

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

In the Matter of:)
)
Quantachrome Instruments)
1900 Corporate Drive)
Boynton Beach, FL 33426)
)
Respondent.)
)

ORDER

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS") having notified Quantachrome Instruments ("Quantachrome") of its intention to initiate an administrative proceeding against Quantachrome pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2005)) ("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 Quantachrome that alleged that Quantachrome committed one violation of the Regulations. Specifically, the charge is:

1. *One Violation of 15 C.F.R. § 764.2(a) -Unauthorized Export to a Listed Entity:*

On or about January 21, 2002, Quantachrome engaged in conduct prohibited by

¹ The violation alleged to have been committed occurred in 2002. The Regulations governing the violation at issue are found in the 2002 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2002)). The 2005 Regulations establish the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). 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 6, 2004 (69 Fed. Reg. 48763 (August 10, 2004)), has continued the Regulations in effect under the IEEPA.

the Regulations by exporting an Automated Surface Area and Pore Size Analyzer and related scientific instruments, items subject to the Regulations, to the Department of Atomic Energy, Bhabha Atomic Research Center ("BARC") of Mumbai India, an organization on the Department of Commerce's Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a license from the Department of Commerce as required by Section 744.1(c) of the Regulations.

WHEREAS, BIS and Quantachrome 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 the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$6,000 is assessed against Quantachrome, 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.

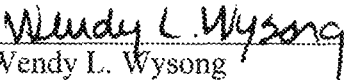
SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Quantachrome will be assessed, 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, 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 Quantachrome. Accordingly, if Quantachrome should fail to pay the civil penalty in a timely manner, the undersigned may enter

an Order denying all of Quantachrome'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.



Wendy L. Wysong
Acting Assistant Secretary of Commerce
for Export Enforcement

Entered this 10th day of August 2005.

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

In the Matter of:)
)
Quantachrome Instruments.)
1900 Corporate Drive)
Boynton Beach, FL 33426)
)
Respondent.)
)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Respondent, Quantachrome Instruments ("Quantachrome"), and the Bureau of Industry and Security, U.S. 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 (2005)) ("Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act"),²

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

WHEREAS, BIS has issued a proposed charging letter to Quantachrome that alleged that

¹ The charged violation occurred in 2002. The Regulations governing the violation at issue are found in the 2002 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2002)). The 2005 Regulations establish the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). 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 6, 2004 (69 Fed. Reg. 48763 (August 10, 2004)), has continued the Regulations in effect under the IEEPA.

Quantachrome committed one violation of the Regulations, specifically:

- I. *One Violation of 15 C.F.R. § 764.2(a) -Unauthorized Export to a Listed Entity:* On or about January 21, 2002, Quantachrome engaged in conduct prohibited by the Regulations by exporting an Automated Surface Area and Pore Size Analyzer and related scientific instruments, items subject to the Regulations, to the Department of Atomic Energy, Bhabha Atomic Research Center ("BARC") of Mumbai India, an organization on the Department of Commerce's Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a license from the Department of Commerce as required by Section 744.1(c) of the Regulations.

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

WHEREAS, Quantachrome 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;

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

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

WHEREAS, Quantachrome neither admits nor denies the allegations contained in the proposed charging letter;

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

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

NOW THEREFORE, the Parties hereby agree as follows:

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

2. The following sanction shall be imposed against Quantachrome in complete settlement of the violation of the Regulations relating to the transaction specifically detailed in the proposed charging letter:

- a. Quantachrome shall be assessed a civil penalty in the amount of \$6,000, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order. Payment shall be made in the manner specified in the attached instructions.
- 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 Quantachrome. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Quantachrome'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,

Quantachrome 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 allegations 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 \$6,000 civil penalty, BIS will not initiate any further administrative proceeding against Quantachrome in connection with any violation of the Act or the Regulations arising out of the transaction specifically detailed 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 the Parties 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

QUANTACHROME INSTRUMENTS



Michael D. Turner
Director
Office of Export Enforcement



F. Scott Lowell
President

Date: 08/09/2005

Date: August 1, 2005

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Quantachrome Instruments
1900 Corporate Drive
Boyton Beach, FL 33426

Attn: *F. Scott Lowell,*
President

Dear Mr. Lowell:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Quantachrome Instruments (hereafter "Quantachrome") of Boyton Beach, Florida, 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 Quantachrome committed the following violation:

Charge 1 15 C.F.R. § 764.2(a): Unauthorized Export to a Listed Entity:

On or about January 21, 2002, Quantachrome engaged in conduct prohibited by the Regulations by exporting an Automated Surface Area and Pore Size Analyzer and related scientific instruments, items subject to the Regulations, to the Department of Atomic Energy, Bhabha Atomic Research Center ("BARC") of Mumbai India, an organization on the Department of Commerce's Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a license from the Department of Commerce as required by Section 744.1(c) of the Regulations. In so doing, Quantachrome committed one violation of Section 764.2(a) of the Regulations.

* * * *

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2005). The charged violation occurred in 2002. The Regulations governing the violation at issue are found in the 2002 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2002)). The 2005 Regulations set forth the procedures that apply to this matter

² 50 U.S.C. app. §§ 2401-2420 (2000). 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 6, 2004 (69 Fed. Reg. 48763 (August 10, 2004)), has continued the Regulations in effect under the IEEPA.

Accordingly, Quantachrome 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;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

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

Quantachrome 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. Quantachrome 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 Quantachrome have a proposal to settle this case, Quantachrome 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 matters set forth in this letter. Accordingly, Quantachrome'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 Quantachrome's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: James C. Pelletier, Esq.
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.

³ *See* 15 C.F.R. § 6.4(a)(2).

Quantachrome
Proposed Charging Letter
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Washington, D.C. 20230

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

Sincerely,

Michael D. Turner
Director
Office of Export Enforcement