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Critical Export Control Issues for Valve Service and Repair Companies

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Export compliance isn't just for valve manufacturers. Many valve service and repair companies (or units of manufacturing companies) handle export-controlled goods, including those designed and manufactured by other companies. Some of those valves are delivered from U.S. addresses, and others come to, or from, non-U.S. locations. Valve repair and service companies (and manufacturers who perform these services) also have service centers located outside the U.S. that may handle valves and related "know how" subject to U.S. export and re-export controls. Some of the valves that service centers handle (and the associated parts and technology) are strictly controlled under U.S. export control laws, requiring companies to obtain proper licenses from the U.S. government or potentially face stiff penalties and fines. In the last two years, eight companies have been subject to fines up to $900,000 in export control cases involving valves and valve components. To comply with U.S. laws and avoid these kinds of penalties, and even potential criminal charges, valve repair and servicing companies need to understand their obligations under U.S. export control laws -- and the export compliance risks presented by handling and shipping export-controlled valves and valve technology.

U.S. export control laws (and laws in the EU, Japan, and many other locations) severely control the export of certain valves and related production, development, and use technology (or "know how"). For example, certain valves with wetted paths made of nickel alloys, nickel/chrome alloys, fluoropolymers (including Teflon®, Viton®, and PVDF), glass, titanium, zirconium, niobium, tantalum, and certain ceramics are controlled for export from the U.S. to over 150 countries, including Mexico, China, Brazil, and India, under the Export Administration Regulations (EAR). Bodies and liners for those valves are also controlled. Similarly, bellows-seal valves made of aluminum or nickel are controlled for export to many destinations, while certain large high pressure valves and certain stainless steel (304 and 316) valves are also subject to export controls and paperwork requirements. When license requirements attach to items, they continue to apply to those items after they are exported from the U.S. For example, if your service facility in Europe needs to ship a U.S.-made body from Europe to Saudi Arabia as a spare or replacement part, you may need a U.S. re-export license (or you many need to consciously use a license exception) before shipping the item.

Valves specifically designed, modified, or prepared for use by the military generally also require an export license before being exported to any country. These controls, mandated under the International Traffic in Arms Regulations (ITAR), often control products that are even slightly modified to comply with military designs. The classic example is a valve that has been modified to meet military shock or vibration testing requirements. Valves specifically destined for a nuclear power plant or other nuclear end uses may require a license from the Commerce Department or the Nuclear Regulatory Commission before being exported to many countries. The know how to develop or make certain nuclear valves also may require approval from the Commerce Department or from the Department of Energy before it may be exported.

The first step to determine your export compliance risk is to examine the classification of the products your company handles and exports. This is not always an easy task. Many repair facilities work on a broad range of valves, some of which were designed and built by other companies. It can also be a fast moving environment, with quick turnarounds demanded to get your customers' critical equipment back up and running. The original manufacturer or customer may not be able to provide you with an export classification, at least not in a timely manner. Frankly, it is surprising how often manufacturers are not familiar with export control requirements. But their ignorance of the rules does not relieve your company from compliance. You don't need to know anything about the rules or about the classification of the valve to get a penalty if an error is made. The party shipping the valve is responsible for compliance. It is therefore critically important that employees are trained to quickly spot controlled products and destinations and gather the information required to make an informed compliance decision. Working on a high nickel content valve destined for China? Check export compliance because you could well need a license or a license exception to make that shipment.

Again, export controls don't just extend to physical products – they also apply to technology, or the "know how" required to develop, produce, or even sometimes use controlled products. Regulations may require you to obtain an export license before exporting such information. The regulations may also require a specific type of approval before releasing controlled technology to foreign nationals in the United States. If you have engineers, machinists, or others from non-U.S. locations working for your company, you might need an export license for them to work on certain projects. You should also track what kinds of information your company receives and transmits overseas (or releases to foreign nationals in the U.S.) to avoid running afoul of technology controls and associated penalties.

It's important not to just shrug off export compliance if your company doesn't export products frequently or generally deals with non-controlled products. A lot of companies do this, but it is tantamount to ignoring health and safety rules or environmental protection regulations. Penalties for violations are significant under current rules with a maximum civil penalty of $250,000 for a single violation (violations rarely occur just once). Willful violations can result in criminal penalties of up to $1 million per occurrence and can lead to prison time. Even small company executives in the valve industry have gone to jail for violations of U.S. export regulations. Remember, penalties can be enforced regardless of whether anyone knew about the regulations or the specific controls on a valve, component, or technology.

Other export controls also apply to valve service and repair companies. For example, you may not transact with individuals or companies that the U.S. government has black-listed and included on a number of "prohibited party" lists. Similarly, multiple agencies strictly control exports to and transactions with sanctioned countries, primarily Cuba, Iran, North Korea, Sudan, and Syria. Many oil and gas entities in Belarus are also sanctioned and subject to licensing requirements. There are also a series of end use prohibitions in the EAR that require a license before exporting any item for use in certain applications, including certain nuclear, weapons, and missile uses. Companies can comply with these requirements by implementing a screening process that checks for prohibited parties and sanctioned destinations and by training employees to spot red flags that a prohibited party or end use may be involved in a transaction.

The key to protecting your company is to implement a simple and effective compliance system. That system will identify and classify the products you deal with and determine what controlled technology you send and receive (if any). It will include a policy statement on export controls, and it will provide for training of employees so that they can spot issues effectively and efficiently. These are the foundation blocks of a successful export compliance program for service and repair companies. Other pieces to an effective system are important as well, but if you don't have these basic elements in place, your company and its managers are taking a risky path.

Robert Slack and Eric McClafferty provide advice to valve companies regarding product classification and other aspects of export compliance. They provide advice regarding international trade issues to companies in all sectors of the fluid handling industry, among many other industries. They are happy to take questions regarding the controls described above and can be reached at (202) 342-8841, or emcclafferty@kelleydrye.com. Eric acts as counsel to the Hydraulic Institute and Valve Manufacturing Association International Trade Task Force, which focuses on export control, import, anti-bribery, and other trade compliance issues of concern to the pump and valve industries.