

Via electronic submission on [www.regulations.gov](http://www.regulations.gov)

ID: BIS-2022-0025

Date: January 31, 2023

**Re: Interim Final Rule – Implementation of Additional Export Controls: Certain advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification (October 7, 2022) (RIN 0694-AI94)**

These comments seek to clarify the agency’s interpretation of “facilitation” as it pertains to 15 C.F.R. 744.6, activities of U.S. persons. Before any enforcement actions are initiated pursuant to 15 C.F.R. 744.6, the agency must provide the industry with further clarification on the definition of “facilitation” in the form of regulations, regulatory guidance, FAQs, general licenses, or a combination thereof. At this time, there is not an adequate definition of “facilitation” under 15 C.F.R. 744.6 or any other provisions of the Export Administration Regulations that provides the industry with sufficient detail to comply with the law and request licenses when necessary.

Below is a list of questions and matters that the agency should publicly address prior to enforcing 15 C.F.R. 744.6 so the industry can have sufficient notice and knowledge of the license requirements, especially U.S. persons living and working abroad who must also navigate these rules in addition to the domestic community.

- 1) Is knowledge of a violation a requirement to trigger the license requirements under 15 C.F.R. 744.6, and if not, what level of culpability is necessary (if any)?
- 2) The agency should provide examples of activities that are, and alternatively are not, considered to be “facilitation” of a restricted transaction.
- 3) Will the agency presume that a company’s executives (e.g., CEO, CFO, COO, President, Board of Directors) “facilitated” a restricted transaction, even if those company executives did not have knowledge of a violative transaction? If not, can you provide distinguishing examples?
- 4) Are administrative or clerical activities, like arranging for shipment or preparing financial records, considered “facilitation”? If not, what are some other examples of activities that are not considered “facilitation”?

- 5) In light of BIS's January 17<sup>th</sup> modification to the rules, "Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification; Updates to the Controls to Add Macau," the agency should clarify its treatment of exports to Taiwan under the rule.
- 6) The agency should publish one or multiple general licenses that provide further explanation of the term "facilitation" in order to provide the industry with notice to comply.
- 7) What compliance methods does the agency recommend for U.S. persons employed by multinational companies that engage in restricted transactions listed under 744.6?

Braumiller Law Group, PLLC (BLG) is a U.S. law firm that represents and advises companies engaged in export activities. BLG submits these questions and matters in the interest of providing accurate and complete advice to its clients regarding licensing requirements under the present language of 15 C.F.R. 744.6, which currently includes undefined and ambiguous phrasing that will ultimately lead to confusion and inadvertent licensing violations in the business community. BLG respectfully requests that implementation and enforcement of this rule should be further delayed, or alternatively, a general license issued to allow U.S. persons an opportunity to have sufficient notice and knowledge of the law to comply and request licenses as necessary.