

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

In the Matter of:

Photonics Industries International, Inc.  
1800 Ocean Avenue  
Ronkonkoma, NY 11779

Respondent

ORDER RELATING TO  
PHOTONICS INDUSTRIES INTERNATIONAL, INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Photonics Industries International, Inc. of Ronkonkoma, New York (“Photonics”), of its intention to initiate an administrative proceeding against Photonics pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),<sup>1</sup> through the issuance of a Proposed Charging Letter to Photonics that alleges that Photonics committed five violations of the Regulations.<sup>2</sup> Specifically, the charges are:

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<sup>1</sup> 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)), which has been 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to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2021). The charged violations occurred in 2014-2016. The Regulations governing the violation at issue are found in the 2014-2016 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2021 Regulations set forth the procedures that apply to this matter.

### **Charges 1-3 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct**

On three occasions, on or about December 13, 2014, December 17, 2014, and December 20, 2014, respectively, Photonics engaged in conduct prohibited by the Regulations when it exported RGH-1064-30 picosecond laser systems, items subject to the Regulations, to the People’s Republic of China (“China”) without the required BIS licenses. Specifically, Photonics exported 16 such laser systems on or about December 13, 2014, two such laser systems on or about December 17, 2014, and seven additional such laser systems on or about December 20, 2014.

At the time of each of these exports, the items were classified under Export Control Classification Number (“ECCN”) 6A005.b.6.b, and controlled for National Security (“NS”) and Anti-Terrorism (“AT”) reasons.

Based upon the NS control for the items, a license was required, pursuant to Section 742.4 of the Regulations, to export them to China.<sup>3</sup> However, no license was sought or obtained for the above-described exports.

In transaction documentation for these unlicensed exports to China, Photonics erroneously listed the ECCN applicable to the items as EAR99 and indicated that no license was required for the exports. Photonics had not sought a commodity classification relating to the items from BIS, but, instead, purportedly mistakenly self-classified the items as EAR99.

Photonics also directed a freight forwarder to file Electronic Export Information (“EEI”) in the Automated Export System in connection with each of these exports that listed Hong Kong as the ultimate destination and a Hong Kong freight forwarder as the ultimate consignee. Photonics assertedly did so at the request of its customer, but knew that China was the actual ultimate destination and that the actual ultimate consignee was located in Shenzhen, China.

By exporting NS-controlled items to China without the required BIS licenses on three occasions, Photonics committed three violations of Section 764.2(a) of the Regulations.

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<sup>3</sup> See 15 C.F.R. § 742.4(a) (2014); Supp. No. 1 to 15 C.F.R. Part 774 (2014), at ECCN 6A005 (NS control applies to all items classified under ECCN 6A005 for exports to countries for which NS Column 2 is marked on the Country Chart, Supp. No. 1 to 15 C.F.R. Part 738); Supp. No. 1 to 15 C.F.R. Part 738 (2014) (NS Column 2 applies to China); and Supplement No. 1 to 15 C.F.R. Part 740--Country Groups (2014) (listing China as a Country Group D country, including as to NS-controlled items).

**Charge 4 15 C.F.R. § 764.2(c) – Attempt**

On one occasion, on or about December 30, 2014, Photonics engaged in conduct prohibited by the Regulations when it attempted to export eight RGH-1064-30 picosecond laser systems, items subject to the Regulations, classified under ECCN 6A005.b.6.b, controlled for NS (and AT) reasons, to China without the required BIS license.

A license was required, pursuant to Section 742.4 of the Regulations, to export the items to China,<sup>4</sup> but no license was sought or obtained for this attempted export.

In transaction documentation for this attempted unlicensed export to China, Photonics erroneously listed the items as EAR99, apparently based on its mistaken self-classification of the items, and indicated that no license was required for the export.

Photonics also directed a freight forwarder to file EEI in the Automated Export System in connection with this attempted export that listed Hong Kong as the ultimate destination and a Hong Kong freight forwarder as the ultimate consignee. Photonics assertedly did so at the request of its customer, but knew that China was the actual ultimate destination and that the actual ultimate consignee was located in Shenzhen, China.

By attempting to export NS-controlled items to China without the required BIS license, Photonics committed one violation of Section 764.2(c) of the Regulations.

**Charge 5 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct**

On or about May 25, 2016, Photonics engaged in conduct prohibited by the Regulations when it exported a DCH-355-3 laser system, an item subject to the Regulations, designated EAR99,<sup>5</sup> to Sichuan University in Chengdu, China, without the required BIS license. Sichuan University was at all times relevant hereto (and remains) listed on the Entity List, Supplement No. 4 to Part 744 of the Regulations, and a BIS license was required to export any item subject to the Regulations to that entity. *See* 15 C.F.R. § 744.11 and Supp. No. 4 to 15 C.F.R. Part 744 (2016).<sup>6</sup> However, Photonics did not seek or obtain a license for the export of the item to Sichuan University.

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<sup>4</sup> *See* note 2, *supra*.

<sup>5</sup> EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2016, 2020).

<sup>6</sup> Under the Sichuan University entry on the Entity List, a license requirement applies and at all relevant times applied to all items subject to the EAR, with a license review policy of “case-by-case basis.” Sichuan University, which remains on the Entity List, was added to the Entity List as a separate entity on September 19, 2012. *See* 77 Fed. Reg. 58,006 (Sept. 19, 2012).

Although Photonics was aware of BIS's investigation into the December 2014 transactions described in Paragraphs 1-12, *supra*, it still did not have in place an export control compliance program that included screening foreign customers against the Entity List (or other BIS or U.S. Government export controls lists).

By exporting an item subject to the Regulations to Sichuan University without the required BIS license on one occasion, Photonics committed one violation of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Photonics have 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

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

IT IS THEREFORE ORDERED:

FIRST, Photonics shall be assessed a civil penalty in the amount of \$350,000. The payment of \$50,000 shall be made to the U.S. Department of Commerce within 30 days of the date of this Order. Payment of the remaining \$300,000 shall be suspended for a period of two years from the date of this Order, and thereafter shall be waived, provided that during this two-year payment probationary period under this Order, Photonics has not committed a violation of the Export Control Reform Act of 2018 ("ECRA"),<sup>7</sup> the Regulations, or any order, license, or authorization issued under ECRA or the Regulations, and has made full and timely payment of \$50,000 as set forth above.

SECOND, that, 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, Photonics will be assessed, in addition to the full amount of the

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<sup>7</sup> See note 1, *supra*.

civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the 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 Photonics. Accordingly, if Photonics should fail to pay the civil penalty in a full and timely manner, the undersigned may issue an order denying all of Photonics' export privileges under the Regulations for a period of one year from the date of failure to make such payment.

FOURTH, Photonics 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 Photonics' 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.

**KEVIN  
KURLAND** Digitally signed by  
KEVIN KURLAND  
Date: 2021.05.28  
13:03:37 -04'00'

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Kevin J. Kurland  
Acting Assistant Secretary of Commerce for  
Export Enforcement

Issued this 28<sup>th</sup> day of May, 2021.

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

In the Matter of:

Photonics Industries International, Inc.  
1800 Ocean Avenue  
Ronkonkoma, NY 11779

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Photonics Industries International, Inc. of Ronkonkoma, New York (“Photonics”), 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”).<sup>1</sup>

WHEREAS, BIS has notified Photonics of its intention to initiate an administrative proceeding against Photonics, pursuant to the Regulations;<sup>2</sup>

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<sup>1</sup> 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)), which has been extended by successive Presidential Notices, the most recent being that 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, Title XVII, Subtitle B of Pub. L. 115-232, 132 Stat. 2208 (“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 until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2021). The charged violations occurred in 2014-2016. The Regulations governing the

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

**Charges 1-3 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct**

On three occasions, on or about December 13, 2014, December 17, 2014, and December 20, 2014, respectively, Photonics engaged in conduct prohibited by the Regulations when it exported RGH-1064-30 picosecond laser systems, items subject to the Regulations, to the People’s Republic of China (“China”) without the required BIS licenses. Specifically, Photonics exported 16 such laser systems on or about December 13, 2014, two such laser systems on or about December 17, 2014, and seven additional such laser systems on or about December 20, 2014.

At the time of each of these exports, the items were classified under Export Control Classification Number (“ECCN”) 6A005.b.6.b, and controlled for National Security (“NS”) and Anti-Terrorism (“AT”) reasons.

Based upon the NS control for the items, a license was required, pursuant to Section 742.4 of the Regulations, to export them to China.<sup>3</sup> However, no license was sought or obtained for the above-described exports.

In transaction documentation for these unlicensed exports to China, Photonics erroneously listed the ECCN applicable to the items as EAR99 and indicated that no license was required for the exports. Photonics had not sought a commodity classification relating to the items from BIS, but, instead, purportedly mistakenly self-classified the items as EAR99.

Photonics also directed a freight forwarder to file Electronic Export Information (“EEI”) in the Automated Export System in connection with each of these exports that listed Hong Kong as the ultimate destination and a Hong Kong freight forwarder as the ultimate consignee. Photonics assertedly did so at the request of its customer, but knew that China was the actual ultimate destination and that the actual ultimate consignee was located in Shenzhen, China.

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violations at issue are found in the 2014-2016 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2021 Regulations set forth the procedures that apply to this matter.

<sup>3</sup> See 15 C.F.R. § 742.4(a) (2014); Supp. No. 1 to 15 C.F.R. Part 774 (2014), at ECCN 6A005 (NS control applies to all items classified under ECCN 6A005 for exports to countries for which NS Column 2 is marked on the Country Chart, Supp. No. 1 to 15 C.F.R. Part 738); Supp. No. 1 to 15 C.F.R. Part 738 (2014) (NS Column 2 applies to China); and Supplement No. 1 to 15 C.F.R. Part 740--Country Groups (2014) (listing China as a Country Group D country, including as to NS-controlled items).

By exporting NS-controlled items to China without the required BIS licenses on three occasions, Photonics committed three violations of Section 764.2(a) of the Regulations.

**Charge 4 15 C.F.R. § 764.2(c) – Attempt**

On one occasion, on or about December 30, 2014, Photonics engaged in conduct prohibited by the Regulations when it attempted to export eight RGH-1064-30 picosecond laser systems, items subject to the Regulations, classified under ECCN 6A005.b.6.b, controlled for NS (and AT) reasons, to China without the required BIS license.

A license was required, pursuant to Section 742.4 of the Regulations, to export the items to China,<sup>4</sup> but no license was sought or obtained for this attempted export.

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Photonics also directed a freight forwarder to file EEI in the Automated Export System in connection with this attempted export that listed Hong Kong as the ultimate destination and a Hong Kong freight forwarder as the ultimate consignee. Photonics assertedly did so at the request of its customer, but knew that China was the actual ultimate destination and that the actual ultimate consignee was located in Shenzhen, China.

By attempting to export NS-controlled items to China without the required BIS license, Photonics committed one violation of Section 764.2(c) of the Regulations.

**Charge 5 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct**

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Although Photonics was aware of BIS's investigation into the December 2014 transactions described in Paragraphs 1-12, *supra*, it still did not have in place an export control compliance program that included screening foreign customers against the Entity List (or other BIS or U.S. Government export controls lists).

By exporting an item subject to the Regulations to Sichuan University without the required BIS license on one occasion, Photonics committed one violation of Section 764.2(a) of the Regulations.

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

WHEREAS, Photonics enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

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

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

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

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

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case basis." Sichuan University, which remains on the Entity List, was added to the Entity List as a separate entity on September 19, 2012. *See* 77 Fed. Reg. 58,006 (Sept. 19, 2012).

1. BIS has jurisdiction over Photonics, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.
2. The following sanctions shall be imposed against Photonics:
  - a. Photonics shall be assessed a civil penalty in the amount of \$350,000. The payment of \$50,000 shall be made to the U.S. Department of Commerce within 30 days of the date of the Order. Payment shall be made in the manner specified in the attached instructions. Payment of the remaining \$300,000 shall be suspended for a period of two years from the date of the Order, and thereafter shall be waived, provided that during this two-year payment probationary period under the Order, Photonics has not committed another violation of ECRA,<sup>7</sup> the Regulations, or any order, license, or authorization issued under ECRA or the Regulations, and has made full and timely payment of \$50,000 as set forth above.
    - b. The full and timely payment of the civil penalty agreed to in Paragraph 2.a, above are 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 Photonics. Failure to make full and timely payment of the civil penalty may result in the denial of all of Photonics' export privileges under the Regulations for one year from the date of the failure to make such payment.

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<sup>7</sup> See note 1, *supra*.

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, Photonics 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 suspended sanctions due to a violation of this Agreement or the Order, if issued), 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 issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. Photonics also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Proposed Charging Letter or 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 Photonics pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement.

4. Photonics shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Photonics' testimonial obligations in any 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 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 Photonics 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, or appropriate designee, 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 issued; 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, or appropriate designee, 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. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, 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.

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

  
\_\_\_\_\_  
John Sonderman  
Director of Export Enforcement


Date: 5/27/2021

Photonics Industries International, Inc.

  
\_\_\_\_\_  
Yusong Yin  
President  
Photonics Industries International, Inc.

Date: 5/20/2021

Reviewed and approved by:

  
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David Johnson, Esq.  
Vinson & Elkins, LLP  
Counsel for Photonics Industries  
International, Inc.

Date: 5/20/2021

CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Photonics Industries International, Inc.  
1800 Ocean Avenue  
Ronkonkoma, NY 11779

*Attention: Yusong Yin, President/CEO*

Dear Dr. Yin,

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Photonics Industries International, Inc. (“Photonics”), of Ronkonkoma, New York, has violated the Export Administration Regulations (“the Regulations” or “the EAR”).<sup>1</sup> Specifically, BIS charges that Photonics committed the following violations:

**Charges 1-3 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct**

1. On three occasions, on or about December 13, 2014, December 17, 2014, and December 20, 2014, respectively, Photonics engaged in conduct prohibited by the Regulations when it exported RGH-1064-30 picosecond laser systems, items subject to the Regulations, to the People’s Republic of China (“China”) without the required BIS licenses. Specifically, Photonics exported 16 such laser systems on or about December

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<sup>1</sup> 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)), which has been 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. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). 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.

The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2021). The charged violations alleged occurred in 2014-2016. The Regulations governing the violations at issue are found in the 2014 and 2016 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2014, 2016). The 2021 Regulations govern the procedural aspects of this case.

13, 2014, two such laser systems on or about December 17, 2014, and seven additional such laser systems on or about December 20, 2014.

2. At the time of each of these exports, the items were classified under Export Control Classification Number (“ECCN”) 6A005.b.6.b, and controlled for National Security (“NS”) and Anti-Terrorism (“AT”) reasons.

3. Based upon the NS control for the items, a license was required, pursuant to Section 742.4 of the Regulations, to export them to China.<sup>2</sup> However, no license was sought or obtained for the above-described exports.

4. In transaction documentation for these unlicensed exports to China, Photonics erroneously listed the ECCN applicable to the items as EAR99 and indicated that no license was required for the exports. Photonics had not sought a commodity classification relating to the items from BIS, but, instead, purportedly mistakenly self-classified the items as EAR99.

5. Photonics also directed a freight forwarder to file Electronic Export Information (“EEI”) in the Automated Export System in connection with each of these exports that listed Hong Kong as the ultimate destination and a Hong Kong freight forwarder as the ultimate consignee. Photonics assertedly did so at the request of its customer, but knew that China was the actual ultimate destination and that the actual ultimate consignee was located in Shenzhen, China.

6. By exporting NS-controlled items to China without the required BIS licenses on three occasions, Photonics committed three violations of Section 764.2(a) of the Regulations.

#### **Charge 4 15 C.F.R. § 764.2(c) – Attempt**

7. BIS re-alleges and incorporates herein the allegations set forth in Paragraphs 1-5, *supra*.

8. On one occasion, on or about December 30, 2014, Photonics engaged in conduct prohibited by the Regulations when it attempted to export eight RGH-1064-30 picosecond laser systems, items subject to the Regulations, classified under ECCN

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<sup>2</sup> See 15 C.F.R. § 742.4(a) (2014); Supp. No. 1 to 15 C.F.R. Part 774 (2014), at ECCN 6A005 (NS control applies to all items classified under ECCN 6A005 for exports to countries for which NS Column 2 is marked on the Country Chart, Supp. No. 1 to 15 C.F.R. Part 738); Supp. No. 1 to 15 C.F.R. Part 738 (2014) (NS Column 2 applies to China); and Supplement No. 1 to 15 C.F.R. Part 740--Country Groups (2014) (listing China as a Country Group D country, including as to NS-controlled items).

6A005.b.6.b, controlled for NS (and AT) reasons, to China without the required BIS license.

9. A license was required, pursuant to Section 742.4 of the Regulations, to export the items to China,<sup>3</sup> but no license was sought or obtained for this attempted export.

10. In transaction documentation for this attempted unlicensed export to China, Photonics erroneously listed the items as EAR99, apparently based on its mistaken self-classification of the items, and indicated that no license was required for the export.

11. Photonics also directed a freight forwarder to file EEI in the Automated Export System in connection with this attempted export that listed Hong Kong as the ultimate destination and a Hong Kong freight forwarder as the ultimate consignee. Photonics assertedly did so at the request of its customer, but knew that China was the actual ultimate destination and that the actual ultimate consignee was located in Shenzhen, China.

12. By attempting to export NS-controlled items to China without the required BIS license, Photonics committed one violation of Section 764.2(c) of the Regulations.

**Charge 5      15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct**

13. BIS re-alleges and incorporates herein the allegations set forth in Paragraphs 1-11, *supra*.

14. On or about May 25, 2016, Photonics engaged in conduct prohibited by the Regulations when it exported a DCH-355-3 laser system, an item subject to the Regulations, designated EAR99,<sup>4</sup> to Sichuan University in Chengdu, China, without the required BIS license. Sichuan University was at all times relevant hereto (and remains) listed on the Entity List, Supplement No. 4 to Part 744 of the Regulations, and a BIS license was required to export any item subject to the Regulations to that entity. *See* 15 C.F.R. § 744.11 and Supp. No. 4 to 15 C.F.R. Part 744 (2016).<sup>5</sup> However, Photonics did not seek or obtain a license for the export of the item to Sichuan University.

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<sup>3</sup> *See* note 2, *supra*.

<sup>4</sup> EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2016, 2020).

<sup>5</sup> Under the Sichuan University entry on the Entity List, a license requirement applies and at all relevant times applied to all items subject to the EAR, with a license review policy of “case-by-case basis.” Sichuan University, which remains on the Entity List, was added to the Entity List as a separate entity on September 19, 2012. *See* 77 Fed. Reg. 58,006 (Sept. 19, 2012).



15. Although Photonics was aware of BIS's investigation into the December 2014 transactions described in Paragraphs 1-12, *supra*, it still did not have in place an export control compliance program that included screening foreign customers against the Entity List (or other BIS or U.S. Government export controls lists).

16. By exporting an item subject to the Regulations to Sichuan University without the required BIS license on one occasion, Photonics committed one violation of Section 764.2(a) of the Regulations.

\* \* \* \* \*

Accordingly, Photonics 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 sanctions including, but not limited to, any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$311,562 per violation,<sup>6</sup> or twice the value of the transaction that is the basis of the violation;<sup>7</sup>
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.<sup>8</sup>

If Photonics 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 Photonics defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Photonics. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

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<sup>6</sup> *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 Public Law 114-74, enacted on November 2, 2015. *See also* 86 Fed. Reg. 1,764 (Jan. 10, 2021) (Adjusting for inflation the maximum civil monetary penalty under IEEPA from \$307,922 to \$311,562, effective Jan. 15, 2021); note 1, *supra*.

<sup>7</sup> *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

<sup>8</sup> The alleged violations occurred prior to August 13, 2018, the date of enactment of ECRA. *See* note 1, *supra*. Consequently, the applicable potential sanctions are provided for under IEEPA, rather than ECRA. *See id.*

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Photonics 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. Photonics 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 Photonics have a proposal to settle this case, Photonics should transmit it to the attorneys representing BIS named below.

Photonics is further notified that under the Small Business Regulatory Enforcement Fairness Act, Photonics 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, Photonics' 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 Photonics' answer must be served on BIS at the following address:

Office of Chief Counsel for Industry and Security  
14th Street and Constitution Avenue, N.W.  
Room H-3839  
Washington, D.C. 20230  
Attention: Aiysha Hussain, Esq.

Aiysha Hussain is the attorney representing BIS in this case; any communications that Photonics may wish to have concerning this matter should occur through her. Ms. Hussain may be contacted by telephone at (202) 482-5301.

Sincerely,

John D. Sonderman  
Director Office of Export Enforcement