

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

In the Matter of:)
)
Firth Rixson, Inc. (d/b/a Firth Rixson Monroe))
P.O. Box 31111)
Rochester, New York 14603-1111)
)
)
)
)
Respondent _____)

AMENDED ORDER RELATING TO FIRTH RIXSON, INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Firth Rixson, Inc., a firm doing business as Firth Rixson Monroe (“FRM”), of its intention to initiate an administrative proceeding against (“FRM”) pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2009)) (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),² through issuance of a proposed charging letter to FRM that alleged that FRM committed three violations of the Regulations. Specifically, these charges are:

¹ The violations alleged occurred in 2007. The Regulations governing the violation at issue are found in the 2007 version of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2007). The 2009 Regulations govern the procedural aspects of this case.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of July 23, 2008 (73 Fed. Reg. 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

Charges 1-3: 15 C.F.R. §764.2(a) – Exporting Items to the PRC Without the Required Licenses

On three occasions, on or about April 9, 2007, on or about April 19, 2007, and on or about July 18, 2007, FRM engaged in conduct prohibited by the Regulations when it exported a total of 1,055 pounds of Titanium 6-2-4-2, items subject to the Regulations and classified under Export Control Classification Number 1C202, to the People's Republic of China ("PRC") without the export licenses required by the Regulations. These items, valued in the three exports at issue at a total of \$35,959.15, are controlled for reasons related to U.S. policy on the non-proliferation of nuclear weapons, and the export of these items to the PRC required a license pursuant to Section 742.3 of the Regulations. In exporting these items to the PRC without the required export licenses, FRM committed three violations of Section 764.2(a) of the Regulations.

WHEREAS, BIS and FRM have entered into an Amended 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;

WHEREAS, I have approved of the terms of such Amended Settlement Agreement; and

WHEREAS, this Order amends and supersedes the order relating to this matter that was issued on May 26, 2009.

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$85,000 is assessed against FRM, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order provided that payment shall not be required to be made before August 1, 2009. 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, FRM 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 FRM. Accordingly, if FRM should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of FRM's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that the proposed charging letter, the Amended 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.



Kevin Delli-Colli
Acting Assistant Secretary of Commerce
for Export Enforcement

Entered this 6th day of July, 2009.

WHEREAS, FRM filed a voluntary self-disclosure with BIS's Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

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

WHEREAS, BIS has issued a proposed charging letter to FRM that alleged that FRM committed three violations of the Regulations, specifically:

Charges 1-3: 15 C.F.R. §764.2(a) – Exporting Items to the PRC Without the Required Licenses

On three occasions, on or about April 9, 2007, on or about April 19, 2007, and on or about July 18, 2007, FRM engaged in conduct prohibited by the Regulations when it exported a total of 1,055 pounds of Titanium 6-2-4-2, items subject to the Regulations and classified under Export Control Classification Number 1C202, to the People's Republic of China ("PRC") without the export licenses required by the Regulations. These items, valued in the three exports at issue at a total of \$35,959.15, are controlled for reasons related to U.S. policy on the non-proliferation of nuclear weapons, and the export of these items to the PRC required a license pursuant to Section 742.3 of the Regulations. In exporting these items to the PRC without the required export licenses, FRM committed three violations of Section 764.2(a) of the Regulations.

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

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

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

WHEREAS, FRM understands that this Agreement amends and supersedes the settlement agreement related to this matter that was executed by the Parties in May 2009.

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

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

2. The following sanction shall be imposed against FRM in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the voluntary self-disclosure and the proposed charging letter:

a. FRM shall be assessed a civil penalty in the amount of \$85,000, all of which shall be paid to the U.S. Department of Commerce not later than August 1, 2009.

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, permission, or privilege granted, or to be granted, to FRM.

Failure to make timely payment of the civil penalty set forth above may result in

the denial of all of FRM'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, FRM 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 any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; and (c) 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 \$85,000 civil penalty, BIS will not initiate any further administrative proceeding against FRM in connection with any violation of the Act or the Regulations arising out of the transactions identified in the voluntary self-disclosure and 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. This Agreement amends and supersedes the settlement agreement executed by the Parties in May 2009. 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 U.S. Government with respect to the facts and circumstances addressed herein.

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

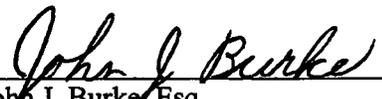
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

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

FIRTH RIXSON, INC.



Thomas Madigan
Director
Office of Export Enforcement



John J. Burke, Esq.
Baker & Hostetler LLP

Date: 7-2-09

Date: 7-1-09

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Firth Rixson, Inc. (d/b/a Firth Rixson Monroe)
P.O. Box 31111
Rochester, New York 14603-1111

Attn: Michael Belmont
General Manager
and Vice President of Operations

Dear Mr. Belmont:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Firth Rixson, Inc. of Rochester, New York, doing business as Firth Rixson Monroe (“FRM”), has committed three violations of the Export Administration Regulations (the “Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that FRM committed the following violations:

Charges 1-3: 15 C.F.R. §764.2(a) – Exporting Items to the PRC Without the Required Licenses

On three occasions, on or about April 9, 2007, on or about April 19, 2007, and on or about July 18, 2007, FRM engaged in conduct prohibited by the Regulations when it exported a total of 1,055 pounds of Titanium 6-2-4-2, items subject to the Regulations and classified under Export Control Classification Number 1C202, to the People’s Republic of China (“PRC”) without the export licenses required by the Regulations. These items, valued in the three exports at issue at a total of \$35,959.15, are controlled for reasons related to U.S. policy on the non-proliferation of nuclear weapons, and the export of these items to the PRC required a license pursuant to Section 742.3 of the

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The violations charged occurred in 2007. Regulations governing the violations at issue are found in the 2007 version of the Code of Federal Regulations. See 15 C.F.R. Parts 730-774 (2007). The 2009 Regulations govern the procedural aspects of this case.

² 50 U.S.C. app. §§ 2401- 2420 (2000). Since August 21, 2001 the Act has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of July 23, 2008 (73 Fed. Reg. 43603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 - 1707 (“IEEPA”). The Act and the Regulations are available on the Government Printing Office website at: <http://www.access.gpo.gov/bis/>.

Regulations. In exporting these items to the PRC without the required export licenses, FRM committed three violations of Section 764.2(a) of the Regulations.

* * * * *

Accordingly, FRM is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation;³
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If FRM fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7 (2009). If FRM defaults, the Administrative Law Judge may find the charges alleged in this letter to be true without a hearing or further notice to FRM. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

FRM is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6 (2009). FRM is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. 15 C.F.R. §§ 766.3(a) and 766.4 (2009).

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18 (2009). Should FRM have a proposal to settle this case, FRM's representative should transmit it through the attorney representing BIS, who is named below.

FRM is further notified that under the Small Business Regulatory Enforcement Flexibility Act, FRM may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, FRM's answer must be filed in

³ *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

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 FRM's answer must be served on BIS at the following address:

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

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

Sincerely,

Thomas Madigan
Director
Office of Export Enforcement