreover, in the shipper's letter of instructions that it provided the freight forwarder, MDA Precision stated that the item was designated EAR99 and did not require a license for export to the UAE.<sup>5</sup>
3. MDA Precision also failed to obtain end-user information for this transaction despite having done so in connection with other exports involving five-axis milling machines. MDA Precision failed to obtain this information even though the five-axis milling machine at issue was paid for prior to shipment by a third party, also in the UAE, that had not been previously involved in the transaction.
4. Even absent this red flag, the risk of potential diversion by MDA Precision's UAE customer, and the need for due diligence by MDA Precision, already existed in connection with this transaction. Items controlled on nuclear nonproliferation grounds can be of significance for nuclear explosive purposes, *see* 15 C.F.R. § 742.3(a), and the UAE was known as a transshipment point to Iran. In fact, there is reason to believe that the item at issue was destined for Iran. BIS obtained evidence during its investigation indicating that MDA Precision's customer in the UAE was seeking the same type of five-axis milling machine for or on behalf of an Iranian university, specifically the University of Tehran. In addition, MDA Precision's UAE customer on at least one occasion emailed MDA Precision from an internet protocol address in Iran, indicating that at least some of its communications originated in Iran.

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<sup>3</sup> *See* 15 C.F.R. § 772.1 (“Knowledge of a circumstance (the term may be a variant, such as ‘know,’ ‘reason to know’ or ‘reason to believe’) includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person’s willful avoidance of facts.”) (parenthetical and internal quotations in the original).

<sup>4</sup> A license was required to all destinations, except those Nuclear Suppliers Group member countries listed under Country Group A:4 in Supplement No. 1 to Part 740 of the Regulations. *See* 15 C.F.R. § 742.3(a)(1) and Country Group A:4 in Supp. No. 1 to 15 C.F.R. Part 740.

<sup>5</sup> “EAR99” is a designation for items subject to the Regulations but not listed on the CCL. *See* 15 C.F.R. §§ 734.3(c) and 772.1.

5. By selling and then transferring the item to the UAE without the required export license with reason to know that a license was required, MDA Precision committed one violation of Section 764.2(e) of the Regulations.

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Accordingly, MDA Precision is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions<sup>6</sup> including, but not limited to, any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$311,562 per violation,<sup>7</sup> or twice the value of the transaction that is the basis of the violation;<sup>8</sup>
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

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

MDA Precision 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. MDA Precision 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.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should MDA Precision have a proposal to settle this case, MDA Precision should transmit it to the attorneys representing BIS named below.

MDA Precision is further notified that under the Small Business Regulatory Enforcement Flexibility Act, MDA Precision may be eligible for assistance from the Office of the National

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<sup>6</sup> The alleged violations occurred prior to August 13, 2018, the date of enactment of ECRA. *See* note 1, *supra*. Consequently, the potential sanctions are provided for in IEEPA. In situations involving alleged violations that occurred on or after August 13, 2018, the potential sanctions are specified in Section 1760(c) of ECRA.

<sup>7</sup> *See* 15 C.F.R. §§ 6.3(c)(4) and 6.4. This amount is subject to annual increases pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Pub. L. No. 114-74, enacted on November 2, 2015. *See* 86 Fed. Reg. 1,764 (Jan. 10, 2021) (adjusting for inflation the maximum civil monetary penalty under IEEPA from \$307,922 to \$311,562 effective January 15, 2021).

<sup>8</sup> *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).



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, MDA Precision's 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, MD 21202-4022

In addition, a copy of MDA Precision's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Gregory Michelsen and Kimberly Hsu  
Room H-3839  
14th Street and Constitution Avenue, N.W.  
Washington, DC 20230

Gregory Michelsen and Kimberly Hsu are the attorneys representing BIS in this case; any communications that MDA Precision may wish to have concerning this matter should occur through them. Mr. Michelsen and Ms. Hsu may be contacted by telephone at (202) 482-5301.

Sincerely,

John Sonderman  
Director  
Office of Export Enforcement