

# DRAFT



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Bureau of Industry and Security**  
Washington, D.C. 20230

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bernard A. Spear  
530 North Firestone Lane  
Placentia, California 92870

Dear Mr. Spear:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that during the time period of 1998 to 2001 you, Bernard A. Spear, as President of Hlear, Inc., doing business as Preston Scientific, in your individual capacity ("Spear"), committed nine violations of the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979 (the "Act").<sup>2</sup> Specifically, BIS charges that Spear committed the following violations:

**Charge 1      15 C.F.R. § 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)<sup>3</sup> from the United States to an organization in India on BIS' Entity List<sup>4</sup> without the Department of Commerce

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). 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 C.F.R. Parts 730-774 (1998-2001)). The 2004 Regulations set forth the procedures that apply to this matter.

<sup>2</sup> 50 U.S.C. app. §§ 2401-2420 (2000). 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 C.F.R., 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 by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 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 6, 2004 (69 *Fed. Reg.* 48763 (August 10, 2004)), continues the Regulations in effect under the IEEPA.

<sup>3</sup> The term "ECCN" refers to an Export Control Classification Number. See Supp. 1 to 15 C.F.R. § 774.

<sup>4</sup> See Supplement No. 4 to Part 744 of the Regulations.



license required by Section 744.11 of the Regulations. In so doing, Spear committed one violation of Section 764.2(a) of the Regulations.

**Charge 2      15 C.F.R. § 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 referenced in Charge One with knowledge that a violation of the Regulations would occur. Specifically, Spear sold and transferred the amplifier to an organization in India on BIS' Entity List when Spear knew that the required Department of Commerce license would not be obtained. In so doing, Spear committed one violation of Section 764.2(e) of the Regulations.

**Charge 3      15 C.F.R. § 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 Charge One, Spear 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 Charge One, a Department of Commerce license was required to export the amplifier. In so doing, Spear committed one violation of Section 764.2(g) of the Regulations.

**Charge 4      15 C.F.R. § 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 transactions referenced in Charge One, Spear made a false statement to OEE investigators. Specifically, Spear 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. In so doing, Spear committed one violation of Section 764.2(g) of the Regulations.

**Charge 5      15 C.F.R. § 764.2(a) - Export of a Connector Socket Without the Required Department of Commerce License**

On or about February 26, 1999, Spear exported a connector socket (EAR99)<sup>5</sup> 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. In so doing, Spear committed one violation of Section 764.2(a) of the Regulations.

**Charge 6      15 C.F.R. § 764.2(e) - Selling and Transferring an Item With Knowledge a Violation of the Regulations Would Occur**

On or about February 26, 1999, Spear sold and transferred the connector socket referenced in Charge Five with knowledge that a violation of the Regulations would occur. Specifically, Spear sold and transferred the connector socket to an organization in India on BIS' Entity List when Spear knew that the required Department of Commerce license would not be obtained. In so doing, Spear committed one violation of Section 764.2(e) of the Regulations.

**Charge 7      15 C.F.R. § 764.2(a) - Export of Spare Parts Without the Required Department of Commerce License**

On or about July 29, 1999, Spear 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, Spear committed one violation of Section 764.2(a) of the Regulations.

**Charge 8      15 C.F.R. § 764.2(e) - Selling and Transferring Items With Knowledge a Violation of the Regulations Would Occur**

On or about July 29, 1999, Spear sold and transferred the spare parts referenced in Charge Seven with knowledge that a violation of the Regulations would occur. Specifically, Spear sold and transferred the spare parts to an organization in India on BIS' Entity List when Spear knew that the required Department of Commerce license would not be obtained. In so doing, Spear committed one violation of Section 764.2(e) of the Regulations.

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<sup>5</sup> The term "EAR99" refers to items subject to the Regulations which are not listed on the Commerce Control List. See 15 C.F.R. § 734.3(c).

**Charge 9 15 C.F.R. § 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 Charges Five and Seven, Spear made a false statement to OEE investigators. Specifically, Spear stated to OEE investigators that he had not shipped any items to India since December 1998. This statement was false because Spear had exported items to India after December 1998, as described in Charges Five and Seven. In so doing, Spear committed one violation of Section 764.2(g) of the Regulations.

Accordingly, Spear is hereby notified that an administrative proceeding is instituted against him pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation;<sup>6</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Spear fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Spear defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Spear. *See id.* The Under Secretary for Industry and Security may then impose up to the maximum penalty on the charges in this letter. *See id.*

Spear is further notified that he is entitled to an agency hearing on the record if he files a written demand for one with his answer. *See* 15 C.F.R. § 766.6. Spear is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent him. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Spear have a proposal to settle this case, Spear or his representative should transmit it to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Spear's answer must be filed in accordance with the instructions set forth in Section 766.5(a) of the Regulations with:

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<sup>6</sup> *See* 15 C.F.R. § 6.4(a)(2).

Bernard A. Spear  
Charging Letter  
Page 5 of 5

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of Spear's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: David C. Recker, Esq.  
Room H-3839  
United States Department of Commerce  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

David C. Recker is the attorney representing BIS in this case. Any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,

Director  
Office of Export Enforcement

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

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

This Settlement Agreement (“Agreement”) is made by and between Respondent, Bernard A. Spear, as President of Hlear, Inc., in his individual capacity (“Spear”), and the Bureau of Industry and Security, United States Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2004)) (“Regulations”),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),<sup>2</sup>

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<sup>1</sup> 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 C.F.R. Parts 730-774 (1998-2001)). The 2004 Regulations set forth the procedures that apply to this matter.

<sup>2</sup> 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 C.F.R., 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 C.F.R., 2001 Comp. 783 (2002), as extended by the Notice of August 6, 2004 (69 *Fed. Reg.* 48763 (August 10, 2004)), has continued the Regulations in effect under the IEEPA.

WHEREAS, BIS has notified Spear of its intention to initiate an administrative proceeding against Spear, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter 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:

1. *15 C.F.R. § 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)<sup>3</sup> from the United States to an organization in India on BIS' Entity List<sup>4</sup> without the Department of Commerce license required by Section 744.11 of the Regulations.
2. *15 C.F.R. § 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 referenced in Paragraph One above with knowledge that a violation of the Regulations would occur. Specifically, Spear sold and transferred the amplifier to an organization in India on BIS' Entity List when Spear knew that the required Department of Commerce license would not be obtained.

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<sup>3</sup> The term "ECCN" refers to an Export Control Classification Number. See Supp. 1 to 15 C.F.R. § 774.

<sup>4</sup> See Supplement No. 4 to Part 744 of the Regulations.

3. *15 C.F.R. § 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, Spear 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 C.F.R. § 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, Spear made a false statement to OEE investigators. Specifically, Spear 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 C.F.R. § 764.2(a) - Export of a Connector Socket Without the Required*  
*Department of Commerce License:* On or about February 26, 1999, Spear

exported a connector socket (EAR99)<sup>5</sup> 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 C.F.R. § 764.2(e) - Selling and Transferring an Item With Knowledge a Violation of the Regulations Would Occur:* On or about February 26, 1999, Spear sold and transferred the connector socket referenced in Paragraph Five above with knowledge that a violation of the Regulations would occur. Specifically, Spear sold and transferred the connector socket to an organization in India on BIS' Entity List when Spear knew that the required Department of Commerce license would not be obtained.
7. *15 C.F.R. § 764.2(a) - Export of Spare Parts Without the Required Department of Commerce License:* On or about July 29, 1999, Spear 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.
8. *15 C.F.R. § 764.2(e) - Selling and Transferring Items With Knowledge a Violation of the Regulations Would Occur:* On or about July 29, 1999, Spear sold and transferred the spare parts referenced in Paragraph Seven above with knowledge that a violation of the Regulations would occur. Specifically, Spear sold and

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<sup>5</sup> The term "EAR99" refers to items subject to the Regulations which are not listed on the Commerce Control List. *See* 15 C.F.R. § 734.3(c).

transferred the spare parts to an organization in India on BIS' Entity List when Spear knew that the required Department of Commerce license would not be obtained.

9. *15 C.F.R. § 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, Spear made a false statement to OEE investigators. Specifically, Spear stated to OEE investigators that he had not shipped any items to India since December 1998. This statement was false because Spear had exported items to India after December 1998, as described in Paragraphs Five and Seven above.

WHEREAS, Spear has reviewed the proposed charging letter and is aware of the allegations made against him and the administrative sanctions which could be imposed against him if the allegations are found to be true;

WHEREAS, Spear fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if she approves this Agreement as the final resolution of this matter;

WHEREAS, Spear enters into this Agreement voluntarily and with full knowledge of his rights;

WHEREAS, Spear states that no promises or representations have been made to him other than the agreements and considerations herein expressed;

WHEREAS, Spear neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Spear wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Spear agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Spear, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against Spear in complete settlement of the violations of the Regulations set forth in the proposed charging letter:

a. For a period of three years from the date of entry of the Order, Bernard A. Spear, 530 North Firestone Lane, Placentia, California, 92870 (“Spear”) his successors or assigns, and, when acting for or on behalf of Spear, his officers, representatives, agents, or employees (“Denied Person”) may not participate, directly or indirectly, 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, or in any other activity subject to the Regulations, including, but not limited to:

i. Applying for, obtaining, or using any license, License Exception, or export control document;

- ii. 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
- iii. 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 in any other activity subject to the Regulations.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Spear hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from the terms of a denial order under 15 C.F.R. § 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. BIS agrees that, upon entry of the Order, it will not initiate any further administrative proceeding against Spear in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BIS only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

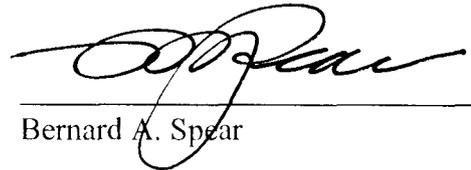
BUREAU OF INDUSTRY AND SECURITY  
U.S. DEPARTMENT OF COMMERCE



Acting Director  
Office of Export Enforcement

Date: 11/17/04

BERNARD A. SPEAR



Bernard A. Spear

Date: 11-18-04

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

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

ORDER RELATING TO BERNARD A. SPEAR

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 C.F.R. Parts 730-774 (2004)) (“Regulations”),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),<sup>2</sup> based on the proposed charging letter issued to Spear that alleged that, during the time period of

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<sup>1</sup> 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 C.F.R. Parts 730-774 (1998-2001)). The 2004 Regulations set forth the procedures that apply to this matter.

<sup>2</sup> 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 C.F.R., 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 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 *Fed. Reg.* 48763 (August 10, 2004)), has continued the Regulations in effect under the IEEPA.

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 C.F.R. § 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)<sup>3</sup> from the United States to an organization in India on BIS' Entity List<sup>4</sup> without the Department of Commerce license required by Section 744.11 of the Regulations.
2. *15 C.F.R. § 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 referenced in Paragraph One above with knowledge that a violation of the Regulations would occur. Specifically, Spear sold and transferred the amplifier to an organization in India on BIS' Entity List when Spear knew that the required Department of Commerce license would not be obtained.
3. *15 C.F.R. § 764.2(g) - False Statements on a Shipper's Export Declaration Concerning Authority to Export:* On or about December 1, 1998, in connection with the export referenced in Paragraph One above, Spear 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 it qualified

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<sup>3</sup> The term "ECCN" refers to an Export Control Classification Number. See Supp. 1 to 15 C.F.R. § 774.

<sup>4</sup> See Supplement No. 4 to Part 744 of the Regulations.

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 C.F.R. § 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 transactions referenced in Paragraph One above, Spear made a false statement to OEE investigators. Specifically, Spear 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 C.F.R. § 764.2(a) - Export of a Connector Socket Without the Required Department of Commerce License:* On or about February 26, 1999, Spear exported a connector socket (EAR99)<sup>5</sup> 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 C.F.R. § 764.2(e) - Selling and Transferring an Item With Knowledge a Violation of the Regulations Would Occur:* On or about February 26, 1999, Spear sold and transferred the connector socket referenced in Paragraph Five above with

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<sup>5</sup> The term “EAR99” refers to items subject to the Regulations which are not listed on the Commerce Control List. *See* 15 C.F.R. § 734.3(c).

knowledge that a violation of the Regulations would occur. Specifically, Spear sold and transferred the connector socket to an organization in India on BIS' Entity List when Spear knew that the required Department of Commerce license would not be obtained.

7. *15 C.F.R. § 764.2(a) - Export of Spare Parts Without the Required Department of Commerce License:* On or about July 29, 1999, Spear 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.
8. *15 C.F.R. § 764.2(e) - Selling and Transferring Items With Knowledge a Violation of the Regulations Would Occur:* On or about July 29, 1999, Spear sold and transferred the spare parts referenced in Paragraph Seven above with knowledge that a violation of the Regulations would occur. Specifically, Spear sold and transferred the spare parts to an organization in India on BIS' Entity List when Spear knew that the required Department of Commerce license would not be obtained.
9. *15 C.F.R. § 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, Spear made a false statement to OEE investigators. Specifically, Spear stated to OEE investigators that he had not shipped any items to India since December 1998. This statement was false

because Spear had exported items to India after December 1998, as described in Paragraphs Five and Seven above.

BIS and Spear 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 for a period of three years from the date of this Order, Bernard A. Spear, 530 North Firestone Lane, Placentia, California, 92870 (“Spear”), and when acting for or on behalf of Spear, his representatives, agents, assigns or employees (“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, 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. 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 in any other activity subject to the Regulations.

SECOND, 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.

THIRD, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Spear 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.

FOURTH, 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.

FIFTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

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

This Order, which constitutes the final agency action in this matter, is effective immediately.



Julie L. Salcido  
Acting Deputy Assistant Secretary of Commerce  
for Export Enforcement

Entered this 18<sup>th</sup> day of November 2004.