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Special Agent Kirk Flashner
Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
Room 2099B
14th St. and Pennsylvania Ave., NW
Washington, DC 20230

Subject: RIN0694-AF59 (Time Limit for Completion of Voluntary Self-Disclosures)

Reference: BIS-2012-0043

Dear Mr. Flashner:

The General Electric Company (GE) submits the following comments to the referenced proposed changes to the BIS requirements for filing voluntary self-disclosures (VSDs) of violations of the Export Administration Regulations (EAR). The proposed rule (77 Fed Reg. 66777) would require that the final, comprehensive narrative account be submitted to the BIS Office of Export Enforcement within 180 days of the initial VSD notification, unless an extension of time is granted by BIS.

GE recognizes its responsibility to implement and maintain a top-notch export controls compliance program to prevent violations of the EAR. Nonetheless, we also recognize that a perfect program doesn't exist and violations may occur, notwithstanding an exporter's best efforts. When violations do occur, the opportunity to file VSDs is an essential component of an exporter's compliance program. In general, we support the proposed rule and understand the need for BIS to impose reasonable time limits for completing the filing of VSDs. We are, however, concerned about some of the specifics contained in the proposed rule and offer the following comments.

180 Day Period

We understand that an exporter should not be afforded mitigation for filing a VSD when an initial notice is not supplemented within a reasonable time. When an exporter files an initial notice with no further follow-up, it is appropriate for BIS to reduce or eliminate the mitigating impact of the initial disclosure. The proposed rule allows 180 days for submission of the "final narrative," unless the government grants an extension. In many cases, 180 days is sufficient for the exporter to complete its review and file the final narrative, but as noted in the proposed rule, more complex cases may require more time. We suggest that the 180 day period be for submission of the final narrative or,

alternatively, a substantive supplemental filing indicating the status of the company's review, including interim remedial measures already taken and action plan with a timeline for completion of the review and submission of the final narrative.

Extensions of the 180 Day Period

Recognizing that some investigations may require more than 180 days, the proposed rule allows for extensions. Such extension requests, directed to the Director of the Office of Export Enforcement (OEE), would be granted "at his or her discretion." Such unfettered discretion doesn't afford the exporter any regulatory right to an extension of time, even if circumstances warrant an extension. The proposed rule states that "BIS believes that 180 days is ample time to complete the narrative account in most instances and that requests for extensions will normally not be necessary or justified." This is not comforting.

From the perspective of a large multinational company with a very strong commitment to compliance, we envision many scenarios where more than 180 days may be required to conduct a complete investigation and prepare a thorough final narrative, including explanations of corrective action. Reviewing company records across multiple business units, interviewing employees, ex-employees and third parties may be time-consuming. Implementing stronger internal controls, conducting training and disciplining employees also takes time, and frequently can't take place until the internal investigation is complete or nearly complete.

We recommend that BIS recognize that 180 days may not be adequate time and that requests for extensions will normally be granted when properly justified by the VSD filer. We recommend clarifying the proposed rule to state that such extensions will not be unreasonably denied when more time is shown to be reasonably necessary to complete the narrative account.

Conditions for Approving an Extension

The proposed rule provides examples of conditions that may be imposed as conditions on granting an extension of time for filing the final narrative. These examples include executing a tolling agreement or undertaking interim remedial compliance measures.

We agree that a tolling agreement for the period of time between the initial notice and submission of the final narrative is appropriate. In fact, it has generally been GE's practice to disclose violations back five years from the date of the initial notice, even if some transactions are outside the statute of limitations at the time of submission of the final narrative. A tolling agreement to ensure that these violations don't "drop off the screen" while the company is preparing the final narrative makes sense and seems fair.

Our concern with the proposed rule is that the condition of a tolling agreement is open-ended and could extend far beyond any additional time required to prepare the final narrative. While we appreciate the good intentions of BIS, we have seen cases where requests for tolling agreements have been made repeatedly over extended periods of time, resulting in the possibility of enforcement action for non-egregious, inadvertent violations that may have occurred more than ten years earlier. This is inconsistent with the general purpose of statutes of limitations and seriously interferes with a

company's ongoing business operations. For example, extending the period lengthens the time period that must be reviewed when conducting due diligence of a potential acquisition or when conducting an internal audit or investigation.

Similarly, a condition requiring implementation of interim remedial compliance measures appears to make sense. We are, however, concerned that such unfettered discretion could permit the imposition of unreasonable measures as a condition of an extension. We believe that a "reasonableness" standard should be required for such conditions.

Other Agencies

The proposed rule states that "Imposing a deadline to complete voluntary disclosures is consistent with the practices of other agencies." The International Traffic in Arms Regulation (ITAR) requires a submission within 60 days, but allows extensions without the BIS assumption that extensions "will normally not be necessary or justified." The Department of the Treasury's Office of Foreign Assets Control (OFAC) does not impose a specific time period, but rather requires that disclosures be made "within a reasonable time" following the initial notification. We agree that final submissions should be made within a reasonable time following an initial notice, but we believe that BIS' assumption requiring extensions is misplaced and not aligned with other agencies.

Potential Consequence

We support the BIS goal of receiving final narratives within a reasonable time of VSD initial submissions. We are concerned, however, that a strict approach without assurance of a reasonable time to comply, especially with significant or complex disclosures, may have the opposite effect. The reluctance to allow exporters the right to a reasonable extension when required could motivate exporters to wait longer before submitting an initial VSD notice, until the exporter has more certainty that the final narrative can be submitted within 180 days. In some cases, a strict time limit could discourage the submission of a VSD altogether. This is not in the best interests of the government.

We appreciate the opportunity to provide comments on this Proposed Rule. If you have any questions or require additional information concerning this submission, please contact the undersigned at (202) 637-4222 or by email at carol.fuchs@ge.com.

Sincerely,

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