

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges;
Halear, Inc.

In the Matter of: Halear, Inc., 530 North Firestone Lane, Placentia, California 92870; Respondent

The Bureau of Industry and Security, United States Department of Commerce ("BIS") having notified Halear, Inc., ("Halear") of its intention to initiate an administrative proceeding against Halear pursuant to section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2004)) ("Regulations"),¹ and section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) ("Act"),² based on the proposed charging letter issued to Halear that alleged that Halear, during the time period of 1998 to 2001, doing business as Preston Scientific, committed nine violations of the Regulations. Specifically, the charges are:

1. *15 CFR 764.2(a)—Export of an Amplifier to India Without the Required Department of Commerce License:* On or about November 30, 1998, Halear export an amplifier (ECCN 3A992)³ from the United States to an organization in India on BIS' Entity List⁴ without the Department of Commerce license required by section 744.11 of the Regulations.

2. *15 CFR 764.2(e)—Selling and Transferring an Item With Knowledge a Violation of the Regulations Would Occur:* On or about November 30, 1998, Halear sold and transferred the amplifier referenced in Paragraph One above with knowledge that a violation

of the Regulations would occur. Specifically, Halear sold and transferred the amplifier to an organization in India on BIS' Entity List when Halear knew that the required Department of Commerce license would not be obtained.

3. *15 CFR 764.2(g)—False Statement on a Shipper's Export Declaration Concerning Authority to Export:* On or about December 1, 1998, in connection with the transaction referenced in Paragraph One above, Halear filed or caused to be filed a Shipper's Export Declaration with the U.S. Government for the export of the amplifier to an organization in India on BIS' Entity List that stated the amplifier qualified for export from the United States as NLR ("No License Required"). This statement was false because, as described in Paragraph One above, a Department of Commerce license was required to export the amplifier.

4. *15 CFR 764.2(g)—False Statement to an Office of Export Enforcement Special Agent in the Course of an Investigation:* On or about January 25, 2001, in connection with an ongoing BIS, Office of Export Enforcement ("OEE") investigation concerning the transaction referenced in Paragraph One above, Halear made a false statement to OEE investigators. Specifically, Halear stated to OEE investigators that the export of the amplifier had been made prior to the imposition of sanctions against India and Pakistan on November 19, 1998, that gave rise to the license requirements in this case. This statement was false because the export was not made until after the imposition of the sanctions.

5. *15 CFR 764.2(a)—Export of a Connector Socket Without the Required Department of Commerce License:* On or about February 26, 1999, Halear exported a connector socket (EAR99)⁵ from the United States, through a distributor in India, to an organization in India on BIS' Entity List without the Department of Commerce license required by section 744.11 of the Regulations.

6. *15 CFR 764.2(e)—Selling and Transferring an Item With Knowledge a Violation of the Regulations Would Occur:* On or about February 26, 1999, Halear sold and transferred the connector socket referenced in Paragraph Five above with knowledge that a violation of the Regulations would occur. Specifically, Halear sold and transferred the connector socket to an organization in India on BIS' Entity

List when Halear knew that the required Department of Commerce license would not be obtained.

7. *15 CFR 764.2(a)—Export of Spare Parts without the Required Department of Commerce License:* On or about July 29, 1999, Halear exported spare parts (EAR99) from the United States, through a distributor in India, to an organization in India on BIS' Entity List without obtaining a license from the Department of Commerce as required by section 744.11 of the Regulations. In so doing, Halear committed one violation of section 764.2(a) of the Regulations.

8. *15 CFR 764.2(e)—Selling and Transferring Items With Knowledge a Violation of the Regulations Would Occur:* On or about July 29, 1999, Halear sold and transferred the spare parts referenced in Paragraph Seven above with knowledge that a violation of the Regulations would occur. Specifically, halear sold and transferred the spare parts to an organization in India on BIS' Entity List when Halear knew that the required Department of Commerce license would not be obtained.

9. *15 CFR 764.2(g)—False Statement to an Office of Export Enforcement Special Agent in the Course of an Investigation:* On or about January 25, 2001, in connection with an ongoing BIS, OEE investigation concerning the transactions referenced in Paragraphs Five and Seven above, Halear made a false statement to OEE investigators. Specifically, Halear stated to OEE investigators that he had not shipped any items to India since December 1998. This statement was false because Halear had exported items to India after December 1998, as described in Paragraphs Five and Seven above.

BIS and Halear 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 \$60,000 is assessed against Halear which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. 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, Halear will be assessed, in addition to the full amount of the civil penalty and

¹ The charged violations occurred from 1998 to 2001. The Regulations governing the violations at issue are found in the 1998 to 2001 versions of the Code of Federal Regulations (15 CFR parts 730–774 (1998–2001)). The 2004 Regulations set forth the procedures that apply to this matter.

² 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 CFR, 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 CFR 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 FR 48763 (August 10, 2004)), has continued the Regulations in effect under the IEEPA.

³ The term "ECCN" refer to an Export Control Classification Number. See Supp. 1 to 15 CFR 774.

⁴ See Supplement No. 4 to part 744 of the Regulations.

⁵ The term "EAR99" refers to items subject to the Regulations which are not listed on the Commerce Control List. See 15 CFR 734.3(c).

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 Hlear. Accordingly, if Hlear should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Hlear's export privileges for a period of one year from the date of entry of this Order.

Fourth, that for a period of three years from the date of this Order, Hlear, Inc., 530 North Firestone Lane, Placentia, California, 92870 ("Hlear"), and when acting for or on behalf of Hlear, its representatives, agents, assigns or employees ("denied person") may not, directly or indirectly, participate in any way in 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, or in any other activity 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 in any other activity subject to the Regulations; or

C. Benefiting 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 in any other activity subject to the Regulations.

Fifth, that 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.

Sixth, that after notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organizations related to Hlear by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Seventh, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Eighth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**.

Ninth, 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.

Entered this 18th day of November 2004.

Julie L. Salcido,

Acting Deputy Assistant Secretary of Commerce for Export Enforcement.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Order Relating to Bernard A. Spear

In the Matter of: Bernard A. Spear, 530 North Firestone Lane, Placentia, California 92870, Respondent

The Bureau of Industry and Security, United States Department of Commerce ("BIS") having notified Bernard A. Spear ("Spear") of its intention to initiate an administrative proceeding against Spear pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730-774 (2004)) ("Regulations"),¹ and section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. sections 2401-2420 (2000)) ("Act"),² based on the proposed charging letter issued to Spear that alleged that, during the time period of 1998 to 2001, Spear, as President of Hlear, Inc., doing business as Preston Scientific, in his individual capacity committed nine violations of the Regulations. Specifically, the charges are:

1. 15 CFR 764.2(a)—Export of an Amplifier to India Without the Required Department of Commerce License: On or about November 30, 1998, Spear exported an amplifier (ECCN 3A992)³ from the United States to an organization in India on BIS' Entity List⁴ without the Department of Commerce license required by Section 744.11 of the Regulations.

2. 15 CFR 764.2(e)—Selling and Transferring an Item With Knowledge a Violation of the Regulations Would Occur: On or about November 30, 1998, Spear sold and transferred the amplifier

¹ The charged violations occurred from 1998 to 2001. The Regulations governing the violations at issue are found in the 1998 to 2001 versions of the Code of Federal Regulations (15 CFR parts 730-774 (1998-2001)). The 2004 Regulations set forth the procedures that apply to this matter.

² 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 CFR, 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 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 FR 48763 (August 10, 2004)), has continued the Regulations in effect under the IEEPA.

³ The term "ECCN" refers to an Export Control Classification Number. See Supp. 1 to 15 CFR 774.

⁴ See Supplement No. 4 to Part 744 of the Regulations.