

UNITED STATES OF AMERICA  
DEPARTMENT OF COMMERCE

In the Matter of

**Climax Molybdenum Marketing Company**

**Case No. 10-02**

**ORDER**

The Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce ("BIS"), has determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. §§2401 – 2420 (2000)) (the "Act")<sup>1</sup> and the Export Administration Regulations (currently codified at 15 C.F.R. Part 730 – 774 (2012)) (the "Regulations"), against Climax Molybdenum Marketing Company ("Climax"), a domestic concern, organized under the laws of the United States and doing business in the State of Arizona, based on allegations set forth in the Proposed Charging Letter, dated August 3, 2012, that alleged that Climax committed three violations of the Regulations.

<sup>1</sup> 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 August 15, 2012 (77 Fed. Reg. 49699 (August 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq.).

Specifically, the charges are:

1. *One violations of 15 C.F.R. §760.2(d) – Furnishing Information about Business Relationships with Boycotted Countries or Blacklisted Persons:*

During the period January 2008 through April 2008, Climax engaged in transactions involving the sale and/or transfer of goods or services (including information) from the United States to Kuwait, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations. In connection with these activities, Climax, on one occasion, with intent to comply with further or support an unsanctioned foreign boycott, furnished information concerning its or another person's business relationships with another person who is known or believed to be restricted from having any business relationship with or in a boycotting country, an activity prohibited by Section 760.2(d) of the Regulations, and not excepted.

2. *Two violations of 15 C.F.R. §760.5 – Failing to Report the Receipt of a Request to Engage in a Restrictive Trade Practice or Foreign Boycott Against a Country Friendly to the United States:*

During the period January through April 2008, Climax engaged in transactions involving the sale and/or transfer of goods or services (including information) from the United States to Kuwait, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations. In connection with these activities, Climax, on two occasions, received a request to take an action which would have the effect of furthering

or supporting a restrictive trade practice or unsanctioned foreign boycott.

Climax failed to report to the Department of Commerce its receipts of these requests, as required by Section 760.5 of the Regulations.

BIS and Climax have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby the parties have agreed to settle this matter in accordance with the terms and conditions set forth therein and the terms of the Settlement Agreement have been approved by me.

IT IS THEREFORE ORDERED THAT:

FIRST, a civil penalty of \$9,000 is assessed against Climax and shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment of this sum shall be made in the manner specified in the attached instructions.


SECOND, pursuant to the Debt Collections Act of 1982, as amended (31 U.S.C. §§3701 – 3720E (1983 and Supp. 2001)), 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, Climax will be assessed, in addition to the full amount of the penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, the timely payment of the sum of \$9,000 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 Climax.

Accordingly, if Climax should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Climax's export privileges for a period of one year from the date of the entry of this Order.

FOURTH, the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public, and a copy of this Order shall be served upon Climax.

This Order, which constitutes the final agency action in this matter, is effective immediately.

  
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David W. Mills  
Assistant Secretary of Commerce for  
Export Enforcement

Entered this 9<sup>th</sup> day of November, 2012

Attachments



## NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collections Act of 1982, as amended (31 U.S.C. §§3701 – 3702E (1983 and Supp. 2001)) and the Federal Claims Collection Standards (65 Fed. Reg. 70390 – 70406, November 22, 2000, to be codified at 31 C.F.R. Parts 900 – 904), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C. §3717 and 31 C.F.R. §901.9.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C. §3717 and 31 C.F.R. §901.9.

The foregoing constitutes the initial written notice and demand to respondent in accordance with Section 901.2 of the Federal Claims Collections Standards (31 C.F.R. §901.2(b)).

INSTRUCTION FOR PAYMENT OF SETTLEMENT AMOUNT

1. The check should be made payable to:

U.S. Department of Commerce

2. The check should be mailed to:

U.S. Department of Commerce  
Bureau of Industry and Security  
**Room 6622**

14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Attention: Francine Dodson

In the Matter of

Case No. 10-02

## SETTLEMENT AGREEMENT

This agreement is made by and between Climax Molybdenum Marketing Company (“Climax”), a domestic concern, organized under the laws of the United States and doing business in the State of Arizona, and the Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce (“BIS”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Part 730 – 774 (2012)) (the “Regulations”) issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. §§2401 – 2420 (2000)) (the “Act”)¹.

<sup>1</sup> 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 August 15, 2012 (77 Fed. Reg. 49699 (August 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq.).

WHEREAS, BIS has notified Climax of its intention to initiate an administrative proceeding against Climax pursuant to the Act and the Regulations by issuing the Proposed Charging Letter dated August 3, 2012, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, Climax has reviewed the Proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; Climax fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of its rights; and Climax states that no promises or representations have been made to it other than the agreements and considerations herein expressed; and

WHEREAS, Climax neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, Climax agrees to be bound by the appropriate Order ("Order") when entered;

NOW THEREFORE, Climax and BIS agree as follows:

1. Under the Act and the Regulations, BIS has jurisdiction over Climax with respect to the matters alleged in the Proposed Charging Letter.



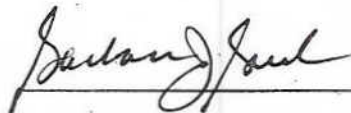
2. BIS will impose a civil penalty in the amount of \$9,000. Climax will pay to the U.S. Department of Commerce, within 30 days from the date of entry of the Order, and in accordance with the terms of the Order, when entered, the amount of \$9,000 in complete settlement of all matters set forth in the Proposed Charging Letter.
3. The timely payment of the amount agreed to in paragraph 2 is hereby made a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Climax. Failure to make payment of this amount shall result in the denial of all of Climax's export privileges for a period of one year from the date of entry of the Order.
4. Subject to the approval of this Settlement Agreement, pursuant to paragraph 9 hereof, Climax hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the Order, when entered) including, without limitation, any right to:
  - A. An administrative hearing regarding the allegations in the Proposed Charging Letter;
  - B. Request a refund of the funds paid by Climax pursuant to this Settlement Agreement and the Order, when entered; or
  - C. Seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.

5. BIS, upon entry of the Order, will not initiate any administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against Climax with respect to any violation of Section 8 of the Act or Part 760 of the Regulations arising out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by BIS in the course of its investigation.
6. Climax understands that BIS will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the Order, when entered.
7. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by Climax that it has violated the Regulations, or an admission of the truth of any allegation contained in the Proposed Charging Letter or referred to in this Settlement Agreement. Therefore, if this Settlement Agreement is not accepted and the Order not entered by the Assistant Secretary for Export Enforcement, BIS may not use this Settlement Agreement against Climax in any administrative or judicial proceeding.
8. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement bind, constrain or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and

circumstances herein addressed. This paragraph shall not limit Climax's right to challenge any action brought by any other agency based on a referral by BIS or any employee thereof, in contravention of paragraph 5 of this Settlement Agreement.

9. This Settlement Agreement will become binding on BIS only when approved by the Assistant Secretary for Export Enforcement by entering the Order.

CLIMAX MOLYBDENUM MARKETING COMPANY



Barbara J. Buck  
Vice President

DATE: October 16, 2012

U.S. DEPARTMENT OF COMMERCE



Edward O. Weant III  
Director  
Office of Antiboycott Compliance

DATE: November 7, 2012

Attachments



UNITED STATES DEPARTMENT OF COMMERCE  
Bureau of Industry and Security  
Washington, D.C. 20230

PROPOSED CHARGING LETTER

August 3, 2012

Climax Molybdenum Marketing Company  
333 North Central Avenue  
Phoenix, AZ 85015

Attention: Chris Gnann  
Customer Service Manager

Case No. 10-02

Gentlemen/Ladies:

We, the Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce ("BIS"), have reason to believe that you, Climax Molybdenum Marketing Company, on three occasions, have violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2012)) (the "Regulations")<sup>1</sup>, which are issued under the authority of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§2401-2420 (2000)) (the "Act")<sup>2</sup>.

We charge that you committed one violation of Section 760.2(d) of the Regulations, in that, on one occasion, with intent to comply with, further or support an unsanctioned foreign boycott, you furnished information concerning your or another person's business relationships with another person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

We also charge that you committed two violations of Section 760.5 of the Regulations, in that, on two occasions, you failed to report to the Department of Commerce your receipt of a request to engage in a restrictive trade practice or boycott, as required by the Regulations.

We allege that:

You, Climax Molybdenum Marketing Company, are, and at all times relevant were, a domestic concern, organized under the laws of the United States and doing business in the State of Arizona. As such, you are a United States person, as defined in Section 760.1(b) of the Regulations.

<sup>1</sup> The transactions and violations alleged occurred during the year 2008. The Regulations governing the violations at issue are found in the 2008 version of the Code of Federal Regulations (15 C.F.R. Parts 730 – 774 (2008)). The prior years' Regulations are substantially the same as the 2012 version of the Regulations which govern the procedural aspects of this matter.

<sup>2</sup> 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 August 12, 2011 (76 Fed. Reg. 50661 (August 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §1701 et seq.).





During the period January 2008 through April 2008, you engaged in transactions involving the sale and/or transfer of goods or services (including information) from the United States to Kuwait, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations.

**Charge 1                    (15 C.F.R. §760.2(d) – Furnishing Information about Business Relationships with Boycotted Countries or Blacklisted Persons)**

In connection with the activities referred to above, on or about May 2, 2008, on one occasion, you furnished to persons in Kuwait information, as described in Table A, which is attached and incorporated herein by this reference, concerning your or another person's business relationships with another person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

Providing the information described in Table A, with intent to comply with, further or support an unsanctioned foreign boycott, is an activity prohibited by Section 760.2(d) of the Regulations, and not excepted. We therefore charge you with one violation of Section 760.2(d).

**Charges 2 – 3            (15 C.F.R. §760.5 – Failing to Report the Receipt of a Request to Engage in a Restrictive Trade Practice or Foreign Boycott Against a Country Friendly to the United States)**

In connection with the activities referred to above, during the period January 2008 through April 2008, on two occasions, you received a request as described in Table B, which is attached and incorporated herein by this reference, to take an action which would have the effect of furthering or supporting a restrictive trade practice or unsanctioned foreign boycott.

Section 760.5 of the Regulations requires United States persons to report to the Department of Commerce their receipts of such requests. You failed to report to the Department of Commerce your receipts of these requests.

By failing to report your receipts of these requests, described in Table B, as directed by Section 760.5 of the Regulations, you are in violation of Section 760.5. We therefore charge you with two violations of Section 760.5 of the Regulations.

Accordingly, administrative proceedings are instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions.<sup>3</sup>

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<sup>3</sup> Administrative sanctions may include any or all of the following:

- a. A maximum civil penalty of the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation (see International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007));
- b. Denial of export privileges (see §764.3(a)(2) of the Regulations); and/or
- c. Exclusion from practice before BIS (see §764.3(a)(3) of the Regulations).



You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer. Under Sections 766.3(a) and 766.4 of the Regulations, you are entitled to be represented by counsel or other authorized representative who has power of attorney to represent you and, under Section 766.18 of the Regulations you may also seek a settlement agreement without a hearing.

Under the Small Business Regulatory Enforcement Flexibility Act, you may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter.<sup>4</sup>

If you fail to answer the allegations contained in this letter within thirty (30) days after service as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

As provided in Section 766.3 of the Regulations, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between BIS and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter.

Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

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

Attention: Administrative Law Judge

Also, in accordance with the instructions in Section 766.5(b) of the Regulations, a copy of your answer should also be served on the Bureau of Industry and Security at the following address:

Office of the Chief Counsel for Industry and Security  
U.S. Department of Commerce  
Room H-3839  
14<sup>th</sup> Street & Constitution Avenue, NW  
Washington, D.C. 20230

Sincerely,

Edward O. Weant III  
Director  
Office of Antiboycott Compliance

Enclosures

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<sup>4</sup> To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

**TABLE A**

Schedule of Alleged Violations of Section 760.2(d)  
**FURNISHING INFORMATION ABOUT BUSINESS RELATIONSHIPS  
WITH BOYCOTTED COUNTRIES OR BLACKLISTED PERSONS**

**CLIMAX MOLYBDENUM MARKETING COMPANY**  
Case No. 10-02

<b>Item</b>	<b>Transaction File(s)</b>	<b>Document Furnished</b>	<b>Date of Furnishing</b>	<b>Boycotting Country</b>	<b>Information Furnished</b>
1	PO # FP-180018	Certificate	May 2, 2008	Kuwait	WE...AGENTS FOR AND ON BEHALF OF MASTER SENATOR LINES GMBH., HEREWITH CERTIFY THAT THE CARRYING VESSEL IS ALLOWED TO ENTER KUWAITI PORT/PORT OF DISCHARGE.

**TABLE B**

Schedule of Alleged Violations of Section 760.5  
**FAILURE TO REPORT RECEIPTS OF BOYCOTT REQUESTS**

**CLIMAX MOLYBDENUM MARKETING COMPANY**  
Case No. 10-02

Item	Transaction Reference/Letter of Credit #	Date Request Received	Date Reporting Violation*	Boycotting Country	Boycott Request
1	PO # FP-18009 LC0384358/000023	01/31/08	04/30/08	Kuwait	DOCUMENTS REQUIRED... 4) BILLS OF LADING TO MENTION... (C) THE CARRYING VESSEL IS ALLOWED TO ENTER KUWAITI PORTS/PORT OF DISCHARGE. A SEPARATE DECLARATION TO THIS EFFECT FROM THE CAPTAIN OR OWNER OR AGENT OF THE VESSEL IS ACCEPTABLE.
2	PO # FP-180018 LC0384358/000821	04/09/08	07/31/08	Kuwait	DOCUMENTS REQUIRED... 4) BILLS OF LADING TO MENTION... (C) THE CARRYING VESSEL IS ALLOWED TO ENTER KUWAITI PORTS/PORT OF DISCHARGE. A SEPARATE DECLARATION TO THIS EFFECT FROM THE CAPTAIN OR OWNER OR AGENT OF THE VESSEL IS ACCEPTABLE.

\* As provided in Section 760.5(b)(4)(i) of the Regulations, where the person receiving the request is a United States person located in the United States, each report of requests must be postmarked by the last day of the month following the calendar quarter in which the request was received.