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For **RIN 0694-AI94**

January 31, 2023

Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Re: RIN 0694-AI94

Dear Sir / Madam:

This comment is submitted by Thomsen and Burke LLP.

4E001 and NS Controls:

The Oct. 7, 2022 interim rule added to the scope of ECCN 4E001.a the technology for the development, production or use of ECCN 4A090 items. According to the Reason for Control chart in ECCN 4E001, this technology is now subject to both RS and NS1 controls, even though the discussion in the new rule focuses only on RS controls.

The application of NS1 controls creates new authorization requirements (including deemed export requirements) for all countries of the world, except Canada. Since this issue was not mentioned in the interim rule, we believe ECCN 4E001.a technology for 4A090 items was not intended to be subject to NS1 controls.

As a result, we suggest that the Bureau of Industry and Security (“BIS”) revise the Reasons for Control chart for ECCN 4E001 to exclude technology for commodities controlled by 4A090 or software specified by 4D090 from the NS1 controls. This is currently the approach for ECCN 3E001 technology (for 3A090 items), but not for 4E001 technology. Specifically, revise the Reasons for Control chart for ECCN 4E001 to:

NS applies to entire entry, except 4E001.a for 4A090 and 4D090 items

If BIS really intended for NS1 controls to apply, then we suggest that BIS revise the EAR to exclude deemed exports of such newly NS-controlled technology, consistent with the new exclusion for the RS-controlled

technology at 742.6(a)(6)(ii). Specifically, add to Section 742.4 (National Security) the following new paragraph (d):

(d) Deemed exports. The license requirements for technology classified in 4E001 (for 4A090 and 4D090) do not apply to deemed exports or deemed reexports.

Temporary General License:

The new Temporary General License at Supp. No. 1 to Part 736 only applies to “companies that engage in the specific activities authorized under this TGL.” End users or resellers not located in China that return defective or unused 4A090 items to their suppliers who are described by the TGL are not explicitly covered by the TGL because the end users/resellers do not themselves engage in the specific authorized activities (i.e., integration, assembly (mounting), inspection, testing, quality assurance, or distribution).

We suggest that BIS revise the TGL to explicitly capture shipments to a TGL-authorized party for the purpose of engaging in TGL-authorized activity.

Sincerely,

Wesley A. Demory