

DEPARTMENT OF COMMERCE**Submission for OMB Review;
Comment Request**

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Offsets in Military Exports.

OMB Control Number: 0694-0084.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 270.

Number of Respondents: 30.

Average Hours per Response: 9.

Needs and Uses: This information collection is required by the Defense Production Act. The Act requires United States firms to furnish information to the Department of Commerce regarding offset agreements exceeding \$5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries or foreign firms. Offsets are industrial or commercial compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations. Such offsets are required by most major trading partners when purchasing U.S. military equipment or defense-related items.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Jasmeet Seehra, (202) 395-3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395-5167, or Jasmeet_K_Seehra@omb.eop.gov.

Dated: January 29, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

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DEPARTMENT OF COMMERCE

[Docket No. 07-BIS-0028]

Under Secretary for Industry and Security; In the Matter of: Wayne LaFleur, Respondent

Final Decision and Order

This matter is before me upon a Recommended Decision and Order ("RDO") of an Administrative Law Judge ("ALJ"), as further described below.

In a charging letter filed on December 18, 2007, the Bureau of Industry and Security ("BIS") alleged that Respondent Wayne LaFleur committed one violation of the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (2008) ("Regulations")), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. sections 2401-2420 (2000)) (the "Act"),¹ when he exported a vessel to Cuba during a regatta without the license required by the Regulations. Specifically, the charge against Respondent Wayne LaFleur is as follows:

Charge 1 15 CFR 764.2(a)—Exporting a Vessel Without the Required License

Between on or about May 22, 2003 through on or about May 31, 2003, [LaFleur] engaged in conduct prohibited by the Regulations when he exported the vessel

EKA, an item subject to the Regulations and classified on the Commerce Control List under Export Control Classification Number ("ECCN") 8A992.f, to Cuba during a regatta without the required Department of Commerce authorization. On more than one occasion prior to the regatta,

¹ 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. sections 1701-1707) ("IEEPA"). On November 13, 2000, the Act was reauthorized and 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)), which has been extended by successive Presidential Notices, the most recent being that of July 23, 2008 (73 FR 43603, July 25, 2008), has continued the Regulations in effect under IEEPA.

BIS's Office of Export Enforcement had advised race organizers that all regatta participants required a Department of Commerce export license prior to exporting their vessel to Cuba. On or about May 22, 2003, the Office of Export Enforcement met with [LaFleur] and other regatta participants at the regatta's pre-launch party and informed [LaFleur] that a license was required for the temporary export of vessels to Cuba during the regatta. On or about May 23, 2003, the Office of Export Enforcement provided [LaFleur] with a written letter indicating again that an export license was required by all regatta participants who took their vessels to Cuba and that a particular license that had been identified by some participants as authority to take their vessel to Cuba during the regatta did not in fact authorize the temporary export of a vessel. Pursuant to Section 746.2 of the Regulations, a license is required for the export of vessels to Cuba and no license was obtained for the export of the EKA to Cuba. In temporarily exporting a vessel to Cuba without the required license, [LaFleur] committed one violation of Section 764.2(a) of the Regulations.

December 18, 2007 Charging Letter against Wayne LaFleur, at 1-2 (Exhibit Q to BIS's Motion for Decision).²

On October 31, 2008, BIS filed a motion for decision on the record against Respondent LaFleur as to the above charge. Based on the record before him, the ALJ determined that reliable and substantial evidence demonstrated clearly, under the applicable preponderance standard, that the facts described in the charging letter more probably than not occurred as alleged by BIS. RDO, at 7.³ The ALJ found that LaFleur committed one violation of Section 764.2(a) of the Regulations when he exported to Cuba the vessel EKA, an item subject to the Regulations and classified under ECCN 8A992.f, without the export license required by the Regulations. Id. The ALJ also recommended, following consideration of the record, that LaFleur be assessed a monetary penalty of \$8,000.00 and a denial of export privileges for three years. RDO, at 10-11. The ALJ further recommended that the denial of export privileges be

² In the charging letter, LaFleur's name was inadvertently misspelled as "Lefleur", which BIS sought to correct in its Motion for Decision. I agree with the conclusion in the RDO that this spelling change was not substantive and in no way prejudiced LaFleur, who clearly understood that the charging letter was addressed to him. RDO, at 3, fn. 4.

³ The certified record, including the original copy of the RDO dated December 8, 2008, was received in my office on December 11, 2008.