

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Alicat Scientific, Inc.  
2200 Wilmot Road  
Tucson, AZ 85712

Attention: Mr. John Bowman  
President

Dear Mr. Bowman:

The Bureau of Industry and Security, United States Department of Commerce ("BIS") has reason to believe that on one occasion, Alicat Scientific, Inc. ("Alicat Scientific") violated the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979 (the "Act")<sup>2</sup>. Specifically, BIS charges that Alicat Scientific committed the following violation:

**Charge 1                    15 C.F.R. §764.2(a) - Unlicensed export to Entity List organization**

On or about March 5, 1999, Alicat Scientific caused the export of items subject to the Regulations (mass flow meters and power supplies)(EAR99) to the Department of Atomic Energy, Mumbai, India, an organization on the Entity List, Supplement No. 4 to Part 744 of the Regulations, without the license required by then Section 744.11 of the Regulations. In so doing, Alicat Scientific committed one violation of Section 764.2(a) of the Regulations.

Accordingly, Alicat Scientific is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003) and establish the procedures that apply to this matter

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508, and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222, extended by an August 14, 2002 Presidential Notice (67 *Fed. Reg.* 159 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000;<sup>3</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Alicat Scientific fails to answer the charge contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7). If Alicat Scientific defaults, the Administrative Law Judge may find the charge alleged in this letter is true without hearing or further notice to Alicat Scientific. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on the charge in this letter.

Alicat Scientific is further notified that it is entitled to an agency hearing on the record if Alicat Scientific files a written demand for one with its answer. (Regulations, Section 766.6). Alicat Scientific is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Alicat Scientific have a proposal to settle this case, Alicat Scientific or its representative should transmit the offer to me through the attorney representing BIS named below.

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

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

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

Office of Chief Counsel for Industry and Security  
Attention: Philip Ankel  
Room H-3839

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<sup>3</sup> See 15 C.F.R. §6.4(a)(2).

Alicat Scientific, Inc  
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United States Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Philip Ankel is the attorney representing BIS in this case. Any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,

Mark D. Menefee  
Director  
Office of Export Enforcement

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

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In the Matter of: )  
)  
Alicat Scientific, Inc. )  
2200 Wilmot Road )  
Tucson, AZ 85712 )  
)  
Respondent. )

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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, Alicat Scientific, Inc. (“Alicat Scientific”), and the Bureau of Industry and Security, United States Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (“Regulations”),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”).<sup>2</sup>

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violation charged occurred in 1999. The Regulations governing the violation at issue are found in the 1999 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The 2003 Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003), has continued the Regulations in effect under IEEPA.

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

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

1. *One Violation of 15 C.F.R. § 764.2(a) - Unlicensed export to Entity List organization:* On or about March 5, 1999, Alicat Scientific caused the export of items subject to the Regulations, mass flow meters and power supplies designated as EAR99, to the Department of Atomic Energy, Mumbai, India, an organization on the Entity List, Supplement No. 4 to Part 744 of the Regulations, without the Department of Commerce license required by then Section 744.11 of the Regulations.

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

WHEREAS, Alicat Scientific fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if it agrees to this Agreement as the final resolution of this matter;

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

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

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

- a. Alicat Scientific shall be assessed a civil penalty in the amount of \$7,000. Alicat Scientific shall pay \$5,000 to the U.S. Department of Commerce within 30 days from the date of entry of the Order. Payment of the remaining \$2,000 shall be suspended for a period of one year from the date of entry of this Order and thereafter shall be waived, provided that during the period of suspension, Alicat Scientific has committed no violation of the Act, or any regulation, order, or license issued thereunder and has made the payment of \$5,000 described above in a timely manner.

- b. The timely payment of the civil penalty agreed to in paragraph 2.a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Alicat Scientific. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of Alicat Scientific's export privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Alicat Scientific hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from the terms of a denial order under 15 C.F.R. § 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$5,000 civil penalty, BIS will not initiate any further administrative proceeding against Alicat Scientific in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

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

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

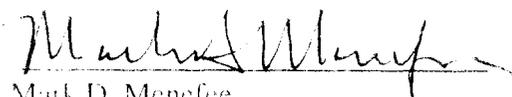
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BIS only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

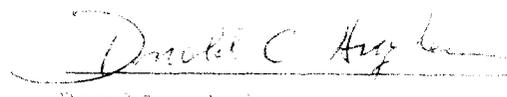
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

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

ALICAT SCIENTIFIC, INC



Mark D. Menefee  
Director  
Office of Export Enforcement



Donald C. Hughes  
President

Date: 2/20/04

Date: 2/18/04

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

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In the Matter of: )  
 )  
Alicat Scientific, Inc. )  
2200 Wilmot Road )  
Tucson, AZ 85712 )  
 )  
Respondent. )  
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ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”) having notified Alicat Scientific, Inc. (“Alicat Scientific”) of its intention to initiate an administrative proceeding against Alicat Scientific pursuant to Section 766.3 of the Export Administration Regulations (“Regulations”),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),<sup>2</sup> based on the proposed charging letter issued to Alicat Scientific that alleged that Alicat Scientific committed one violation of the Regulations. Specifically, the charge is:

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violation charged occurred in 1999. The Regulations governing the violation at issue are found in the 1999 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The 2003 Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003), has continued the Regulations in effect under IEEPA.



1. *One Violation of 15 C.F.R. § 764.2(a) - Unlicensed export to Entity List*

*organization:* On or about March 5, 1999, Alicat Scientific caused the export of items subject to the Regulations, mass flow meters and power supplies designated as EAR99, to the Department of Atomic Energy, Mumbai, India, an organization on the Entity List, Supplement No. 4 to Part 744 of the Regulations, without the Department of Commerce license required by then Section 744.11 of the Regulations.

BIS and Alicat Scientific having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$7,000 is assessed against Alicat Scientific. Alicat Scientific shall pay \$5,000 to the U.S. Department of Commerce within 30 days from the date of entry of the Order. Payment of the remaining \$2,000 shall be suspended for a period of one year from the date of entry of this Order and thereafter shall be waived, provided that during the period of suspension, Alicat Scientific has committed no violation of the Act, or any regulation, order, or license issued thereunder and has made the payment of \$5,000 described above in a timely manner. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein,

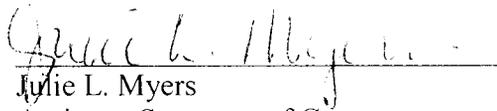


Alicat Scientific will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

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

FOURTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

  
Julie L. Myers  
Assistant Secretary of Commerce  
for Export Enforcement

Entered this 7<sup>th</sup> day of March 2004.

