

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

In the Matter of:

Cotran Corporation
4 High Point Avenue #1
Portsmouth, RI 02871

Respondent

ORDER RELATING TO COTRAN CORPORATION

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Cotran Corporation, of Portsmouth, Rhode Island (“Cotran”), of its intention to initiate an administrative proceeding against Cotran pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ through the issuance of a Proposed Charging Letter to Cotran that alleges that Cotran committed eleven violations of the Regulations.² Specifically, the charges are:

¹ The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the 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)), as extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain 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as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.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 Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2019). The charged violations occurred during 2011-2015, and are

Charges 1-10 15 C.F.R. § 764.2(a): Engaging in Prohibited Conduct

On ten occasions between on or about May 28, 2011, and on or about July 16, 2015, Cotran engaged in conduct prohibited by the Regulations by exporting electric cattle prods, items subject to the Regulations, from the United States to various countries, including Venezuela, Mexico, South Africa, and the Czech Republic, without the required Department of Commerce export licenses. The items are classified under Export Control Classification Number (“ECCN”) 0A985, controlled on Crime Control grounds, and valued in total at approximately \$81,010. Pursuant to Section 742.7 of the Regulations, a Department of Commerce export license is required before the items can be exported to each of the destinations at issue. While Cotran had previously applied for and received a number of export licenses for electric cattle prods, including to some of the destinations and end-users at issue, it failed to do on each required occasion and also failed to properly monitor the expiration dates of the export licenses it had been granted.

By exporting these items without the required export licenses, Cotran committed ten violations of Section 764.2(a) of the Regulations.

Charge 11 15 C.F.R. §764.2(i): Failure to Comply with Recordkeeping Requirements

Between on or about May 28, 2011, and on or about July 16, 2015, in connection with Charges 1-10 described above, Cotran failed to comply with the recordkeeping requirements set forth in Section 762.2 of the Regulations in connection with the export from the United States of electric cattle prods, items subject to the Regulations, classified under ECCN 0A985, and controlled on crime control grounds. Cotran failed to retain documents required to be retained under Section 762.2, including, invoices and/or bills of lading relating to these exports.

In so doing, Cotran committed one violation of Section 764.2(i) of the Regulations.

WHEREAS, BIS and Cotran have entered into a Settlement Agreement (the “Agreement”) pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Agreement;

accordingly governed by the 2011-2015 versions of Regulations, 15 C.F.R. Parts 730-774 (2011-2015). The 2019 Regulations set forth the procedures that apply to this matter.

IT IS THEREFORE ORDERED:

FIRST, Cotran shall be assessed a civil penalty in the amount of \$136,000. Cotran shall pay \$50,000 to the U.S. Department of Commerce in four installments as follows: \$12,250, not later than November 15, 2019; \$12,250, not later than February 15, 2020; \$12,250, not later than May 15, 2020; and \$12,250, not later than August 15, 2020. Payment of the remaining \$86,000 shall be suspended for a period of four years from the date of this Order, and thereafter shall be waived, provided that during this four-year payment probationary period, Cotran has not committed another violation of the Export Control Reform Act of 2018 (“ECRA”),³ the Regulations, or any order, license, or authorization issued under ECRA or the Regulations, and has fully complied with the terms of the Agreement and this Order, including full and timely payment of \$50,000 as set forth above.

SECOND, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2012)), 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, Cotran 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, Cotran’s compliance with the terms of the Agreement and this Order, including full and timely payment of the civil penalty in accordance with the payment schedule 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 Cotran. Accordingly, if Cotran fails to comply in full with

³ See note 1, *supra*.

the terms of the Agreement and this Order, the undersigned may issue an order denying all of Cotran' export privileges under ECRA and the Regulations for a period of two years from the date of issuance of any such denial order.

FOURTH, Cotran shall not dispute or deny, directly or indirectly, the allegations contained in the Proposed Charging Letter or this Order or take any position contrary thereto in any public statement. The foregoing does not affect Cotran's testimonial obligations in any administrative or judicial proceeding; nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

FIFTH, 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.



Douglas Hassebrock
Director, Office of Export Enforcement,
performing the non-exclusive functions and
duties of the Assistant Secretary for Export
Enforcement

Issued this 7th day of November, 2019.

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

In the Matter of:

Cotran Corporation
4 High Point Avenue #1
Portsmouth, RI 02871

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Cotran Corporation, of Portsmouth, Rhode Island (“Cotran”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (the “Regulations”).¹

WHEREAS, BIS has notified Cotran of its intentions to initiate an administrative proceeding against Cotran pursuant to the Regulations;²

¹ The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the 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)), as extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), as continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain 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 Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2019). The charged violations occurred during the 2011-2015 time period. The Regulations governing the violations at issue are found in the 2011-2015 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2019 Regulations set forth the procedures that apply to this matter.

WHEREAS, BIS has issued a Proposed Charging Letter to Cotran that alleges that Cotran committed eleven violations of the Regulations, specifically:

Charges 1-10 15 C.F.R. § 764.2(a): Engaging in Prohibited Conduct

On ten occasions between on or about May 28, 2011, and on or about July 16, 2015, Cotran engaged in conduct prohibited by the Regulations by exporting electric cattle prods, items subject to the Regulations, from the United States to various countries, including Venezuela, Mexico, South Africa, and the Czech Republic, without the required Department of Commerce export licenses. The items are classified under Export Control Classification Number ("ECCN") 0A985, controlled on Crime Control grounds, and valued in total at approximately \$81,010. Pursuant to Section 742.7 of the Regulations, a Department of Commerce export license is required before the items can be exported to each of the destinations at issue. While Cotran had previously applied for and received a number of export licenses for electric cattle prods, including to some of the destinations and end-users at issue, it failed to do on each required occasion and also failed to properly monitor the expiration dates of the export licenses it had been granted.

By exporting these items without the required export licenses, Cotran committed ten violations of Section 764.2(a) of the Regulations.

Charge 11 15 C.F.R. §764.2(i): Failure to Comply with Recordkeeping Requirements

Between on or about May 28, 2011, and on or about July 16, 2015, in connection with Charges 1-10 described above, Cotran failed to comply with the recordkeeping requirements set forth in Section 762.2 of the Regulations in connection with the export from the United States of electric cattle prods, items subject to the Regulations, classified under ECCN 0A985, and controlled on crime control grounds. Cotran failed to retain documents required to be retained under Section 762.2, including, invoices and/or bills of lading relating to these exports.

In so doing, Cotran committed one violation of Section 764.2(i) of the Regulations.

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

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

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

WHEREAS, Cotran neither admits nor denies the allegations contained in the Proposed Charging Letter; and

WHEREAS, Cotran agrees to be bound by the Order, if issued;

NOW, THEREFORE, the Parties hereby agree, for purposes of this Agreement, as follows:

1. BIS has jurisdiction over Cotran, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanctions shall be imposed against Cotran:

a. Cotran shall be assessed a civil penalty in the amount of \$136,000.

Cotran shall pay \$50,000 to the U.S. Department of Commerce in four installments as follows: \$12,250, not later than November 15, 2019; \$12,250, not later than February 15, 2020; \$12,250, not later than May 15, 2020; and \$12,250, not later than August 15, 2020. Payment shall be made in the manner specified in the attached instructions. Payment of the remaining \$86,000 shall be suspended for a period of four years from the date of the Order, and thereafter shall be waived, provided that during this four-year payment probationary period under

the Order, Cotran has not committed another violation of the Export Control Reform Act or 2018 (“ECRA”),³ the Regulations, or any order, license, or authorization issued under ECRA or the Regulations, and has fully complied with the terms of this Agreement and the Order, including full and timely payment of \$50,000 as set forth above.

b. Compliance with the terms of this Agreement and the Order, including full and timely payment of the civil penalty agreed to in Paragraph 2.a 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 Cotran. Failure to comply in full with the terms of this Agreement and the Order may result in the denial of all of Cotran’s export privileges under ECRA and the Regulations for a period of two years from the issuance of any such denial order.

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof and issuance of the Order, Cotran hereby waives all rights to further procedural steps in this matter (except the procedural steps set forth in Sections 766.17(c) and 766.18(c) of the Regulations with respect to the possible activation of a suspended sanction due to a violation or violations of this Agreement or the Order), including, without limitation, any right to: (a) receive 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; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order. Cotran also waives and will not assert any Statute of Limitations defense, and

³ See note 1, *supra*.

the Statute of Limitations will be tolled, in connection with any violation of the Regulations arising out of the transactions identified in the Proposed Charging Letter, and in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until Cotran has paid in full the civil penalty as set forth in Paragraph 2.a above.

4. Cotran shall not dispute or deny, directly or indirectly, the allegations contained in the Proposed Charging Letter or Order or take any position contrary thereto in any public statement. The foregoing does not affect Cotran's testimonial obligations in any administrative or judicial proceeding; nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. BIS agrees that upon Cotran's full compliance with the terms of this Agreement and the Order, if issued, including full and timely payment of the civil penalty as set forth in Paragraph 2.a above, BIS will not initiate any further administrative proceeding against Cotran in connection with any violation of the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

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 constitutes and the contains the entire agreement and understanding among the parties, and the terms of this Agreement or the Order, if issued, may not be varied or otherwise altered or affected by any agreement, understanding, representation, or interpretation not contained in this Agreement; 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 issuing 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. If the Order issues, BIS will make the Proposed Charging Letter, this Agreement, and the Order available to the public.

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

∥

11. If any provision of this Settlement Agreement is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

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



By: John D. Sonderman
Deputy Director, Office of Export
Enforcement

COTRAN CORPORATION



Bertrand Dumont
Owner

Date: Nov 7, 2019

Date: Oct. 31, 2019

PROPOSED CHARGING LETTER

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Cotran Corporation
4 High Point Avenue #1
Portsmouth, RI 02871

*Attention: Bertrand Dumont
Owner*

Dear Mr. Dumont,

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Cotran Corporation, of Portsmouth, Rhode Island (“Cotran”), has violated the Export Administration Regulations (the “Regulations”).¹ Specifically, BIS alleges that Cotran committed the following 11 violations:²

Charges 1-10 15 C.F.R. § 764.2(a): Engaging in Prohibited Conduct

As described in greater detail in the attached Schedule of Violations, which is incorporated herein, on ten occasions between on or about May 28, 2011, and on or about July 16, 2015, Cotran engaged in conduct prohibited by the Regulations by exporting electric cattle prods, items subject to the Regulations, from the United States to various countries, including Venezuela, Mexico, South Africa, and the Czech Republic, without the required Department of Commerce export licenses. The items are classified under Export Control Classification Number (“ECCN”) 0A985, controlled on Crime Control grounds, and valued in total at approximately \$81,010. Pursuant to Section 742.7 of the Regulations, a Department of Commerce export license is required before the items can be exported to each of the destinations at issue. While Cotran had previously applied for and received a number of export licenses for electric cattle prods,

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² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2019). The violations alleged occurred in 2011-2015. The Regulations governing the violations at issue are found in the 2011-2015 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2011-2015). The 2019 Regulations currently govern the procedural aspects of this case.

including to some of the destinations and end-users at issue, it failed to do on each required occasion and also failed to properly monitor the expiration dates of the export licenses it had been granted.

By exporting these items without the required export licenses, Cotran committed ten violations of Section 764.2(a) of the Regulations.

Charge 11 15 C.F.R. §764.2(i): Failure to Comply with Recordkeeping Requirements

Between on or about May 28, 2011 and on or about July 16, 2015, in connection with Charges 1-10 described above, Cotran failed to comply with the recordkeeping requirements set forth in Section 762.2 of the Regulations in connection with the export from the United States of electric cattle prods, items subject to the Regulations, classified under ECCN 0A985, and controlled on crime control grounds. Cotran failed to retain documents required to be retained under Section 762.2, including, invoices and/or bills of lading relating to these exports.

In so doing, Cotran committed one violation of Section 764.2(i) of the Regulations.

* * * * *

Accordingly, Cotran is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions³ including, but not limited to, any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$302,584 per violation,⁴ or twice the value of the transaction that is the basis of the violation;⁵
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

If Cotran 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. If Cotran defaults, the Administrative Law Judge may find the charges

³ The alleged violations occurred prior to August 13, 2018, the date of enactment of ECRA. Consequently, the potential sanctions are provided for in IEEPA. In situations involving alleged violations that occurred on or after August 13, 2018, the potential sanctions are specified in Section 1760(c) of ECRA.

⁴ *See* 15 C.F.R. §§ 6.3(b)(4), 6.4. This amount is subject to annual increases pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Pub. L. No 114-74, enacted on November 2, 2015. *See* 84 Fed. Reg. 2445, 2447 (adjusting for inflation the maximum civil monetary penalty under IEEPA from \$295,141 to \$302,584 effective March 1, 2019).

⁵ *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

alleged in this letter are true without a hearing or further notice to Cotran. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Cotran 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. Cotran is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Cotran have a proposal to settle this case, Cotran should transmit it to the attorneys representing BIS named below.

Cotran is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Cotran 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, Cotran'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, MD 21202-4022

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

Chief Counsel for Industry and Security
Attention: Gregory Michelsen
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Gregory Michelsen is the attorney representing BIS in this case. Any communications that Cotran may wish to have concerning this matter should occur through Mr. Michelsen, who may be contacted by telephone at (202) 482-5301.

Sincerely,

John Sonderman
Deputy Director
Office of Export Enforcement

**COTRAN CORPORATION
SCHEDULE OF VIOLATIONS**

Violation	Date of Export	Invoice No	Item	ECCN	Total Value (\$)	Destination	Violation
1	28-May-11	4838	electric cattle prods	0A985	3,140	South Africa	\$764.2 (a)
2	7-Aug-12	8702	electric cattle prods	0A985	6,400	South Africa	\$764.2 (a)
3	6-Sep-13	11335	electric cattle prods	0A985	1,320	Venezuela	\$764.2 (a)
4	9-May-14	11833/11834	electric cattle prods	0A985	20,150	Venezuela	\$764.2 (a)
5	13-Jan-15	14738	electric cattle prods	0A985	600	Czech Republic	\$764.2 (a)
6	20-Feb-15	15083	electric cattle prods	0A985	7,000	Mexico	\$764.2 (a)
7	8-Apr-15	15149	electric cattle prods	0A985	11,150	Mexico	\$764.2 (a)
8	23-Apr-15	15669	electric cattle prods	0A985	3,850	Venezuela	\$764.2 (a)
9	1-Jun-15	15688	electric cattle prods	0A985	22,750	Mexico	\$764.2 (a)
10	16-Jul-15	16020	electric cattle prods	0A985	4,650	Mexico	\$764.2 (a)
					81,010		