

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

In the Matter of:)
)
Alexander Fishenko)
Inmate Number: 73080-279)
FCI Three Rivers)
P.O. Box 4200)
Three Rivers, TX 78071)

ORDER DENYING EXPORT PRIVILEGES

On July 21, 2016, in the U.S. District Court for the Eastern District of New York, Alexander Fishenko (“Fishenko”) was convicted of violating the International Emergency Economic Powers Act (50 U.S.C § 1701, *et seq.* (2012)) (“IEEPA”) and Section 38 of the Arms Export Control Act (22 U.S.C. § 2778 (2012)) (“AECA”). Specifically, Fishenko was convicted of knowingly, intentionally and willfully exporting from the United States to Russia microelectronics without the required U.S. Department of Commerce licenses, in violation of IEEPA. Fishenko was also convicted of knowingly, intentionally and willfully exporting from the United States to Russia power amplifiers designated as defense articles on the United States Munitions List, namely five TriQuint parts TGA2517, without the required U.S. Department of State licenses, in violation of the AECA. Fishenko was sentenced to 120 months in prison, three years of supervised release, and a \$1,900 assessment, and forfeited over \$500,000 in criminal proceeds to the United States. Fishenko also was placed on the U.S. Department of State Debarred List.

The Export Administration Regulations (“EAR” or “Regulations”) are administered and enforced by the U.S. Department of Commerce’s Bureau of Industry

and Security (“BIS”).¹ Section 766.25 of the Regulations provides, in pertinent part, that the “Director of [BIS’s] Office of Exporter Services, in consultation with the Director of [BIS’s] Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of . . . the International Emergency Economic Powers Act (50 U.S.C § 1701-1706) . . . or section 38 of the Arms Export Control Act (22 U.S.C. § 2778).” 15 C.F.R. § 766.25(a). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 C.F.R. § 766.25(d).² In addition, pursuant to Section 750.8 of the Regulations, BIS’s Office of Exporter Services may revoke any BIS-issued licenses in which the person had an interest at the time of his/her conviction.³

BIS has received notice of Fishenko’s conviction for violating IEEPA and Section 38 of the AECA, and has provided notice and an opportunity for Fishenko to make a

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2018). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which 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. No. 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 according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

² See also Section 11(h) of the EAA, 50 U.S.C. § 4610(h) (Supp. III 2015); Sections 1760(e) and 1768 of ECRA, Title XVII, Subtitle B of Pub. L. No. 115-232, 132 Stat. 2208, 2225 and 2233 (Aug. 13, 2018); and note 1, *supra*.

³ See notes 1 and 2, *supra*.

written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has received a submission from Fishenko, via his counsel.

Based upon my review of the record, including Fishenko's submission and the facts available to BIS, and my consultations with BIS's Office of Export Enforcement, including its Director, I have decided to deny Fishenko's export privileges under the Regulations for a period of 10 years from the date of Fishenko's conviction. I have also decided to revoke all BIS-issued licenses in which Fishenko had an interest at the time of his conviction.

Accordingly, it is hereby **ORDERED**:

First, from the date of this Order until July 21, 2026, Alexander Fishenko with a last known address of Inmate Number: 73080-279, FCI Three Rivers, P.O. Box 4200, Three Rivers, TX 78071, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives ("the Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

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

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

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

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

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

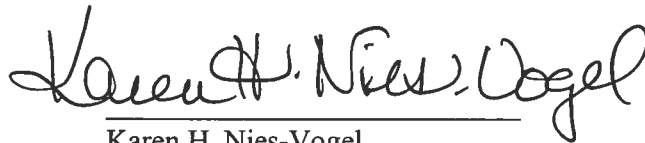
of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification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

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

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

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

Sixth, this Order is effective immediately and shall remain in effect until July 21, 2026.



Karen H. Nies-Vogel
Director
Office of Exporter Services

Issued this 31st day of December, 2018.