



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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

E.A. Fischione Instruments, Inc.
9003 Corporate Circle
Export, Pennsylvania 15632

Attn: Paul E. Fischione
President

Dear Mr. Fischione:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that E.A. Fischione Instruments, Inc. of Export, Pennsylvania ("Fischione") has committed one violation of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that Fischione committed the following violation:

Charge 1 15 C.F.R. § 764.2(c) - Attempted Export of a Plasma Cleaner to an Organization in India on the Entity List Without the Required Department of Commerce License

On or about May 27, 2004, Fischione attempted to violate the Regulations by attempting to export a plasma cleaner, an item subject to the Regulations (EAR99),³ from the United States to an organization in India on BIS' Entity List without the Department of Commerce license

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). The 2004 Regulations govern the violation at issue and set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. 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 6, 2004, (69 *Fed. Reg.* 48763 (August 10, 2004)), continues the Regulations in effect under IEEPA.

³ The term "EAR99" refers to items subject to the Regulations which are not listed on the Commerce Control List. *See* 15 C.F.R. § 734.3(c).



required by Section 744.1 of the Regulations.⁴ In so doing, Fischione committed one violation of Section 764.2(c) of the Regulations.

Accordingly, Fischione 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 any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation;⁵

Denial of export privileges; and/or

Exclusion from practice before BIS.

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

Fischione 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. Fischione 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 Fischione have a proposal to settle this case, Fischione or its representative should transmit it to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matter set forth in this letter. Accordingly, Fischione's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

⁴ The Entity List is set forth in Supplement 1 to Part 744 of the Regulations.

⁵ *See* 15 C.F.R. § 6.4(a)(2).

E.A. Fischione Instruments, Inc.
Proposed Charging Letter
Page 3 of 3

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

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

Chief Counsel for Industry and Security
Attention: David C. Recker
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

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

Sincerely,

Acting Director
Office of Export Enforcement

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

In the Matter of:)
)
E.A. Fischione Instruments, Inc.)
9003 Corporate Circle)
Export, Pennsylvania 15632,)
)
Respondent.)
)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, E.A. Fischione Instruments, Inc. (“Fischione”), and the Bureau of Industry and Security, United States Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2004)) (“Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),²

¹ The 2004 Regulations govern the violation at issue and set forth the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. 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), as extended by the Notice of August 6, 2004 (69 *Fed. Reg.* 48763 (August 10, 2004)), has continued the Regulations in effect under the IEEPA.

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

WHEREAS, BIS has issued a proposed charging letter to Fischione that alleged that Fischione committed one violation of the Regulations, specifically:

1. *15 C.F.R. § 764.2(c) - Attempted Export of a Plasma Cleaner to an Organization in India on the Entity List Without the Required Department of Commerce License:* On or about May 27, 2004, Fischione attempted to violate the Regulations by attempting to export a plasma cleaner, an item subject to the Regulations (EAR99),³ from the United States to an organization in India on BIS' Entity List without the Department of Commerce license required by Section 744.1 of the Regulations.⁴

WHEREAS, Fischione has reviewed the proposed charging letter and is aware of the allegation made against it and the administrative sanctions which could be imposed against it if the allegation is found to be true;

WHEREAS, Fischione fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if she approves this Agreement as the final resolution of this matter;

³ The term "EAR99" refers to items subject to the Regulations which are not listed on the Commerce Control List. *See* 15 C.F.R. § 734.3(c).

⁴ The Entity List is set forth in Supplement 1 to Part 744 of the Regulations.

WHEREAS, Fischione enters into this Agreement voluntarily and with full knowledge of its rights;

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

WHEREAS, Fischione neither admits nor denies the allegation contained in the proposed charging letter;

WHEREAS, Fischione wishes to settle and dispose of the matter alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Fischione agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Fischione, under the Regulations, in connection with the matter alleged in the proposed charging letter.

2. The following sanction shall be imposed against Fischione in complete settlement of the violation of the Regulations set forth in the proposed charging letter:

- a. Fischione shall be assessed a civil penalty in the amount of \$6,300 which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order;
- b. The timely payment of the civil penalty agreed to in paragraph 2.a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, License Exception, permission, or privilege granted, or to be granted, to

Fischione. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of Fischione's export privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Fischione 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 entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegation in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from the terms of a denial order under 15 C.F.R. § 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$6,300 civil penalty, BIS will not initiate any further administrative proceeding against Fischione in connection with any violation of the Act or the Regulations arising out of the transaction identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

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 entered, nor shall this Agreement serve to 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 addressed herein.

8. This Agreement shall become binding on BIS only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering 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. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

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



Acting Director
Office of Export Enforcement

E.A. FISCHIONE INSTRUMENTS, INC.



David W. Casuccio
Chief Financial Officer

Date: 11/22/04

Date: 11-19-04

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

In the Matter of:)
)
)
E.A. Fischione Instruments, Inc.)
9003 Corporate Circle)
Export, Pennsylvania 15632,)
)
Respondent.)

ORDER RELATING TO E.A. FISCHIONE INSTRUMENTS, INC.

The Bureau of Industry and Security, United States Department of Commerce (“BIS”) has notified E.A. Fischione Instruments, Inc. (“Fischione”) of its intention to initiate an administrative proceeding against Fischione pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2004)) (“Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),² by issuing a proposed charging letter to Fischione that alleged that Fischione committed one violation of the Regulations. Specifically, the charge is:

¹ The 2004 Regulations govern the violation at issue and set forth the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. 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)), as extended by the Notice of August 6, 2004 (69 *Fed. Reg.* 48763 (August 10, 2004)), has continued the Regulations in effect under the IEEPA.

1. *15 C.F.R. § 764.2(c) - Attempted Export of a Plasma Cleaner to an Organization in India on the Entity List Without the Required Department of Commerce License:* On or about May 27, 2004, Fischione attempted to violate the Regulations by attempting to export a plasma cleaner, an item subject to the Regulations (EAR99),³ from the United States to an organization in India on BIS' Entity List without the Department of Commerce license required by Section 744.1 of the Regulations.⁴

WHEREAS, BIS and Fischione having 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 the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$6,300 is assessed against Fischione which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, 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, Fischione 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.

³ The term "EAR99" refers to items subject to the Regulations which are not listed on the Commerce Control List. *See* 15 C.F.R. § 734.3(c).

⁴ The Entity List is set forth in Supplement 1 to Part 744 of the Regulations.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, License Exception, permission, or privilege granted, or to be granted, to Fischione. Accordingly, if Fischione should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Fischione's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that 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.



Julie L. Salcido
Acting Deputy Assistant Secretary of Commerce
for Export Enforcement

Entered this 29th day of November 2004.