

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

In the Matter of:

Cryomech, Inc.
113 Falso Drive
Syracuse, NY 13211

Respondent

**ORDER RELATING TO
CRYOMECH, INC.**

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Cryomech, Inc., of Syracuse, New York (“Cryomech”), of its intention to initiate an administrative proceeding against Cryomech pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),² through the issuance of a Proposed Charging Letter to Cryomech that alleges that Cryomech committed one violation of the Regulations. Specifically, the charge is:

Charge 1 15 C.F.R. § 764.2(a): Engaging in Prohibited Conduct

On one occasion, on or about August 16, 2012, Cryomech engaged in conduct prohibited by the Regulations when it exported an LNP-20 Liquid Nitrogen Plant, an item subject to

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2016). The charged violation occurred in 2012. The Regulations governing the violation at issue are found in the 2012 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2016 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. §§ 4601-4623 (Supp. III 2015). Since August 21, 2001, the Act has been in lapse and 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, the most recent being that of August 4, 2016 (81 Fed. Reg. 52,587 (Aug. 8, 2016)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq. (2012)).

the Regulations, designated EAR99,³ and valued at \$33,587, from the United States to the All-Russian Scientific Research Institute of Experimental Physics (VNIIEF) a.k.a Russian Federal Nuclear Center-VNIIEF (RFNC-VNIIEF) in Sarov, Russia, without the required BIS license.

Pursuant to Section 744.11 of the Regulations, a license is required to export, reexport, or transfer (in-country) items subject to the Regulations to an entity listed in Supplement No. 4 to Part 744 of the Regulations (the "Entity List") to the extent specified on the Entity List. At all times pertinent hereto, VNIIEF and its RFNC-VNIIEF alias (collectively, "VNIIEF") were listed on the Entity List, and a BIS license was required to export any item subject to the Regulations to that entity. *See* 15 C.F.R. § 744.11 and Supp. No. 4 to 15 C.F.R. Part 744 (2012).⁴ However, Cryomech did not seek or obtain a license for the export of the item to VNIIEF.

By exporting an item subject to the Regulations to VNIIEF without the required BIS license, Cryomech committed one violation of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Cryomech 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, Cryomech shall be assessed a civil penalty in the amount of \$28,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

³ EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2012-2016).

⁴ VNIIEF was originally included on the Entity List beginning in June 1997, under the name All-Union Scientific Research Institute of Experimental Physics. *See* 62 Fed. Reg. 35,334 (June 30, 1997). The listing was updated to revise the name to All-Russian Scientific Research Institute of Experimental Physics (VNIIEF) in May 2011, at the same time the RFNC-VNIIEF alias was added. *See* 76 Fed. Reg. 29,998 (May 24, 2011). The listing was also made applicable at that time to any other "nuclear-related entities, institutes, or centers located in Sarov (Kremlev)." *See id.* VNIIEF remains listed on the Entity List. In addition to the RFNC-VNIIEF alias, the entry lists other VNIIEF aliases and, as noted above, applies to all nuclear-related entities, institutes, or centers located in Sarov (Kremlev), Russia. *See* Supp. No. 4 to 15 C.F.R. Part 744 (2016).

SECOND, 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, Cryomech 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.

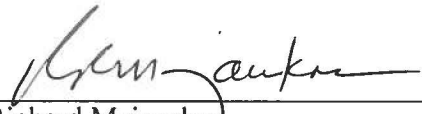
THIRD, Cryomech shall complete an external audit of its export controls compliance program. Cryomech shall hire an unaffiliated third-party consultant with expertise in U.S. export control laws to conduct the external audit of its compliance with U.S. export control laws (including recordkeeping requirements), with respect to all exports and reexports that are subject to the Regulations. The results of the audit, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, 1200 South Avenue, Suite 104, Staten Island, NY 10314 ("BIS New York Field Office"). The audit shall cover the period from June 1, 2017, through and including May 31, 2018, and the related report shall be due to the BIS New York Field Office no later than August 31, 2018. Said audit shall be in substantial compliance with the Export Management and Compliance Program (EMCP) sample audit module, and shall include an assessment of Cryomech's compliance with the Regulations. The EMCP sample audit module is available on the BIS web site at <https://www.bis.doc.gov/index.php/forms-documents/pdfs/1641-ecp/file>. In addition, where said audit identifies actual or potential violations of the Regulations, Cryomech must promptly provide copies of the pertinent invoices, waybills, and other export control documents and supporting documentation to the BIS New York Field Office.

FOURTH, the full and timely payment of the civil penalty, completion of the audit, and submission of the audit results 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 Cryomech. Accordingly, if Cryomech should fail to fully or timely pay the civil penalty, complete the audit, or submit the audit results, the undersigned may issue an order denying all of Cryomech's export privileges under the Regulations for a period of one year from the date of failure to fully and timely make such payment, complete the audit, or submit the audit results.

FIFTH, Cryomech shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or this Order. The foregoing does not affect Cryomech's testimonial obligations in any 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.


Richard Majauskas
Acting Assistant Secretary of Commerce
for Export Enforcement

Issued this 9th day of June, 2017.

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

In the Matter of:

Cryomech, Inc.
113 Falso Drive
Syracuse, NY 13211

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Cryomech, Inc., of Syracuse, New York ("Cryomech"), 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"),¹ issued pursuant to the Export Administration Act of 1979, as amended (the "Act").²

WHEREAS, BIS has notified Cryomech of its intentions to initiate an administrative proceeding against Cryomech, pursuant to the Act and the Regulations;

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

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2016). The charged violation occurred in 2012. The Regulations governing the violation at issue are found in the 2012 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2016 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. §§ 4601-4623 (Supp. III 2015). Since August 21, 2001, the Act has been in lapse and 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, the most recent being that of August 4, 2016 (81 Fed. Reg. 52,587 (Aug. 8, 2016)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq. (2012)).

Charge 1 15 C.F.R. § 764.2(a): Engaging in Prohibited Conduct

On one occasion, on or about August 16, 2012, Cryomech engaged in conduct prohibited by the Regulations when it exported an LNP-20 Liquid Nitrogen Plant, an item subject to the Regulations, designated EAR99,³ and valued at \$33,587, from the United States to the All-Russian Scientific Research Institute of Experimental Physics (VNIIEF) a.k.a Russian Federal Nuclear Center-VNIIEF (RFNC-VNIIEF) in Sarov, Russia, without the required BIS license.

Pursuant to Section 744.11 of the Regulations, a license is required to export, reexport, or transfer (in-country) items subject to the Regulations to an entity listed in Supplement No. 4 to Part 744 of the Regulations (the "Entity List") to the extent specified on the Entity List. At all times pertinent hereto, VNIIEF and its RFNC-VNIIEF alias (collectively, "VNIIEF") were listed on the Entity List, and a BIS license was required to export any item subject to the Regulations to that entity. *See* 15 C.F.R. § 744.11 and Supp. No. 4 to 15 C.F.R. Part 744 (2012).⁴ However, Cryomech did not seek or obtain a license for the export of the item to VNIIEF.

By exporting an item subject to the Regulations to VNIIEF without the required BIS license, Cryomech committed one violation of Section 764.2(a) of the Regulations.

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

³ EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2012-2016).

⁴ VNIIEF was originally included on the Entity List beginning in June 1997, under the name All-Union Scientific Research Institute of Experimental Physics. *See* 62 Fed. Reg. 35,334 (June 30, 1997). The listing was updated to revise the name to All-Russian Scientific Research Institute of Experimental Physics (VNIIEF) in May 2011, at the same time the RFNC-VNIIEF alias was added. *See* 76 Fed. Reg. 29,998 (May 24, 2011). The listing was also made applicable at that time to any other "nuclear-related entities, institutes, or centers located in Sarov (Kremlev)." *See id.* VNIIEF remains listed on the Entity List. In addition to the RFNC-VNIIEF alias, the entry lists other VNIIEF aliases and, as noted above, applies to all nuclear-related entities, institutes, or centers located in Sarov (Kremlev), Russia. *See* Supp. No. 4 to 15 C.F.R. Part 744 (2016).

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

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

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

WHEREAS, Cryomech 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 Cryomech, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanctions shall be imposed against Cryomech:

a. Cryomech shall be assessed a civil penalty in the amount of \$28,000, the payment of which 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.

b. Cryomech shall complete an external audit of its export controls compliance program. Cryomech shall hire an unaffiliated third-party consultant with expertise in U.S. export control laws to conduct the external audit of its compliance with U.S. export control laws (including recordkeeping

requirements), with respect to all exports and reexports that are subject to the Regulations. The results of the audit, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, 1200 South Avenue, Suite 104, Staten Island, NY 10314 ("BIS New York Field Office"). The audit shall cover the period from June 1, 2017, through and including May 31, 2018, and the related report shall be due to the BIS New York Field Office no later than August 31, 2018. Said audit shall be in substantial compliance with the Export Management and Compliance Program (EMCP) sample audit module, and shall include an assessment of Cryomech's compliance with the Regulations. The EMCP sample audit module is available on the BIS web site at <https://www.bis.doc.gov/index.php/forms-documents/pdfs/1641-ecp/file>. In addition, where said audit identifies actual or potential violations of the Regulations, Cryomech shall promptly provide copies of the pertinent invoices, waybills, and other export control documents and supporting documentation to the BIS New York Field Office.

c. The full and timely payment of the civil penalty agreed to in Paragraph 2.a, and the full and timely completion of the audit and submission of the audit results 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 Cryomech. Failure to fully or timely pay the civil penalty, complete the audit, or submit the audit results may result in the denial of all of Cryomech's export privileges under the Regulations

for a period of one year from the date of the failure to fully and timely make such payment, complete the audit, or submit the audit results.

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, Cryomech 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 issued), including, without limitation, any right to: (a) receive 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; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order. Cryomech 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 transaction identified in the Proposed Charging Letter, and 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 Cryomech pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement or has completed the audit and submitted the audit results agreed to in Paragraph 2.b.

4. Cryomech shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Cryomech's testimonial obligations in any 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 and completion of the audit and submission of the audit results as set forth in Paragraph 2.b, BIS will not initiate any further administrative proceeding against Cryomech in connection with any violation of the Act or 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 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.

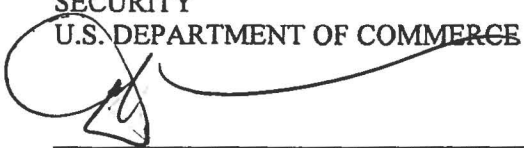
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement or the Order serve to bind, constrain, or otherwise limit any action by any other agency 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 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. If the Order issues, BIS will make the Proposed Charging Letter, this Agreement, and the Order 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.

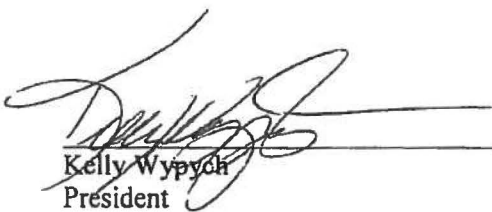
BUREAU OF INDUSTRY AND
SECURITY
U.S. DEPARTMENT OF COMMERCE



Douglas R. Hassebrock
Director of Export Enforcement

Date: 9 JUN, 2017

CRYOMECH, INC.

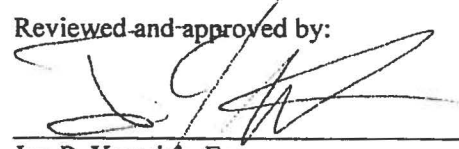


Kelly Wypych
President

Cryomech, Inc.

Date: June 1, 2017

Reviewed and approved by:



Jon P. Yormick, Esq.
Law Offices of Jon P. Yormick Co. LPA
Counsel for Cryomech, Inc.

Date: JUN 1, 2017

PROPOSED CHARGING LETTER

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Cryomech Inc.
113 Falso Drive
Syracuse, NY 13211

Attention: Kelly Wypych, President

Dear Ms. Wypych,

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Cryomech, Inc., of Syracuse, New York (“Cryomech”), has violated the Export Administration Regulations (the “Regulations”),¹ which issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that Cryomech committed the following violation:

Charge 1 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct

On one occasion, on or about August 16, 2012, Cryomech engaged in conduct prohibited by the Regulations when it exported an LNP-20 Liquid Nitrogen Plant, an item subject to the Regulations, designated EAR99,³ and valued at \$33,587, from the United States to the All-Russian Scientific Research Institute of Experimental Physics (VNIIEF) a.k.a Russian Federal Nuclear Center-VNIIEF (RFNC-VNIIEF) in Sarov, Russia, without the required BIS license.

Pursuant to Section 744.11 of the Regulations, a license is required to export, reexport, or transfer (in-country) items subject to the Regulations to an entity listed in Supplement No. 4 to Part 744 of the Regulations (the “Entity List”) to the extent specified on the Entity List. At all times pertinent hereto, VNIIEF and its RFNC-VNIIEF alias (collectively, “VNIIEF”) were listed on the Entity List, and a BIS license was required to export any item subject to the Regulations to that entity. *See* 15 C.F.R. § 744.11 and

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2016). The violation alleged occurred in 2012. The Regulations governing the violation at issue are found in the 2012 version of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2012). The 2016 Regulations govern the procedural aspects of this case.

² 50 U.S.C. §§ 4601-4623 (available at <http://uscode.house.gov/>). 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 4, 2016 (81 Fed. Reg. 52587 (Aug. 8, 2016)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.* (2012)).

³ EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2012-2016).

Supp. No. 4 to 15 C.F.R. Part 744 (2012).⁴ However, Cryomech did not seek or obtain a license for the export of the item to VNIIEF.

By exporting an item subject to the Regulations to VNIIEF without the required BIS license, Cryomech committed one violation of Section 764.2(a) of the Regulations.

* * * * *

Accordingly, Cryomech 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, but not limited to, any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$289,238 per violation,⁵ or twice the value of the transaction that is the basis of the violation;⁶
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

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

⁴ VNIIEF was originally included on the Entity List beginning in June 1997, under the name All-Union Scientific Research Institute of Experimental Physics. *See* 62 Fed. Reg. 35,334 (June 30, 1997). The listing was updated to revise the name to All-Russian Scientific Research Institute of Experimental Physics (VNIIEF) in May 2011, at the same time the RFNC-VNIIEF alias was added. *See* 76 Fed. Reg. 29,998 (May 24, 2011). The listing was also made applicable at that time to any other “nuclear-related entities, institutes, or centers located in Sarov (Kremlev).” *See id.* VNIIEF remains listed on the Entity List. In addition to the RFNC-VNIIEF alias, the entry lists other VNIIEF aliases and, as noted above, applies to all nuclear-related entities, institutes, or centers located in Sarov (Kremlev), Russia. *See* Supp. No. 4 to 15 C.F.R. Part 744 (2016).

⁵ *See* 15 C.F.R. § 6.3(b)(4). This amount is subject to annual increases pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015.

⁶ *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

Cryomech 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. Cryomech 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 Cryomech have a proposal to settle this case, Cryomech should transmit it to the attorneys representing BIS named below.

Cryomech is further notified that under the Small Business Regulatory Enforcement Flexibility ACT, Cryomech 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 U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Cryomech'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, Maryland 21202-4022

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

Chief Counsel for Industry and Security
Attention: Zachary Klein
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

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

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement