needs documentation to legally advance loan funds and conduct other business activities with the new or surviving entity. The specific documents required vary according to state law and the particular circumstances of the merger. Most of the information required by RUS consists of copies of documents that the borrower must file with state and local authorities.

The second concerns transitional assistance. Short-term financial stress can follow mergers and consolidations that will in the long term benefit rural America and enhance government loan security. Title 7 CFR part 1717, subpart D, offers transitional assistance to mitigate these stresses. This information collection includes documentation from borrowers requesting such assistance.

Third are the unusual situations where RUS approval of a merger is required. This collection includes the list of documents that RUS needs to approve a merger. Except for a formal transmittal letter and board resolution from each of the companies involved, RUS believes that the information required is prepared by any prudent business attempting to enter into a merger.

RUS may not require borrower to either merge or to study the possibility of merger. The provisions of the rule may be utilized only at the borrower's request. This collection of information encompasses the procedures for borrowers who wish to enter into mergers or who request transitional assistance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 hour per response.

Respondents: Small cooperatives or similar organizations.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimate Total Annual Burden on Respondents: 249 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, at (202) 720–0812.

Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW, Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 30, 1999.

Blaine D. Stockton, Jr.

Acting Administrator, Rural Utilities Service.

[FR Doc. 99–20173 Filed 8–4–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary.

Title: Survey of Business Leaders Accompanying the Secretary on Trade Missions.

Agency Form Number: None.

OMB Approval Number: 0690–0017.

Type of Request: Reinstatement of a collection previously approved.

Burden: 5 hours.

Number of Respondents: 100 (approximately 20 per trade mission).

Average Hours Per Response: 3 minutes.

Needs and Uses: Trade missions are one of the most visible means for the Secretary to provide support to the business community in expanding exports. When he leads a mission, a quick survey of business leaders who accompany him on the trip is made. Its purpose is to assess their opinions on the market area they are visiting. The information is used to stimulate discussions during the trip.

Affected Public: Businesses or other for profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection program can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: July 30, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–20138 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No.: 97–BXA–20]

Re: Aluminum Company of America

On Friday, February 26, 1999, the **Federal Register** published the Decision and Order issued by the Under Secretary for Export Administration, Bureau of Export Administration, United States Department of Commerce (BXA) on February 19, 1999 (64 FR 9471). However, the Recommended Decision and Order of the Administration Law Judge (ALJ) was inadvertently not included with the Order of the Under Secretary. This notice is to hereby publish the December 21, 1998, Recommended and Decision Order of the ALJ.

Dated: July 21, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

Recommended Decision and Order

Appearance for Respondents: Edward L. Rubinoff, Esq, Samuel C. Straight, Esq., of Akin, Gump, Strauss, Hauer & Feld, L.L.P., Michael D. Scott, Aluminum Company of America.

Appearance for Agency: Jeffrey E.M. Joyner, Esq., Office of the Chief Counsel for Export Administration, U.S. Department of Commerce.

Before: Hon. Parlen L. McKenna, United States Administrative Law Judge.

Preliminary Statement

This is a civil penalty proceeding initiated pursuant to the legal authority contained under the Export Administration Act of 1979, as amended (50. U.S.C.A. §§ 2401–2420 (1991 & Supp. 1997) (hereinafter known as the ''ACT''). It was conducted in accordance with the procedural requirements as found in 15 CFR Parts 768–799 (1991–1995). Those

Regulations were reorganized and restructured in 1997. The current Regulations are found at 15 CFR Parts 730–744 (1997) which govern these proceedings.

On December 12, 1997, Aluminum Company of America (''ALCOA'') was issued a charging letter by the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (''BXA'') alleging that ALCOA committed 100 violations of the Export Administration Regulations (''EAR'') between 1991 and 1995.[1] The alleged violations are as follows:

CHARGES 1–50: On 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA exported potassium fluoride and sodium fluoride from the United States to Jamaica and Suriniam, without obtaining from BXA the validated export licenses required by Section 772.1(b) of the former regulations. By exporting U.S.—origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation, order, or license issued thereunder, ALCOA violated Section 7878.6 of the former Regulations on 50 separate occasions, for a total of 50 violations.

CHARGES 51–100: In connection with the exports described in Charges 1–50 above, on 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA used Shipper's Export Declarations, as defined in Section 770.2 of the former regulations, on which it represented, potassium fluoride and sodium fluoride, qualified for exports from the United States to Jamaica and Surinam under general license G–DEST. These chemicals required a validated license for export from the United States to both of those destinations. By making false or misleading statements of material fact, directly or indirectly, to a United States agency in connection with the use of export control documents to effect exports from the United States, ALCOA violated Section 787.5(a) of the former Regulations in connection with each of the 50 exports, for a total of 50 additional violations.

The maximum civil penalty assessment for each violation is $10,000 (*See* 15 CFR § 764.3(a) (1)). In addition to the penalty assessment, a denial of export privileges could be imposed (see Section 764.3(a) (2)) and the exclusion from practice (*See* Section 764.3(a) (3)). BXA proposed a civil penalty assessment of $7,500 for each of the 50 violations of Section 787.6 of the former Regulations and $7,500 for each of the 50 violations of Section 787.5(a) of the former Regulations, for a total civil penalty of $750.000.

On February 9, 1998, a telephonic pre-hearing conference was held which included both parties and the undersigned. As a result of that conference, it was agreed by the parties that no hearing would be required since the facts of the case were not in dispute. Accordingly, a schedule was established for the submission of joint stipulations of fact and the filing of initial and reply briefs. Joint Stipulations were filed on March 27, 1998. ALCOA had previously filed its Answer to the Charging Letter on January 20, 1998. BXA Replied to ALCOA's Answer on May 1, 1998. On May 7, 1998, the undersigned issued on order permitting ALCOA to submit a response to BXA's Reply which was filed on May 13, 1998. In that Reply, Counsel for ALCOA took exception to BXA's assertion that the parties agreed during the February 9, 1998 prehearing conference that this matter could be resolved without a hearing because the facts were not in dispute. Subsequently, another telephonic conference was heard between the parties and the undersigned. At that time, after listening to the arguments of counsel for ALCOA, it became clear to me that Mr. Rubinoff was only asking for Oral Argument and not an evidentiary hearing. Given the complex nature of this case and my desire to insure that ALCOA's due process rights were fully protected, I granted Oral Argument. Oral Argument in this matter was held in Washington, DC on Monday, July 20, 1998. A transcript of the Oral Argument was released thereafter and the matter is now ripe for decision.

The findings of fact and conclusions of law which follow are prepared upon my analysis of the entire record, and applicable regulations, statutes, and case law. Each submission of the parties, although perhaps not specifically mentioned in this decision, has been carefully reviewed and given thoughtful consideration.[1]

Law and Regulation [2]

The United States, like many other industrialized nations, restricts the export of goods and services for reasons of national security. The United States Congress, under the President's signature, statutorily defined the penalties for violating such restrictions in Title 50 of the United States Code—''War and National Defense'' as follows:

§ 2410 Violations

(a) In general

Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act [section 2401 to 2420 of this Appendix] or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(b) Willful violations

(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act [sections 2401 to 2420 of this Appendix] for any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes—

(A) Except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) In the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this Act [sections 2401 to 2420 of this Appendix] for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense—

(A) Except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) In the case of an individual, shall be fined not more that $250,000, or imprisoned not more than 5 years, or both.

(3) Any person who possesses any goods or technology—

(A) With the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] or any regulation, order, or license issued with respect to such control, or

(B) Knowing or reason to believe that the goods or technology would be so exported,

Shall, in the case of a violation of an export control imposed under section 5 [section 2404 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 [section 2405 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(4) Any person who takes any action with the intent to evade the provisions of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix] shall be subject to the penalties set for in subsection (a), except that in the case of an evasion of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] (or

[1] Each of these alleged violations were the result of separate and distinct shipments over a desperate four and one-half year period and were not based upon a continuing violation concept. The alleged violations are defined in the charging letter with reference to the EAR that were in effect at the time of the alleged incidents (*See* 15 CFR Parts 768–799 (1991–1995). These Regulations were issued pursuant to the Export Administration Act of 1979 and define the violations that BXA alleges occurred and are referred to hereinafter as the former regulations. Since that time, the regulations have been reorganized and restructured; the restructured regulations establish the procedures that apply to this matter. The Act expired on August 20, 1994. Executive Order 12924 (3 F.R.R. 1994 Comp. 917 (1995)), August 14, 1996 (3 CFR 1996 Comp. 298 (1997)), and August 13, 1997 (62 *FR* 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701–1706 (1991 and Supp. 1998)).

[1] A list of the record evidence in this case is set forth in Appendix A, attached hereto.

[2] Because an evidentiary hearing was not held in this matter, a record was not developed which included exhibits that contained copies of each of the applicable laws and regulations. In order to aid the readers of this opinion, all applicable laws and regulations are set forth herein.

any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act [sections 2401 to 2420 of this Appendix].

(c) Civil penalties; administrative sanctions

(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $10,000 for each violation of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order or license issued under this Act [sections 2401 to 2420 of this Appendix], either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act [section 2404 of this Appendix] or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act [22 U.S.C.A. § 2778] may not exceed $100,000.

(2)(A) The authority under this Act [sections 2401 to 2420 of this Appendix] to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of the Act [section 2407(a) of the Appendix].

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act [sections 2401 to 2420 of this Appendix] for a violation of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix] may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code [5 U.S.C.A. §§ 554 to 557].

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of the Act [section 2407(a) of the Appendix] shall be made available for public inspection and copying.

(3) An exception may not be made to any order issued under this Act [sections 2401 to 2420 of this Appendix] which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

United States Department of Commerce Regulations

15 CFR 787—Enforcement

§ 787.1 Sanctions

(a) Criminal (1) Violations of Export Administrative Act (i) General. Except as provided in paragraph (a)(1)(ii) of this section, whoever knowingly violates or conspires to or attempts to violate the Export Administration Act (''the Act'') or any regulation, order, or license issued under the Act is punishable for each violation by a fine of not more than five times the value of the exports involved or $50,000, whichever is greater, or by imprisonment for not more than five years, or both.

(ii) Willful violations. (A) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, license issued thereunder, with knowledge that the exports involved will be used for the benefit of or that the destination or intended destination of the goods or technology involved is any controlled country or any country to which exports are controlled for foreign policy purposes, except in the case of an individual, shall be fined not more than five times the value of the export involved or $1,000,000 whichever is greater; and in the case of an individual shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(B) Any person who is issued a validated license under this Act for the export of any goods or technology to a controlled country and who with the knowledge that such export is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than five years, or both.

(C) Any person who possesses any goods or technology with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of the Act or any regulation, order, or license issued with respect to such control, or knowing or having reason to believe that the goods or technology would be so exported, shall, in the case of a violation of an export control imposed under section 5 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section and shall, in the case of a violation of an export control imposed under section 6 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(I) of this section.

(D) Any person who takes any action with the intent to evade the provisions of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in paragraph (a)(1)(i) of this section, except that in the case of an evasion of an export control imposed under section 5 or 6 of the Act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section.

(2) Violations of False Statements Act. The submission of false or misleading information or the concealment of material facts, whether in connection with license applications, boycott reports, Shipper's Export Declarations, Investigations, compliance proceedings, appeals, or otherwise, is also punishable by a fine of not more than $10,000 or by imprisonment for not more than five years, or both, for each violation (18 U.S.C. 1001).

(b) Administrative [1]—(1) Denial of export privileges, Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is also subject to administrative action which may result in suspension, revocation, or denial of export privileges conferred under the Export Administration Act (*See* § 788.3 et seq).

(2) Exclusion from practice. Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is further subject to administrative action which may result in exclusion from practice before the Bureau of Export Administration (*See* § 790.2(a)).

(3) Civil penalty. A civil penalty may be imposed for each violation of the Export Administration Act or any regulation, order or license issued under the Act either in addition to, or instead of, any other liability or penalty which may be imposed. The civil penalty may not exceed $10,000 for each violation except that the civil penalty for each violation involving national security controls imposed under section 5 of the Act may not exceed $100,000. The payment of such penalty may be deferred or suspended, in whole or in part, for a period of time that may exceed one year. Deferral or suspension shall not operate as a bar in the collection of the penalty in the event that the conditions of the suspension or deferral are not fulfilled. When any person fails to pay a penalty imposed under this paragraph (b)(3), civil action for the recovery of the penalty may be brought in the name of the United States, in which action the court shall determine *de novo* all issues necessary to establish liability. Once a penalty has been paid, no action for its refund may be maintained in any court.[1]

(4) Seizure. Commodities or technical data which have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the Export

[1] Violations of the Act or regulations, or any order or license issued under the Act, may result in the imposition of administrative sanctions, and also or alternatively of a fine or imprisonment as described in paragraph (a) of this section, seizure or forfeiture of property under section 11(g) of this Act or 22 U.S.C. 401, or any other liability or penalty imposed by law. The U.S. Department of Commerce may compromise and settle any administrative proceeding brought with respect to such violations.

[1] The U.S. Department of Commerce may refund the penalty at any time within two years of payment if it is found that there was a material error of fact or of law.

Administration Act or of any regulation, order, or license issued the Act are subject to being seized and detained, as are the vessels, vehicles, and aircraft carrying such commodities or technical data are subject to forfeiture (50 U.S.C. app. 2411(g)) (22 U.S.C. 401, see § 786.8(b)(6)).

15 CFR 772.1(b)—Exports Requiring Validated Licenses

No commodity or technical data subject to the Export Administration Regulations may be exported to any destination without a validated license issued by the Office of Export Licensing, except where the export is authorized by a general license or other authorization by the Office of Export Licensing.

15 CFR 787.5—Misrepresentation and Concealment of Facts; Evasion

(A)(1) Misrepresentation and Concealment. No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Bureau of Export Administration, any Customs Office, or any official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official * * *

15 CFR 787.6—Export, Diversion, Reexport, Transshipment

Except as specifically authorized by the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may export, dispose of, divert, direct, mail or otherwise ship, transship, or reexport commodities or technical data to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of any export control document, any prior representation, any form of notification a prohibition against such action, or any provision of the Export Administration Act or any regulation, order, or license issued under the Act.

15 CFR 774.1—Reexport of U.S.-Made Equipment

Unless the reexport of a commodity previously exported from the United States has been specifically authorized in writing by the Office of Export, Licensing prior to its reexport * * *, no person in a foreign country (including Canada) or in the United States may;

(a) Reexport such commodity * * * from the authorized country(ies) of ultimate destination * * *.

Joint Stipulations of Fact

Aluminum Company of America (ALCOA) and the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA) stipulated to the following facts:

1. ALCOA is a corporation organized under the laws of Pennsylvania with its principal offices located at 425 Sixth Avenue, ALCOA Building, Pittsburgh, Pennsylvania 15219.

2. ALCOA is one of the world's leading producers of aluminum and a primary participant in all segments of the industry mining, refining, smelting, fabricating, and recycling.

3. ALCOA is one of the world's largest producers of alumina, which is both an intermediate product in the production of aluminum and an important chemical product in itself.

4. During the period June 14, 1991 through December 7, 1995 (''the review period''), ALCOA, through its subsidiary ALCOA Minerals of Jamaica (''AMJ''), and the Government of Jamaica, through its subsidiary Clarendon Alumina Productions (''CAP''), owned an alumina refinery in Clarendon Parish, Jamaica. CAP and AMJ each owned a 50% interest in the alumina refinery.

5. Jamalco is a joint operation, located in Kingston, Jamaica, governed by a Joint Venture Agreement between AMJ and CAP dated March 1, 1988. The joint venture is governed by an eight member Executive Committee, four members each from CAP and AMJ. Article 5 of the Joint Venture Agreement provides that the Executive Committee will appoint a manager who will have full rights and responsibilities to manage and control the day to day conduct of the operations of the joint venture. Article 5 further requires that AMJ be appointed as the Manager. AMJ has acted as Manager at all times since 1988.

6. Prior to December 30, 1994, ALCOA operated mining, refining, and smelting operations in Suriname (Suralco). As of December 30, 1994, all of ALCOA's bauxite, alumina and alumina-based chemicals businesses, including Suralco, were restructured and combined into ALCOA Alumina and Chemicals, L.L.C. Subsequently, Suralco has been owned 98% by ALCOA Alumina and Chemicals, L.L.C., and 2% by ALCOA Caribbean Alumina Holdings, L.L.C., each of which is owned 60% by ALCOA and 40% by WMC Limited, an Australian corporation.

7. Since 1984, the alumina refinery in Paranarn, Suriname has been co-owned by Suralco and an affiliate of Billiton N.V., a Dutch corporation, and has been operated pursuant to a Refining Joint Venture Operating Agreement dated March 14, 1984, as amended. In accordance with Article 5.02 of the Refining Joint Venture Operating Agreement, Suralco was in 1984 appointed, and has since then acted as Manager of the Paranam refinery.

8. During the review period, the refineries in Jamaica and Suriname used potassium fluoride as the key reagent for refining alumina from bauxite, the raw ore for aluminum.

9. During the review period, the water treatment facility in Suriname used sodium fluoride to treat drinking water. Suralco's water treatment facility was located in the powerhouse which supplied electricity to and was located at Suralco's bauxite mine in Moengo, Suriname. In March 1994, Suralco sold its Moengo powerhouse and water treatment facility to Energie Bedrijven Suriname (EBS), a utility company owned by the government of Suriname. In conjunction with the sale of the powerhouse and water treatment facility, Suralco agreed to continue operating the water treatment facility for one year. Consequently, Suralco personnel were on-site at the water treatment facility at all times when ALCOA's Export Supply Division shipped sodium fluoride to Suralco. Also as part of the powerhouse sale agreement, Suralco agreed to provide the chemicals used in the water treatment facility for a period of two years following the sale.

10. During the review period, logistical support for Jamalco and Suralco was provided by ALCOA's Export Supply Division (''ESD''), located in New Orleans, Louisiana.

11. During the review period, Jamalco and Suralco purchased certain items from a scheduled buying list, while other times were purchased only as required in specific instances.

12. During the review period, ESD received requisitions from Jamalco and Suralco, located suppliers, purchased products, and shipped the requested items to Jamalco and Suralco.

13. During the review period, ESD prepared all export and shipping documentation for shipments to Jamalco and Suralco.

14. ESD was responsible for determining the applicable export licensing requirements for items ordered by Jamalco and Suralco during the review period.

15. For each shipment of specially-ordered items to Jamalco and Suralco during the review period, the export compliance procedures in place provided that ESD was to review the Export Administration Regulations to determine the applicable export licensing requirement.

16. On several occasions during the review period, ESD obtained validated licenses from BXA to export specially-ordered items, such as computers, to Jamalco and Suralco.

17. By contrast, once ESD made an initial determination of the export licensing requirements for items on the scheduled buying list, ESD did not thereafter review the Export Administration Regulations for each subsequent shipment of ''scheduled buying lists'' goods to Jamalco and Suralco.

18. Both potassium fluoride and sodium fluoride were on ESD's scheduled buying list for Jamalco and Suralco both before and during the review period.

19. Both potassium fluoride and sodium fluoride were routinely purchased against periodic requisitions regularly submitted by Jamalco and Suralco both before and during the review period.

20. Under the export compliance procedures in place during the review period, ESD did not perform a complete export compliance check for each shipment of potassium fluoride and sodium fluoride to Jamalco and Suralco.

21. Prior to March 13, 1991, exporters were not required to obtain from BXA a validated license to export potassium fluoride and sodium fluoride from the United States to Jamalco and Suralco.

22. Prior to March 13, 1991, ESD lawfully exported potassium fluoride and sodium fluoride on a regular basis to Jamalco and Suralco under general license authority.

23. On March 13, 1991, through a notice published in the Federal Register, entitled Expansion of Foreign policy Controls on Chemical Weapons Precursors (56 Fed. Reg 10756), the Department of Commerce

amended the Commerce Control List of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730–774 (1997)),[2] ''by expanding the number of countries for which a validated license is required for 39 precursor chemicals. Under the rule, the 39 chemicals will require a validated license for export to all destinations except NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland.'' Potassium fluoride and sodium fluoride were included on the list of 39 chemicals subject to the regulatory change.

24. As potassium fluoride and sodium fluoride were routinely ordered by Jamalco and Suralco, ESD failed to attach any significance to the March 1991 amendment, missed the regulatory change, and continued to export these commodities to the refineries during review period without first obtaining from BXA the validated export license required under the Regulations.

25. During the review period, ESD made 47 shipments of potassium fluoride to Jamalco and Suralco without validated license. The total value of these shipments was $104,637.00.

26. During the review period, ESD made three shipments of sodium fluoride to Suralco without validated licenses. The total value of these shipments was $6.603.00.

27. During the review period, ESD used Shippers Export Declarations (''SEDs''), an export control document as defined in the Export Administration Regulations, to effect the export of potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname.

28. With eight exceptions, ALCOA identified the chemicals shipped to Jamalco and Suralco on the SEDs by their specific nomenclature.

29. As a result of missing the March 1991 regulatory amendment, ALCOA, during the review period, indicated on each SED used for the export of the chemicals from the United States to Jamaica and Suriname that the goods qualified for export from the United States to Jamaica and Suriname under general license G–DEST, when in fact the chemicals required a validated license for export from the United States to both destinations.

30. ESD had no intent to make any false or misleading statements on the SEDs accompanying the shipments of potassium fluoride and sodium fluoride to Jamalco and Suralco during the review period.

31. The exports of potassium fluoride and sodium fluoride during the review period were made to countries that are not suspected of engaging in illicit weapons development.

32. All of the potassium fluoride and sodium fluoride shipped by ESD to Jamalco and Suralco during the review period was completely consumed on the premises of the refinery and water treatment facilities in Jamaica and Suriname.

33. Once BXA informed ALCOA that ESD had shipped potassium fluoride and sodium fluoride to Jamaica and Suriname during the review period without the required validated export license, ALCOA cooperated fully with BXA in its investigation.

34. After BXA brought to ALCOA's attention the regulatory change imposing a validated licensing requirements on exports of potassium fluoride and sodium fluoride to Jamaica and Suriname, ALCOA applied for, and BXA granted, validated license for shipments of potassium fluoride to Jamaica and Suriname made after the review period.

35. During the review period, there was a presumption of approval, on a case-by-case basis, for license to export potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname.

36. Prior to the initiation of the investigation by BXA, ALCOA retained outside counsel and experts to assist in improving and strengthening ALCOA's export compliance procedures.

37. As a result of these efforts, ALCOA developed and implemented a new export compliance program that includes an export compliance manual (with specific procedures and policies applicable to all exports by ALCOA), training seminars, instructional videos, and other measures.

38. 15 CFR 787.4(a) provides:

(a) No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to any transaction.

The parties stipulated at the Oral Argument that this regulation does not have a strict liability trigger since it contains a knowledge element (TR–33).

39. 15 CFR § 787.4(b) provides:

(b) No person may possess any commodities or technical data, controlled for national security or foreign policy reasons under section 5 or 6 of the Act:

(1) With the intent to export such commodities or technical data in violation of the Export Administration Act or any regulation, order, license or other authorization under the Act, or;

(2) Knowing or having reason to believe that the commodities or technical data would be so exported.

The parties stipulated at the Oral Argument that this regulation does not have a strict liability trigger since it contains a knowledge or intent element (TR–33).

40. 15 CFR 787.5(b) provides:

(b) Evasion. No person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provision of the Act, or any regulation, order, license or other authorization issued under the Act.

The parties stipulated at the Oral Argument that this regulation does not have a strict liability trigger since it contains a knowledge or intent element (TR–33).

Findings of Fact [1]

1. The Respondent and BXA entered into forty (40) Joint Stipulations of Fact which are set forth above. Each and every one of those Joint Stipulations of Fact are hereby accepted by the undersigned and adopted as a Finding of Fact in this proceeding.

2. Aluminum Company of America (ALCOA), the Respondent, was at all times herein a Corporation authorized to and doing business in the United States. As such, the Respondent clearly fails within the definition of ''person'' set forth in 15 CFR 770.2; currently codified at 15 Code of Federal Regulations, Parts 730–774 (1997), issued the Regulations 768–799) hereinafter known as the former Regulations (*see* Joint Stipulations of Fact Nos. 1, 2, and 3).

3. Potassium fluoride is the key reagent used during the refining of alumina from its bauxite ore. Bauxite is crushed and mixed with a caustic soda solution. This solution dissolves the alumina present in the bauxite. Potassium fluoride is used to determine the level of dissolved alumina in the caustic solution. Only a small amount of potassium fluoride is used per metric ton of bauxite processed (*see* Respondent's Answer dated January 20, 1998, page 2).

4. Sodium fluoride was used by the ALCOA facility in Suriname to treat drinking water for people living in the Suralco refinery area. All of the sodium fluoride exported from the United States to Suriname was used by this ALCOA subsidiary facility and was fully consumed in the water treatment process. ALCOA sold the water treatment facility to the government of Suriname in July 1994. Therefore, Suralco no longer uses any sodium fluoride (*See* Respondent's Answer dated January 20, 1998, page 3).

5. All of the potassium fluoride and Sodium Fluoride exports at issue in this case were sent to ALCOA's refinery operations in Jamaica (Jamalco) and Suriname (Suralco). These refineries are located near bauxite mines. Bauxite is the raw ore for aluminum. The refineries process the bauxite so as to extract aluminum oride (alumina), which becomes the basic feedstock for ALCOA's metal and chemical businesses. Both refineries were directly controlled by ALCOA during the period June 14, 1991 through December 7, 1995 (*See* Respondent's Answer dated January 20, 1998, page 2).

6. Prior to March 13, 1991, validated licenses were not required under the EAR for exports of potassium fluoride and sodium fluoride either to Jamaica or Suriname. Therefore, prior to that date, ESD had lawfully exported these products to the refineries under the EAR general license authority. However, on March 13, 1991, the Department of Commerce amended the Commerce Control List of the EAR by expanding the number of countries for which a validated license was required for exports of thirty-nine (39) commodities.

7. Logistical support for the ALCOA refineries in Jamaica and Suriname was provided by ALCOA's Export Supply

[2] At the time BXA promulgated this rule, the Export Administration Regulations were found at 15 CFR Parts 768–799 (1991). Since that time, the Regulations have been reorganized and restructured.

[1] Neither Respondent nor Agency submitted Proposed Findings of Fact. As a result, no rulings are made thereon.

Division (''ESD''), located in New Orleans, LA. Through ESD, the refineries regularly purchased certain items from a scheduled buying list, while other items were purchased only as required in specific instances. In this capacity, ESD purchased everything from office surplus and repaired parts to replacements for equipment and operating supplies. ESD received requisitions from the refineries, located U.S. suppliers for the requested product, purchased the products, and shipped them to the refineries. ESD prepared all export and shipping documentation for shipments to the refineries (See Respondent's Answer dated January 20, 1998, page 3).

8. ESD's sole function was to support the Jamalco and Suralco refineries. It annually handled approximately 25,000 transactions involving 100,000 different items, with a total value of over $125 million. Before, during and after the time periods in question, ESD was aware of the EAR, and sought and obtained validated export licenses for a variety of products, including computer systems and related equipment (*See* Respondent's Answer dated January 20, 1998, page 3).

9. Both potassium fluoride and sodium fluoride were ESD's scheduled buying list for the refineries both before and during the time periods in question and were, in fact, purchased against requisitions submitted by Jamalco and Suralco. Indeed, during the time period in question, ESD made forty-seven (47) shipments of potassium fluoride to the Jamalco and Suralco refineries, and three (3) shipments of sodium fluoride to the Suralco refinery (*See* Respondent's Answer dated January 20, 1998, page 3).

10. On 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA exported potassium fluoride and sodium fluoride from the United States to Jamaica and Surinam, without obtaining from BXA the validated export licenses required by Section 772.1(b) of the former regulations. By exporting U.S.—origin commodities to any person or to any destination as set forth in Section 772.1(b) of the former regulations, ALCOA violated Section 787.6 of the former regulations on 50 separate occasions, for a total of 50 separate violations (See Respondent's plea of ''Admit'' to charges 1–50 in its January 1998 Answer, page 5).

11. On 50 separate occasions between June 14, 1991, and December 7, 1995. ALCOA used Shipper's Export Declarations as defined in Section 770.2 of the former Regulations, on which it represented that potassium fluoride and sodium fluoride, qualified for export from the United States to Jamaica and Surinam under general license G–DEST. Contrary to ALCOA's Shippers Export Declarations, the export of potassium fluoride and sodium fluoride to Jamaica and Surinam required a validated license to both of those destinations and did not qualify for export under general license G–DEST (*See* Respondent's plea of ''Admit'' to finding of Fact No. 9, above; and Joint Stipulation of Fact No. 29, above).

12. Based on the Respondent's admitted actions set forth in Finding of Fact No. 10 above, ALCOA violated 15 CFR 787.5(a) of the former regulations by making ''false or misleading representations[s], statement[s], or certification[s]'' of material fact to a United States agency in connection with the use of export control documents required under 15 CFR 772.1(b) to effectuate the export of potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname (*See*, legal discussion below).

Conclusions of Law

1. That 15 CFR 787.5(a) of the former regulations does not require ''knowledge'' or ''intent'' in order for a finding that the Respondent violated said regulation. Liability and administrative sanctions are imposed on a strict liability basis once the Respondent commits the proscribed act;

2. That the Respondent, Aluminum Company of America, committed 50 violations of 15 CFR 787.5(a) during the period from June 14, 1991 through December 7, 1995 when potassium fluoride and sodium fluoride were exported from the United States to Jamaica and Suriname without obtaining validated export licenses required by 15 CFR 772.1(b);

3. That the Respondent, Aluminum Company of America, committed 50 violations of 15 CFR 787.6 during the period of June 14, 1991 through December 7, 1995 by making false and misleading statements of material fact to a United States agency in connection with the use of export control documents;

4. That based upon the entire record in this matter, the appropriate civil penalty for each of the 100 violations is $10,000 for a total of $1,000,000. The record does not support the suspension of part of the civil penalty assessment on probation.

Discussion

Based upon the stipulations of the parties, there are only two questions to be answered in this proceeding:

(I) Is ''knowledge'' or ''intent'' a necessary element of a violation of § 787.5(a) of the former regulations? and

(II) What is the appropriate level of sanctions in this case?

I. *SECTION 787.5(a) OF THE FORMER REGULATIONS DOES NOT REQUIRE ''KNOWLEDGE'' OR ''INTENT'' IN ORDER FOR A FINDING THAT THE RESPONDANT VIOLATED SAID REGULATION. LIABILITY AND ADMINISTRATIVE SANCTIONS ARE IMPOSED ON A STRICT LIABILITY BASIS ONCE THE RESPONDANT COMMITS THE PROSCRIBED ACT.*

Contrary to the arguments of the Respondent, the answer to this issue is clearly set forth in *Iran air* v. *Kugelman*, 996 F.2d 1253 (D.C. Cir. 1993). In that case, then-Judge Ruth Bader Ginsburg found that the ''essential question is whether the agency, in its reading of the current regulations, reasonably construed the statute, 50 U.S.C.A. App. § 2410, to allow the imposition of civil sanctions on a strict liability basis.'' The answer in *Iran Air* was clearly yes. Therein, the Acting Under Secretary of Commerce for Export Administration determined that an exporter's knowledge need not be shown as a prerequisite to the imposition of civil penalties under the Export Administration Act of 1979, § 11(c), 50 U.S.C.A. App. § 2410(c).[1]

The court in the *Iran Air* case stated:

It is not unusual for Congress to provide for both criminal and administrative penalties in the same statute and to permit the imposition of civil sanctions without proof of the violator's knowledge. Here, the agency maintains, Congress has allowed for an array of penalties for violations of the Export Act: criminal fine and/or imprisonment for the knowing violator; more severe criminal fine and/or longer prison terms for the willful violator; and civil penalties against any violator. Supporting the agency's position that subsection (a)'s knowledge requirement need not be read into subsection (c), Congress expressly provided that nothing in subsection (a) or (b) ''limits the power of the Secretary to define by regulations violations under this Act.'' 50 U.S.C. App. § 2410(b)(5). Furthermore, Congress specifically authorized the executive to establish ''levels of civil penalty * * * based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.'' *Id.* At 2420(c)(4). The provisions appear to leave room for civil penalty regulations that include a knowledge requirement * * * or that allow * * * the imposition of strict liability. *Id.* At 1258.

Therefore, there can be no question that the United States Congress authorized the Secretary of Commerce to promulgate regulations on a strict liability basis pursuant to § 2410 of the Export Administration Act. In order to determine if the Secretary intended to impose a civil sanction for an unwitting violation of the Act (*i.e.*, strict liability), we must look at the regulation that ALCOA was charged with violating:

15 CFR 787.5 Misrepresentation and Concealment of Facts; Evasion

(a)(1) Misrepresentation and Concealment. No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Bureau of Export Administration, any Bureau of Export Administration, any Customs Office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official. * * *

The drafting of agency regulations has evolved into an art form since the passage of the Administrative Procedure Act (5 U.S.C. § 551 *et seq.*) in 1946. As the Court noted in the *Iran Air* case, *Id.* at 1256, the answer to whether a regulation has a strict liability trigger is determined by whether the Secretary, in drafting the regulation, included a ''state of mind'' requirement. A clear and unbiased reading of this regulation reveals no such requirement and therefore liability attaches on a strict liability basis.

The Respondent acknowledges that this regulation does not contain a ''state of mind'' element such as ''knowledge to cause'' (§ 787.2), with ''knowledge or reason to

[1] In the *Iran Air,* case, *Id.*, the court specifically found that 15 CFR §774.1 of the regulations had a strict liability trigger.

know'' (§ 787.4(a)), ''with intent'' or ''knowing or having reason to believe'' (§ 787.4(b)), and ''with intent to evade'' (§ 787.5(b) (*See* Joint Stipulations of Fact Nos. 38, 39 and 40). However, the Respondent argues that since neither the statute nor the regulations define ''false or misleading statements'', the judge must use the ''accumulated settled meaning'' of these terms as defined in Black's Law Dictionary and the legal precedent applicable thereto. The Respondent argues that Black's Law Dictionary defines a ''false statement'' as one that is made with *knowedge* that it is false. The word ''misleading'' is defined as delusive—*calculated* to lead astray or lead into error. The Respondent cites *Feld* v. *Mans,* 116 S. Ct. 437, 445–46 (1995) for the proposition that it is established practice to find meaning in the generally shared common-law when common-law terms are used without further specification.[1]

The government disagrees with what it calls the Respondent's ''attenuated lexicographical-based arguments''. The government argues that as to the federal statute issue, had the Congress intended to include a ''knowledge'' element in the civil penalty provision, it would have explicitly done so (*See e.g.,* False Claims Act, 31 U.S.C. § 3729(a). I agree. 50 U.S.C. App. § 2410(c)(1) does not include a ''knowledge'' element and it is clear in the *Iran Air* case, *Id* at 1258, that Congress explicitly left the issue of strict liability vs. knowledge/intent with the Secretary of Commerce. Indeed, the Secretary promulgated a regulatory scheme that included both types of regulations. Thus, where the Secretary intended that a regulation include a ''knowledge'' or ''intent'' element, the regulation contained explicit language (*See e.g.,* §§ 787.4(a), 787.4(b), 787.5(b), § 387.2 (1980) and joint stipulations of fact Nos. 38, 39, and 40). Conversely, where the Secretary intended no such ''knowledge'' or ''intent'' element, the regulations did not include such a trigger (*See e.g.* §§ 774.1(a), 787.2, 787.5(a)).

The case of *People* v. *Chevron Chemical Co.,* 191 Cal.Rptr 537 (App. 1983) is very informative on the issue at hand. The fact that it is a California criminal case rather than a federal civil penalty case is even more compelling. In that case, the state brought an action against Chevron, charging it with violating the Fish and Game Code for depositing substances deleterious to fish, plant or bird life into state waters—a criminal misdemeanor penalty. The sole issue presented in that case was whether the offense should be construed as a strict liability offense, or one that requires proof of criminal negligence or criminal intent.[1] In ruling on that issue, the Court stated;

In more recent times, the California Supreme Court found *mens rea* unnecessary and upheld the conviction of a meat market proprietor for ''short-weighting'' in the sale of meat by his employee. The court noted that ''where qualifying words such as knowingly, intentionally, or fraudulently are omitted from provisions creating the offense, it is held that guilty knowledge and intent are not elements of the offense''. The court went on to quote from an Ohio case which stated the basic principle: 'There are many acts that are so destructive of the social order, or where the ability of the state to establish the element of criminal intent would be so extremely difficult if not impossible of proof, that in the interest of justice the legislature has provided that the doing of the act constitutes a crime, regardless of knowledge or criminal intent on the part of the defendant'. (*In re Marley* (1946) 29 Cal.2d 525, 529, 175 P. 2d 832).

In the *Chevron* case, *supra* at 539, the court discusses the well recognized public welfare offenses exception to the *mens rea* requirement in criminal prosecution. While not a criminal case, nor the traditional public welfare offense (*e.g.,* water pollution, use of unlicensed poison, sale of improperly branded motor oil, and liability of pharmacist for compounding of prescriptions by unlicensed persons), the regulatory violation herein involves materials that could be used for weapons of mass destruction and the injury or death of untold numbers of people. Accordingly, since these regulations deal with the most profound public welfare/national defense issues, the public interest demands that they be strictly construed in the absence of express ''knowledge'' or ''intent'' language.

The Respondent asserts that the case of *Ceasar Electronics, Inc.,* 55 Fed. Reg. 53016 (Dept Commerce 1990) supports it's position that 15 CFR § 787.5(a) requires that liability is imposed only when there exists a relatively high level of knowledge and intent to make false statements. I disagree. The factual circumstances involved therein proceeded on two tracks—a criminal indictment and conviction for violating 15 CFR § 787.5(a)(3) of the Regulations by one of the Respondent's Vice-Presidents and a subsequent administrative proceeding against the Corporation for violation of 15 CFR § 787.5(a)(1)(ii)(1984). The Order from the United States District Court in criminal case served as the underlying factual basis for the joint stipulations of the parties in the administrative case against the corporation. Thus, while the decision and order in the administrative case discussed knowledge and intent in relation to a § 787.5(a) violation, such predicates were not necessary to a finding of a violation. Indeed, both counsel stipulated at the oral argument in this case that the issue of strict liability for § 787.5(a) has never been decided (TR–36, lines 15–19).[1]

The Respondent cities Section 523(a)(2)(A) of the Bankruptcy Code as support for its position that knowledge and intent to deceive is a prerequisite to any violation of § 787.5(a). I disagree. The *Iran Air* case, *supra,* clearly spells out that Congress authorized the Secretary of Commerce to promulgate strict liability and knowledge/intent based regulations. The Secretary differentiated between the two types of regulations by using ''state of mind'' language for violations which were not intended to employ a strict liability standard and eliminated such triggering language where strict liability was intended. Under this circumstance, any caselaw dealing with § 523(a)(2)(A) requiring knowledge and intent to deceive as a predicate to liability where the regulation is silent as to the issue of ''state of mind'' is simply inapplicable. Moreover, the legislative history, purpose, and construction of the Bankruptcy Code concerns a fresh start for the debtor while the Export Administration Act concerns regulations exports for reasons of national security and foreign policy.

Importantly, an agency has the power to authoritatively interpret its own regulations as a component of it's delegated rulemaking powers (See *Martin* v. *OSHRC,* 499 U.S. 144, 113 L.Ed. 2d 117, 11 S. Ct. 1171.) This delegation of interpretive authority is ordinarily subject to full judicial review. However, because of the national security and/or foreign policy issues involved in regulations exports that could become component parts of weapons, the United States Congress made these Secretarial determinations final and only subject to limited judicial review (*See,* 50 U.S.C. App. § 2412(c)(1) and (3).

II What Is the Appropriate Level of Sanctions in This Case?

The Respondent has been found to have 50 separate violations of 15 CFR 787.6 of the former Regulations and 50 separate violations of 15 CFR 787.5(a) of the former regulations for a total of 100 violations.

Congress has provided for an array of penalties for violations of the Export Administration Act and the regulations promulgated thereunder. These penalties include a criminal fine and/or imprisonment for knowing violators, more severe criminal fines and/or longer prison terms for willful violators and civil penalties against any violator. Since the government apparently did not have proof of willful or intentional acts by the Respondent, criminal charges were not filed (TR–47). Thus, the government commenced this civil penalty action against the Respondent.

The maximum civil penalty assessment for each violation is $10,000 (*See* 15 CFR 764.3(a)(1)). In addition to the penalty assessment, the government could have requested a denial of export privileges (§ 764.3(a)(2)) and/or the exclusion from

[1] In support of its argument, the Respondent cites *NLRB* v. *Amax Coal Co.,* 453 U.S. 322, 329 (1981). In that case, the court held that ''where Congress uses terms that have accumulated settled meaning under either equity or the common law, a court must infer, unless the statute otherwise dictates, that Congress meant to incorporate the established meaning of these terms.''

[1] Fish and Game Code § 5650(f) provides that ''It is unlawful to deposit in, permit to pass into or place where it can pass into waters of this State any of the following: * * * (f) any substances or material deleterious to fish, plant life or bird life.''

[1] 50 U.S.C. App.§ 2412(c). (*Also see, Sparvr Optical Research, Inc.* v. *Baldrige,* 649 Supp, 1366 (D.C. Cir. 1986). This case was reversed, in part, in the *Iran Air* case, note No. 8 finding that a civil penalty may be imposed absent knowledge.); *Dart* v. *United States,* 848 F.2d 217 (D.C. Cir. 1988); and *Harrisiades* v. *Shavgnessy,* 342 U.S. 580, 589, 725, Ct. 512, 519, 96 L.Ed. 586 (1952). *The William A. Roessel, d/b/a Enigma Industries,* 62 Fed. Reg 4031 (Dep't Commerce 1997) and *Herman Kluever,* 56 FR 14916 (Dep't Commerce 1991) are similarly not dispositive of the issue since both cases also involved the aggravating factor of ''knowledge'' or ''intentional conduct''.

practice (§ 764.3(a)(3)). However, after investigating this case, the government determined that it would only seek $7,500 per violation and would not seek the denial of its export privileges or its exclusion from practice.

15 CFR 766.17(b)(2) requires that the presiding judge, after a *de novo* review of the entire record, recommend the appropriate administrative sanction or such other action as he or she deems appropriate.[1] 15 CFR 766.17(c) provides that any such penalty, or part thereof, may be suspended for a reasonable period of probation and remitted if no further violations occur during said probationary period. The Respondent argues that no administrative sanctions be imposed in this case or alternatively, that only a modest civil penalty be levied. ALCOA further argues that if the judge decides on the latter approach, that said penalty be suspended on probation.

In support of its position, the Respondent argues that any violations that occurred were not intentional or willful, that said violations resulted from its failure to comprehend the fact that the March 1991 **Federal Register** Notice added thirty-nine (39) chemicals to the list of chemicals that were identified as precursors for chemical weapons; that there was no risk that the chemicals would be diverted to chemical weapons use; that had the Respondent applied to BXA for the necessary validated licenses, they surely would have been granted; that the exports were entirely consumed at the refineries of the Respondent's subsidiary companies in Jamaica and Suriname; [1] that prior to the initiation of the government's investigation of this matter, the Respondent began developing and implementing an expanded and more comprehensive export compliance program, and that the Respondent has fully cooperated with the government in it's investigation of this matter.

In the government's reply to the Respondent's Answer, it argues that the retaining of outside counsel and experts to assist in improving its export compliance procedures prior to the initiation of the investigation is an aggravating rather than a mitigating factor; that the violations alleged herein are derived from errors that go to the very core of ALCOA's export compliance procedures; that ALCOA's methodology did not involve a periodic review of the Regulations for shipment of ''scheduled buying list goods'' after an initial determination was made concerning the export licensing of items on that list or a thorough monitoring of pertinent regulatory amendments published in the **Federal Register**; that outside counsel and experts retained by ALCOA should have revamped this system immediately upon being retained; that such changes in procedures were not implemented until after the commencement of the investigation; that this investigation did not arise in the context of a voluntary self-disclosure pursuant to § 764.4 of the Regulations; and that given this, the favorable weight accorded such self-disclosures in determining appropriate sanctions is not a factor to be considered.

The government goes on to argue that an ''exporter cannot reasonably 'fail to attach significance' to a regulatory change, bemoan the fact that he/she has been 'tripped-up' by changes in the law, and them argue that, by some stretch of the imagination, he/she should not be penalized for 'inadvertently' violating the law''; that ignorance of the law is no excuse; that the fact that the total value of the 50 shipments was under $112,000 is of no consequence in determining the proper amount of the civil penalty; and that the lack of intent to make false or misleading statements is irrelevant since liability attaches on a strict liability basis. Finally, the government notes that since the March 13, 1991 amendments were properly published in The **Federal Register**, the Respondent was charged with notice of the contents of the changes (*See* 44 U.S.C.A. § 1507 (1991)).

In ALCOA's response to the government's arguments, it states that there are numerous undisputed mitigating circumstances in this case and no aggravating factors; that under the circumstances, it is appropriated to waive or suspend sanctions; that included within the mitigating factors are that the Respondent has no prior violations; that the chemicals were shipped to countries that are not suspected of illegal weapons development; that there was a presumption of approval, on a case by case basis, for licenses to export these chemicals from the United States to Jamaica and Suriname; that the failure of the Respondent to obtain validated licenses should be viewed as technical violations; that the government's logic is distorted since it implies that it is somehow more appropriate to impose a civil penalty on the Respondent because its compliance program was imperfect rather than if ALCOA had had no export compliance program at all; that while the Act and Regulations may not mention the value of exports as a standard for Administrative sanctions, the Judge may consider that issue as a factor in his determination; that the government's proposed penalties are nearly seven (7) times larger than the value of the shipments in this case; that given the lack of harm to U.S. national security or foreign policy interests as a result of these exports, this huge multiple illustrates that the proposed penalty is excessive and overly punitive; that recent government settlement agreements in other cases demonstrate that the proposed penalty is unreasonable; that the Respondent has no prior violations; and that there are numerous cases with similar or even more egregious facts in which the settlement proposal ranged from $2,000 to $5,000 per violation, large portions of which were suspended.

After fully considering the arguments of the parties as to the appropriate sanction in this case, I find that the Respondent's civil penalty shall be $10,000 for each of the 100 violations for a total of $1,000,000. While this assessment exceeds that requested by the government, I find that it is warranted under the facts of this case. The passage of the Export Administration Act of 1979 had one main purpose—to control exports from the United States to other countries. As was noted in the Legislative history of this Act referring to S 737:

Exports contribute significantly to U.S. production and employment, and improved export performance helps pay for expanding U.S. imports of oil and other commodities. There are circumstances, however, in which the economic benefits and the presumption against government interference with participation in international commerce by United States citizens are outweighed by the potential adverse effect of particular exports on the national security * * * of the United States.[1]

By **Federal Register** Notice (Volume 56, No. 49, dated March 13, 1991), the Department of Commerce expanded export control of certain chemical weapons precursors (*i.e.*, chemicals that can be used in the manufacture of chemical weapons). The Notice amended the extant Commodity Control List, by expanding the number of countries for which a validated license was required for 39 precursor chemicals. In issuing this Notice, the Department of Commerce underscored its concern about chemical and biological weapons indicating that serious consideration is being given to eliminating the then-existing contract sanctity provisions of the regulations (*See* Respondent's July 27, 1998 submission, Tab 6). Thus, as the world was becoming a more dangerous place subject to terrorist attacks, the United States Government responded by significantly increasing its regulation of specific chemicals and biological precursors.

In this regard, the government noted in it's May 1, 1998 Reply at page 10:

International trade has been regulated from the earliest days of the republic. While particular aspects or areas of regulations have varied, the fact of the matter is that those engaged in an industry in which government regulation is likely must be presumed to be aware of, and practitioners in the industry are charged with knowledge of as well as the responsibility to comply with, the duly promulgated regulations. [Citing *United States* v. *International Minerals and Chemical Corporation,* 402 U.S. 558 at 563 & 565, 29 L.Ed. 178(1971)].

[1] Importantly, BXA does not have a standard table of orders which lists offenses with a recommended penalty range (*e.g.*, misconduct: 1–3 month suspension) which provides guidance to the judge such as in United States Coast Guard license suspension and revocation cases (46 CFR § 5.569) or a penalty schedule for United States Department of Commerce, National Oceanic and Atmospheric Administration cases where the proposed penalty is based on a published penalty schedule promulgated by the NOAA general counsel and which carries a presumption as to reasonableness (*See In the Matter of William J. Verna,* 4 O.R.W. 64 (NOAA App. 1985)). In that case, the Acting Administrator of NOAA found that the published penalty schedule represents a reasonable starting point and if the judge substantially increases or decreases the amount, good reason for such departures should be stated (*Also see, In the Matter of Kuhnle,* 5 O.R.W. 514, (NOAA App. 1989).

[1] The Respondent notes that neither of these designations were included in Court Group D: 3, which identifies those designations of particular concern with respect to chemical weapons proliferation (*i.e.*, Iran, Syria, Libya. North Korea, and Cuba) *See* CFR ¶799.1, Supp. 1 (*See* 15 CFR § 799.1, Supp.1 (1995)).

[1] *See* Export Administrative Act, P.L. 96–92, 93 Stat. 503, Legislative History at 1148 (Purpose of the Legislation) which is part of the record herein.

I*n the Matter of Core Laboratories, Inc.*, ITA–AB–2–80, Initial Decision and Order on Remand of Administrative Law Judge Huge J. Dolan (May 4, 1982) aff'd, *In the Matter of Core Laboratories, Inc.*, ITA–AB–2–80, Decision on Appeal and Order (March 14, 1983), remanded on other grounds, *United States* v. *Core Laboratories, Inc.*, 759 F.2d 480 (5th Cir. 1985).

Of all the aggravating factors in this case, one is particularly damming—*that the Respondent, over a period of four and one-half (4.5) years, made 50 separate exports of potassium fluoride and/or sodium fluoride in violation of the Export Administration Regulations (emphasis added).* Importantly, ALCOA is not a new or small company that doesn't understand the foreign export regulatory process. Quite to the contrary, the Respondent is a large multinational corporation which had a separate division (Export Supply Division) specifically dedicated to receiving requisitions, locating suppliers, purchasing products, and shipping the requested items in accordance with applicable export licensing requirements. Thus, ALCOA's conduct, under this backdrop, was flatly inexcusable and the fact that the violations were not intentional or willful is only relevant to the fact that a federal criminal indictment was not handed down. Respondent's failure to comprehend the change in the Federal Register Notice, given the existence of its Export Supply Division, is also particularly troubling.[1] Moreover, the fact that the unlawful shipments consisted of precursors for chemical weapons, regardless of the lack of any potential diversion in these instances, is not something that should be viewed as a technical oversight and is clearly an aggravating factor.

In mitigation, ALCOA argues that had it applied for the necessary validated licenses, they would have been presumptively granted. This argument misses the point. Over the past 20 years, a terrorist threat has developed to our Republic and our interests aboard. In order to protect our country and our interests, laws and regulations were passed/implemented to allow the government to monitor and regulate the export of precursor chemicals and if necessary, prevent any such exports that pose a clear and present danger. Given the huge number of exports from the United States, how is the government suppose to monitor the export of precursor chemicals if it doesn't know that the shipments were being made over a four and one-half year period? ALCOA responds that it filed under general license G–DEST and implies that the government was aware of these 50 separate exports over a four and one-half year period (*See* Respondent's Answer dated January 20, 1998, page 8). I disagree. The Respondent did not submit any evidence to support this position. The Respondent cannot shift its responsibility to the government to do that which it is legally required to do. Given the volume of such exports and the limited public resources to regulate these shipments, the government placed a legal duty on the exporter to file the specific applications with the office charged with such oversight responsibility. The Respondent breached that duty and in so doing, deprived the government of the opportunity to monitor its export of precursor chemicals.

The Respondent also argues that all of the precursor chemicals were entirely consumed at the refineries of the Respondent's subsidiary companies in Jamaica and Suriname. Once again, ALCOA misses the point. The crucial point here is that the government was deprived of possible vital information in its fight to control terrorism. In other words, if the world-wide export of chemicals/biological agents were a puzzle being put together by a U.S. Department of Commerce security team, this information constituted 50 pieces of that puzzle that the government did not have. While it turned out that there was no problem, the fact remains that the government did not have the whole picture. Without the whole picture, or in this case, all of the information about precursor chemical exports, catastrophic errors in preventative decision-making could have occurred.

The Respondent argues that prior to the initiation of the investigation into this matter, it began developing and implementing an expanded and more comprehensive export compliance program. The Respondent notes that it developed export control matrices for each U.S. business unit to identify export control issues on a product-by-product basis; produced a video to increase awareness of export control requirements to be used in conjunction with on-site training for each business unit; appointed export liaison's for each of its business units including the Export Supply Division, who is responsible for disseminating export compliance information; that it's legal department now monitors the **Federal Register** daily for changes to the EAR effecting the Respondent's products and operations, and disseminates this information to the export liaisons; that the Respondent is also developing a Denial List search application on its new company-wide intranet; and that all key Exports Supply Division employees have attended export compliance training seminars.

While the Respondent's January 20, 1998 Answer details the above-recited improvements to its export compliance program, there is no record evidence submitted by the Respondent in Tab 2 of its January 20, 1998 Answer specifying when these improvements were implemented. The EAR amendment occurred on March 13, 1991. The violations occurred between June 14, 1991 and December 7, 1995. During this period of time, the Respondent's export compliance procedures did not involve a periodic review of the requirements for shipments of ''scheduled buying list goods'' or a through monitoring of pertinent regulatory amendments published in the **Federal Register** (*See* Stipulation of Fact No. 17). Thus, the record is void of any meaningful evidence as to what policies and procedures were in effect between March 13, 1991 and December 7, 1995.

Moreover, subsequent to December 7, 1995, the record does not indicate when the above-recited improvements were implemented and in what form those improvements were made. Indeed, the first memorandum from the Legal Department to the Export Supply Division is dated May 9, 1996. Interestingly, the only time this issue is discussed during this time period is set forth in the Joint Stipulations. However, as one can see from reading joint Stipulation of Fact Nos. 17, 20, 27, and 29, these factual recitations only recite what the Respondent *did not do* as opposed to what program it had in effect and what changes were made.

The Respondent states that anything more than a nominal fine in this case is unreasonable. In support of this position, ALCOA argues that recent BXA enforcement orders based on settlement agreements establish a range from $2,000 per violation to $5,000 per violation, large portions of which were suspended. The Respondent cites the following settlements in support of it's argument that the government's proposed $7,500 per violation is excessive and inconsistent with past BXA practice:

1. *Gateway 2000* case—This case involved the unlawful export of U.S.—origin computer equipment without a license in violation of § 787.4(a), § 787.5(a) and § 787.6 for a total of 87 violations. The agreed upon fine was $402,000 or $4,620 per violation.

2. *Allergan, Inc.* case—The Respondent was charged with 412 violations of § 787.6 for violating export controls on biological agents. the fine was $824,000 or $2,000 per violation.

3. *Sierra Rutil America, Inc.* case—The Respondent was charged with eight unlicensed exports of sodium fluoride to Sierra Leone over a two year period in violation of § 787.6. The settlement resulted in a $30,000 fine or $3,750 per violation with half of the fine remitted on probation. This case did not involve exports to controlled or affiliated entities.

4. *Herb Kimiatck and Kimson Chemical Inc.* case—The Respondent was charged with two counts of exporting sodium cyanide without a validated license in violation of § 787.6 and § 787.4(a) of the regulations. The fine was $20,000 or $10,000 per violation.

5. *Snytex* case—The Respondent was charged with 13 violations of unlawfully exporting hydrogen fluoride in violation of § 787.2. The fine was $65,000 or $5,000 per violation. One half of the fine was remitted for 2 years and then waived if there were no further violations.

6. *Palmeros Forwarding* case—The Respondent was charged with 10 violations wherein it used export control documents which represented that the Syntex hydrogen fluoride did not need export licenses. The fine was $50,000 or $5,000 per violation with a two year denial of export privileges. The fine was export privilege denial were suspended on probation.

7. *Villasana* case—This case also arose out of the *Syntex* case, The Respondent was charged with one count and fined $2500 and the denial of export privileges. The fine and export privilege denial were suspended on probation.

8. *Chemicals Export Company of Boston* case—The Respondent was charged with four counts of exporting sodium cyanide without

[1] As noted above, 44 U.S.C.A. § 1507 (1991) imputes knowledge of these changes to the Respondent.

a valid export permit in violation of § 787.6. The fine was $16,000 or $4,000 per violation.

9. *Southern Information Systems* case—The Respondent was charged with five counts for the unlawful export of digital microwave systems in violation of § 787.6. The fine was $25,000 or $5,000 per violation.

10. *Advanced Technology* case—The Respondent was charged with two counts of re-exporting electronic equipment from Belgium to Russia without a permit in violation of § 787.6. The fine was $10,000 or $5,000 per violation.

11. *LEP Profit International, Inc.*—The Respondent were charged with twelve counts of preparing shipping documents that contained false information in violation of § 0787.5(a). The fine was $60,000 or $5,000 per violation. A portion of the penalty, $15,000, was suspended for two years, then waived so long as LEP complies with the export control regulations.

12. *NF&M International Inc.*—The Respondent were charged with thirty-three violations for exporting titanium alloy products without the necessary export licenses in violation of § 787.6. The fine was $82,500 or $42,500 per violation. The Department agreed to suspend payment of $42,500 for one year and then to waive that payment provided NF&M complies with export control regulations.

13. *DATRAC AG*—The Respondent was charged with one count for re-exporting U.S.-origin data communications equipment from Switzerland to Singapore without obtaining the required export license in violation of § 787.6. The fine was $2,500.

14. *Lasertechnics Inc.*—The Respondent in this case was charged with thirty-six violations for exporting U.S.-origin thyratrons from the United States to Hong Kong, Ireland, Malaysia, and Singapore without obtaining the individual validated export licenses in violation of § 787.6. The fine was $180,000 or $5,000 per violation. Pursuant to § 766.18(c), the remaining balance of $80,000 was suspended for three years and shall thereafter be waived, provided that, during the period of suspension, the Respondent has committed no violation of the Act, or any regulation, order, or license issued thereunder.

15. *President Titanium*—The Respondent was charged with twenty-five violations for exporting U.S.-origin titanium bars to various countries without obtaining the required validate licenses in violation of 787.6. The fine was $125,000 or $5,000 per violation. Pursuant to § 766.18(c), the remaining balance of $50,000 was suspended for one year provided that, during the period of suspension, the Respondent commit no violation of the Act, or any regulation, order, or license issued thereunder.

16. *Allvac*—The Respondent was charged with forty-eight counts for exporting titanium alloy solid cylindrical forms with diameters greater than three inches from the United States to various countries and exported maraging steel to Germany without the required validated license in violation of § 787.6. The fine was $122,500 or $2,552 per violation. Pursuant to § 766,18(c) payment of the remaining balance of $47,500 was suspended for one year provided that, during the period of suspension, the Respondent commit no violation of the Act, or any regulation, order, or license issued thereunder.

17. *EC Company*—The Respondent was charged with four violations of making false or misleading statements on an export control document; exported U.S.—origin spare parts from the United States to Vietnam without validated license in violation of § 787.6; and two counts for exporting spare parts from the United States to Singapore that Respondent knew would be re-exported from Singapore to Vietnam in violation of § 787.4(a). The fine was $8,000 or $2,000 per violation.

I find the Respondent's argument regarding the previous settlement of cases by BXA with lower civil penalty assessments to be unpersuasive. Settlements are reached based upon the facts of each case. These facts include the relative strengths and weaknesses of each party's case; the desires of one or both sides to extricate themselves from the litigation for whatever reason; and a determination that such a settlement is a good business decision in the case of a Respondent or satisfies the public interest in the case of the government. Moreover, the reasons behind each party's decision to enter into a settlement are rarely, if ever, made public where foreign policy and/or national security issues are involved. As the government points out, this phenomenon is especially true in export cases (TR. 42).

During the Oral Argument in this matter, Counsel for the government stated:

All parties in this courtroom know that citing a series of case names and corresponding settlement figures knowing nothing of the details of what actually transpired during the settlement negotiations, much less any internal discussions of litigation strategy or what not, is really not particularly helpful.

BXA does not maintain a rubric. It does not have a penalty matrix or a cookie cutter into which to force every case it prosecutes. Rather, each case is individually evaluated, and considerations that apply in one, may not apply in another, or may not be given the same impact depending on the facts of each case.

The Respondent argues in mitigation that it has no prior record of violations. I find this argument is entitled to little or no weight given the fact that for four and one-half years, the Respondent committed one hundred violations of the EAR. Indeed, It is not the prior record that is important here, but the aggravating factor of 100 violations and the continuing course of conduct over such a long period. Under this circumstance, I find that the Respondent's actions constitute a gross and long standing neglect of it's undisputed legal duty which totally outweighs the lack of a prior record of violations.

As noted above, the government recommends a $7,500 civil penalty assessment for each of the 100 violations. The Respondent argues for a zero level of civil penalty. However, the Respondent states that it would accept a nominal fine per violation under the suspension on probation procedures. The Respondent also states that the government's recommended sanction is close to the $10,000 maximum and is therefore unreasonable. Indeed, it argues that if you look at the cited cases that were settled, the maximum range should not exceed $2,000 to $5,000. I disagree. Congress established a statutory scheme which provided for a full panoply of penalties ranging from federal prison time and/or severe monetary fines to mere administrative action which could involve civil penalties, denial of export privileges, exclusion from practice or any combination thereof. When viewed in this context, it becomes readily apparent that the government has recommended *an unreasonably low sanction* (*emphasis added*).

Indeed, the government might well have opted to argue in a criminal forum that ALCOA's conduct was so grossly negligent as to constitute a willful disregard of federal law. In this case, the amount of care demanded by the standard of reasonable conduct on the part of the Respondent must be in proportion to the apparent risk. As the danger becomes greater, the Respondent is required to exercise caution commensurate with that increased risk. Since the Respondent was dealing with precursors for chemical weapons, the March 13, 1991 Federal Register Notice constructively put it on notice that it must exercise a great amount of care because the risk is great. It failed to do so.

Importantly, the government voluntarily lowered the sanction bar all the way down to the level of an administrative civil penalty in this case. That having been done, the Respondent argues that the government is being harsh and should lower the bar further. In effect, the Respondent is attempting to have the government negotiate with itself. This is wrong. Based upon the detailed discussion set forth above, I find the appropriate sanction for each of these unlawful shipments is $10,000. The Respondent is a huge multi-national corporation. As such, a $10,000 penalty per violation is minuscule for ALCOA who describes itself as ''one of the world's leading producers of aluminum.* * *''. At no time during this proceeding, did ALCOA's counsel raise financial hardships for mitigating any civil penalty. At some point, ALCOA has to stand up and take responsibility for it's gross and long-standing breach of legal duty. Conversely, the United States government must set its civil penalties at a high enough level to insure that large multi-national corporations don't ignore the law and if they get caught, merely consider the fine as a cost of doing business.

Accordingly, it is ordered that Aluminum Company of America, having been found by preponderant evidence to have one hundred violations of the Export Administration Regulations, pay a civil penalty in the amount of $10,000 per violation for a total of $1,000,000. [1]

[1] In addition to the arguments made herein as to the appropriate amount of the monetary penalty for each violation in this case, I hereby accept the arguments of the government as reasonable to the extent they are not inconsistent with the rational set forth in Section II, above. To the extent that the Respondent's arguments as to sanction are inconsistent with the Recommended Decision and Order, they are specifically rejected.

It is Further Ordered that a copy of this Recommended Decision and Order shall be served on Aluminum Company of America and the Department of Commerce in accordance with § 778.16(b)(2) of the Regulations.

Done and Dated on this 21sth day of December 1998, Alameda, California.

Hon. Parlen L. McKenna,

United States Administrative Law Judge.

To be considered in the thirty (30) day statutory review process which is mandated by 50 U.S.C.A. § 2412(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room H–3898, Washington, DC 20230, within twelve (12) days. Replies to the other party's submission are to be made within the following eight (8) days (*See* 15 CFR 766.22(b) and 50 Fed. Reg. 53134 (1985)). Pursuant to 50 U.S.C.A. § 2412(c)(3) of the Act and 15 CFR 766.22(e) of the Final Order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within fifteen (15) days of its issuance.

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DEPARTMENT OF COMMERCE

Under Secretary for Export Administration

[Docket Number 98–BXA–10]

In the Matter of: TIC LTD. Suite C, Regent Centre, Explorers Way, Freeport, Bahamas, Respondent; Decision and Order

On August 12, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA''), issued a charging letter initiating an administrative proceeding against TIC Ltd. (hereinafter ''TIC''). The charging letter alleged that TIC committed 112 violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730–774 (1999)) (hereinafter the ''Regulations''),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. sections 2401–2420 (1991 & Supp. 1999)) (hereinafter the ''Act'').[2]

Specifically, the charging letter alleged that, beginning in June 1994 and continuing through about July 1996, TIC conspired with Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, and TIC Ltd. to bring about acts that constituted violations of the Act, or any regulation, order, or license issued thereunder. The purpose of the conspiracy was for TIC and the others to export U.S.-origin commodities to Libya, a country subject to a comprehensive economic sanctions program. To accomplish their purpose, the conspirators devised and employed a scheme to export U.S.-origin items from the United States through the United Kingdom to Libya, without applying for and obtaining the export authorizations that the conspirators knew or had reason to know were required under U.S. law, including the Regulations. *See* 15 CFR 764.4, previously codified at 15 CFR 785.7 of the former Regulations, and 15 CFR 772.1 of the former Regulations. BXA alleged that, by conspiring or acting in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Act, or any regulation, order or license issued thereunder, TIC violated Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996) of the former Regulations.

BXA alleged that, in furtherance of the conspiracy described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, TIC, as a co-conspirator, exported polyurethane (isocyanate/polyol) and polyether polyurethane (hereinafter collectively referred to as ''pipe coating materials'') from the United States to Libya, without obtaining from the Department the validated export licenses that TIC knew or had reason to know were required under Section 772.1(b) (redesignated as Section 772A.1(b) on March 25, 1996) of the former Regulations. BXA alleged that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act, or any regulation, order, or license issued thereunder. TIC, as a co-conspirator, violated Section 787.6 or Section 787A.6 of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC, as a co-conspirator, committed 32 violations of Section 787.6 and five violations of Section 787A.6 of the former Regulations, for a total of 37 violations.

BXA also alleged that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the transactions, TIC, as a co-conspirator, violated Section 787.4(a) or Section 787A.4(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC committed 32 violations of Section 787.4(a) and five violations of Section 787A.4(a) of the former Regulations, for a total of 37 violations.

Finally, BXA also alleged that, in furtherance of the conspiracy described above and to effect the 37 exports described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, TIC used Shipper's Export Declarations or Bills of Lading, export control documents as defined in Section 770.2 (redesignated as Section 770A.2 on March 25, 1996) of the former Regulations, on which it represented that the commodities described thereon, pipe coating materials, were destined for ultimate end-use in the United Kingdom. In fact, the pipe coating materials were ultimately destined for Libya. BXA alleged that, by making false or misleading statements of material fact directly and indirectly to a United States agency in connection with the use of export control documents to effect exports from the United States, TIC, as a co-conspirator, violated Section 787.5(a) or Section 787A.5(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC committed 32 violations of Section 787.5(a) and five violations of Section 787A.5(a)[3] of the former Regulations, for a total of 37 violations.

Thus, BXA alleged that TIC committed one violation of Section

[1] The alleged violations occurred during 1994, 1995, and 1996. The Regulations governing the violations at issue are found in the 1994, 1995 and 1996 versions of the Code of Federal Regulations (15 C.F.R. Parts 768–799 (1994 and 1995) and 15 C.F.R. Parts 768–799 (1996), as amended (61 *Fed Reg.* 12714, March 25, 1996)) (hereinafter the ''former Regulations''). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the existing Regulations as 15 C.F.C. Parts 768A–799A. In addition, the March 25, 1996 **Federal Register** publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730–774, effective April 24, 1996. The former Regulations define the violations that BXA alleges occurred. The reorganized and restructured Regulations establish the procedures that apply to this matter.

[2] The Act expired on August 20, 1994. Executive order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), and August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1999)).

[3] BXA noted in its motion that, because of a typographical error, the charging letter incorrectly cites to Section 785A4(a) and requested that the ALJ authorize an amendment to the charging letter to provide the correct citation to the regulatory provision that spells out the false statement violation, Section 787A.5(a). The ALJ granted BXA's request and amended the charging letter to correct the citation to Section 787A.5(a).