

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

In the Matter of:

Robert Herman Fleischer
20003 N. 23rd Avenue, Apt. 250
Phoenix, AZ 85027

ORDER DENYING EXPORT PRIVILEGES

On August 4, 2017, in the U.S. District Court for the District of Arizona, Robert Herman Fleischer (“Fleischer”) was convicted of violating Section 38 of the Arms Export Control Act, 22 U.S.C. § 2778 (2012)(“AECA”), by intentionally attempting to willfully and knowingly export and cause to be exported from the United States to Mexico 2,999 rounds of 7.62x39mm caliber ammunition, manufactured by Igman Arsenal, which are designated as defense articles on the United States Munitions List, without the required U.S. Department of State licenses. Fleischer was sentenced to 21 months in prison, with credit for time served, three years of supervised release, and a special assessment of \$100. Fleischer was also placed on the U.S. Department of State Debarred List.

The Export Administration Regulations (“EAR” or “Regulations”) are administered and enforced by the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”).¹ Section 766.25 of the Regulations provides, in pertinent part, that

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2021). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which was extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain

the “Director of [BIS’s] Office of Export Enforcement, in consultation with the Director of [BIS’s] Office of Exporter Services, may deny the export privileges of any person who has been convicted of a violation of any of the statutes set forth at 50 U.S.C. 4819 (e)(1)(B),”² including Section 38 of the AECA. 15 C.F.R. § 766.25(a).³ The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 C.F.R. § 766.25(d). In addition, pursuant to Section 750.8 of the Regulations, BIS’s Office of Exporter Services may revoke any BIS-issued licenses in which the person has an interest at the time of his/her conviction.⁴

BIS received notice of Fleischer’s conviction for violating Section 38 of the AECA, and pursuant to Section 766.25 of the Regulations, has provided notice and an

National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801–4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

² The Director, Office of Export Enforcement, is now the authorizing official for issuance of denial orders, pursuant to recent amendments to the Regulations (85 *Fed. Reg.* 73411, November 18, 2020).

³ As codified at the time of the underlying conviction at issue, Section 11(h)(1) of the EAA, as amended, provided that: “No person convicted of a violation of this chapter (or any regulation, license, or order issued under this chapter), any regulation, license, or order issued under the International Emergency Economic Powers Act [50 U.S.C. § 1701, *et seq.*], section 793, 794 or 798 of title 18, section 783(b) of this title, or section 2778 of title 22 shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this chapter for a period of up to 10 years from the date of conviction. The Secretary may revoke any export license under this chapter in which such person has an interest at the time of conviction.” 50 U.S.C. § 4610(h)(1).

⁴ See notes 1 and 3, *supra*.

opportunity for Fleischer to make a written submission to BIS. BIS has not received a written submission from Fleischer.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Fleischer's export privileges under the Regulations for a period of seven years from the date of Fleischer's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued license in which Fleischer had an interest at the time of his conviction.

Accordingly, it is hereby **ORDERED**:

First, from the date of this Order until August 4, 2024, Robert Herman Fleischer, with a last known address of 20003 N. 23rd Avenue, Apt. 250, Phoenix, AZ 85027, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives ("the Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, license exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject

to the Regulations, or engaging in any other activity subject to the Regulations; or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item,

of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Fleischer by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Fleischer may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Fleischer and shall be published in the *Federal Register*.

Sixth, this Order is effective immediately and shall remain in effect until August 4, 2024.

John Sonderman

John Sonderman

Director

Office of Export Enforcement

Issued this ___ 8 ___ day of ___ November _____, 2021.