

Bureau of Industry and Security Developing a Condensate Policy

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On December 30, 2014, the U.S. Department of Commerce Bureau of Industry and Security (BIS) provided policy guidance on exports of lease condensate by issuing a set of Frequently Asked Questions (FAQs) on crude oil and petroleum products. As a crude oil product, export of lease condensate is normally prohibited. Recently, however, there have been several requests to classify lease condensate that has had some degree of processing as a "petroleum product," which would generally allow the condensate to be exported. This has generally caused a fair amount of confusion in the industry, resulting in the publication of the guidance in the form of frequently asked questions.

BIS typically has several options for providing guidance. These options include formally revising the regulations, with notice and comment; providing guidance or a regulatory interpretation that may involve notice and comment, such as a policy bulletin; or issuing a set of FAQs. In this case, BIS took the third approach and issued FAQ guidance on the definitions and export restrictions applicable to crude oil and petroleum products. On several hot-button issues such as the Russia sanctions, BIS has issued FAQ guidance rather than publishing a formal proposed rule or policy bulletin.

The recently issued FAQs provide some guidance as to how BIS will determine whether liquid hydrocarbons that have been processed through a crude oil distillation tower can be classified for export purposes as petroleum products instead of crude oil. Generally, as the FAQs state, there must be "material processing" through a crude oil distillation tower in order for a product to qualify as a "petroleum product" under the regulations. If there is no processing in the distillation tower, or the processing is *de minimis*, the product will be

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classified as crude oil. Notably, BIS states that crude oil processed through equipment that utilizes pressure reduction alone to separate vapors from liquid or pressure changes at a uniform temperature (e.g., flash drums with heater treaters or separators) remains classified as crude oil.

In point four of the FAQs, BIS provides some of the specific factors that it considers when reviewing commodity classification requests and determining whether a product has had material processing through a crude oil distillation tower, including:

- Whether the distillation process materially transforms the crude oil, by using heat to induce evaporation and condensation, into liquid streams that are chemically distinct from the crude oil input;
- The change in API gravity between the input and the output of the process;
- The change in percentage of different types of hydrocarbons between the input and the output of the process;
- Whether the streams resulting from distillation have purposes besides simply allowing the product to be classified as an exportable petroleum product, such as use as petrochemical feedstock, diluent, and gasoline blendstock;
- Whether the distillation process utilizes temperature gradients and has significant internal structures, such as trays or packing, and differentiated output streams; and
- Whether the distillation uses towers with more mechanical complexity and heat, higher residence time, internal structures that promote condensation and better separation, and a consistent quality liquid streams (*i.e.*, cuts or fractions) than equipment used to separate vapors and liquids for transportation needs.

BIS notes that these factors are not exhaustive, which leaves significant wiggle room to review the specific facts and circumstances of each commodity classification request. Nevertheless, these factors appear to be more restrictive than public characterizations previously reported in the press.