



LEGAL EASE

AVIATION LAW MADE SIMPLE

BY JASON DICKSTEIN
AEA GENERAL COUNSEL

Exports: A Rapidly Changing Field for the Avionics Community

Exports from the United States are important to the world's economy. For the United States' avionics community, export opportunities can provide the sort of diversification a company needs in times of domestic economic struggles.

Many of the AEA's non-U.S. members are taking an increasing interest in U.S. export laws because they can restrict the ability to obtain avionics and replacement parts made in the United States.

In last month's "Legal Ease" column, we discussed the latest changes to the U.S. State Department regulations and the fact that these changes could have an adverse affect on the export from the U.S. of certain avionics deemed to be "dual-use" articles.

This month, we continue our export odyssey with a look at a few of the details that can help an avionics company export properly, including changes in the shipper's export documentation, basic compliance tips and a strategy for obtaining export assistance from the U.S. government.

No More Paperwork

Don't forget: All of your shipper's export declarations must be filed online via the AES Direct website at www.aesdirect.gov. The implementation date for the new rule requiring online filing of shipper's export declarations was Sept. 30, 2008; so, be certain you are in compliance.

There are severe penalties for failing to use the online system. In addition to the civil penalties, which can run up to \$10,000 per failure (on top of any other export violation penalties that also might be discovered), a failure to file an online shipper's export declaration can lead to a criminal penalty, which includes imprison-

The final rule requiring online filing can be found online at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2008_register&docid=fr02jn08-13.pdf.

ment for up to five years per violation.

In a criminal action, the government also can require the exporter to forfeit to the U.S. the proceeds of the export transaction. Therefore, there is no situation in which it can be "profitable" to circumvent the law.

Check for Prohibitions

One of the first steps in your export inquiry needs to be an examination of the relevant laws that might apply to your proposed export to ensure it meets all of the U.S. export standards.

U.S. export limits tend to be promulgated by three different executive departments, which is one of the issues making export compliance so tricky.

The Treasury Department maintains

lists of prohibited parties and embargoed nations. Then, your export must be accurately characterized as either a Commerce Department-regulated article (Export Administration Regulations) or a State Department-regulated article (International Trade in Arms Regulations).

The standards for this distinction are changing, and they do not appear to be changing in a direction that is favorable for U.S. exporters.

Many avionics and avionics sub-components can be characterized as defense-related articles, subject to the ITARs, which means more significant licensing and registration requirements than those associated with commercial exports. So, the proper analysis of your export is especially important in the avionics community.

Once the export is identified as commercial or defense-related, the next step is to analyze the limits and licensing requirements that might apply to the particular item, relative to the destination and customer, under the regulations of either the State Department or Commerce Department.

This inquiry is important for U.S. companies and non-U.S. companies. In fact, non-U.S. companies can be prosecuted by U.S. authorities for shipping an aircraft component in violation of U.S. laws. This frequently happens when a non-U.S. company sells a U.S.-sourced component to a party who would have been a forbidden

**FOR THE UNITED STATES' AVIONICS COMMUNITY, EXPORT OPPORTUNITIES
CAN PROVIDE THE SORT OF DIVERSIFICATION A COMPANY NEEDS IN TIMES OF
DOMESTIC ECONOMIC STRUGGLES.**

party if it had been shipped as a direct U.S. export.

Financing Your Export Opportunities

Need money to support market penetration strategies or to fund a trade mission overseas? Any company that has been in business, although not necessarily in the exporting business, for at least 12 months and meets the requirements for a Small Business Administration business loan guaranty could be eligible for the SBA's Export Express loan program.

The Export Express program makes loans available to applicants who demonstrate the loan proceeds will enable them to enter a new export market or expand an existing export market. The SBA guaranty level in this program is up to 85 percent. This guaranty encourages lenders to make loans to small business exporters.

The Export Express program is designed to assist current and prospective small exporters, especially those who need revolving lines of credit.

Currently, the maximum loan amount available under the Export Express program is \$250,000. Interest rates on the loan are negotiated between the borrower and the lender, and can be either fixed or variable.

The loan is flexible, allowing a company to use the loan proceeds for most business purposes, including equipment purchases, expansion, inventory, working capital or real estate acquisitions. The maturity of a loan in the program is usually five to 10 years for working capital, 10 to 15 years for machinery and equipment, and up to 25 years for real estate. The maturity for revolving lines of credit cannot exceed five years.

The SBA's Export Express program, first implemented in 1998, was recently extended through Dec. 31, 2009; therefore, export funds will remain available for another year.

The Export Express program also provides technical assistance for companies receiving loans as part of the program. The SBA's U.S. Export Assistance Centers provide assistance.

A representative from one of the

assistance centers contacts the borrower upon approval of the loan to offer assistance and training, including training through the SBA's Export Trade Assistance Partnership, the SBDC International Trade Center, SCORE, the District Export Council or the Export Legal Assistance Network.

The Export Express program comes at a time when the number of small business exporters has grown dramatically. In fact, the value of small business exports grew from \$300 billion in 2002 to \$477 billion in 2007.

The Export Express program is designed to aid these new and expanding small business exporters. If this is a category your company falls into, you might want to look into applying for an Export Express loan.

For more information about the Export Express program, visit the SBA's website at www.sba.gov, under "Special Purpose Loans." □

If you have comments or questions about this article, send e-mails to avionicsnews@aea.net.