GE
Aviation

**Kathleen L. Palma**
Executive
International Trade Compliance

1299 Pennsylvania Ave NW
Washington, D.C. 20004-2414
United States of America

T 202 637 4206
F 202 637 4300
kathleen.palma@ge.com

Regulatory Policy Division
Bureau of Industry and Security
Room 2705
U.S. Department of Commerce
Washington, D.C. 20230

Regulation Id: BIS-2011-0015

September 13, 2011

**Subject:** **Comments on Proposed Revision to the Export Administration Regulations (EAR) Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)**

Reference: RIN 0694-AF17

Dear Mr. Mooney:

The General Electric Company, acting through its GE Aviation business unit (GEA), submits the following comments for the referenced proposed rule. GEA appreciates Administration's effort to address this issue.

**SUMMARY COMMENTS:**

GEA commends the Administration's efforts on export control reform. GEA concurs that there are multiple types of items currently subject to United States Munitions List (USML) that no longer warrant control under it and thus their jurisdictional status should be change so that they are subject to the Export Administration Regulations (EAR). GEA agrees with the overall proposed structure for hosting these items under the Commerce Control List and with most of the proposed definitions. However, GEA believes that the controls proposed for these items, once subject to the EAR, would still require a license for most transactions, and not significantly reduce the licensing burden on exporters.

**SPECIFIC COMMENTS**

**Supplementary Information:**

***I- "600 series"***

*(A) Addition of the "600 series" on the CCL:*

(1) GEA noticed that MT was identified as a reason for control that would require a license to Canada. GEA would like to highlight that currently such control does not exist for Canada.

(2) According to this section, items subject to the "600 series" will be controlled for National Security Column 1 (NS1) and Regional Stability Column 1 (RS1), in addition to any other applicable regime-controls. GEA understands the need to retain reasons for control associated with multilateral regime commitments. However, GEA cautions against the presumption that all "600 series" items warrant treatment under NS1 and RS1. Such restrictive controls may be necessary for a few of these items, but not for most. GEA believes that currently most items intended to be controlled under the "Commerce Munitions List" (CML) are not considered "very sensitive" by the Wassenaar Regime, thus not warranting an NS1 control. Additionally, subjecting these items to a unilateral control, such as RS1, is against the spirit of export control reform.

GEA encourages BIS to use the proposed rule mechanism during the migration of these items from the USML to the CML. This would allow industry the opportunity to comment and address any specific concerns on the controls imposed on these items.

(3) GEA seeks confirmation that items controlled under proposed paragraph .y to Supplement No. 2 to Part 744, are not subject to a policy of denial if exported to a country currently under a US arms embargo, except for a military end-user in China.

*(B) License Exceptions for "600 Series Items":*

(1) GEA recommends that BIS reconsider the proposed restrictions on license exceptions when used for exports of "600 series" items. These restrictions seem to contradict the Administration's export control reform objectives and the principle that these items warrant less restrictive licensing policies than exist under the ITAR today.

For some industries, the migration of items from the USML to the CML creates an additional license requirement that could be alleviated by license exceptions, if these were not so heavily restricted.

At a minimum, GEA recommends that BIS offer at least parity with the relief currently granted by the ITAR under some of its exemptions. For example, ITAR exemption 125.4(b)(9) allows exporters to take or export technical data for use by US Persons while abroad. The exemption is particularly useful for business travelers who may have ITAR-controlled technical data stored on a lap top or other electronic device and who do not plan to release the data to a non-US Person while abroad. License exceptions 740.9 (TMP) and 740.14 (BAG) generally provide equivalent authority, but under the proposed rule, are not available for CML items. GEA submits this restriction to TMP and BAG is not warranted.

(2) GEA would like to note that the US government is not listed as one eligible for GOV or STA, since it is not one of 36 destinations listed under 720.10(c). GEA believes this was an oversight and not an intentional restriction. If an exporter would be able to use STA to export to an intermediate UK supplier for end use by the German Government, for example, GEA does not understand why an exporter could not use STA to export to the intermediate UK supplier for ultimate end use by the US Government. Therefore GEA proposes the following modifications:

### 740.2 Restriction on all License Exceptions

GEA recommends the inclusion of the term "United States" in 740.2(13)(i)(E), 740.2(13)(ii)(E), and 740.2(iii)(C) to read as follows:

740.2(13)(i)(E): "License Exception STA under §740.20(c)(1), provided License Exception STA has been identified by BIS in writing or published as an eligible license exception for the particular "600 series" end item in response to a License Exception STA eligibility request in accordance with §740.20(g) of the EAR and the ultimate end use for the end item is by a government in one of the countries listed in §740.20(c)(1) **or by the US Government."**

740.2(13)(ii)(E): "License Exception STA under §740.20(c)(1), provided the ultimate end user for the "parts", "components", "accessories and attachments" or for any item classified in a "600 series" product group B or C ECCN is by a government in one of the countries listed in §740.20(c)(1) **or by the US Government."**

740.2(13)(iii)(C): "License Exception STA ~~(§740.20(c)(1)~~ **under §740.20(c)(1),** provided the ultimate end use for the "software" or "technology" is by the by a government in one of the countries listed in §740.20(c)(1) **or by the US Government."**

### 740.10 Servicing and replacement of parts, components, accessories, and attachments (RPL)

GEA recommends the use of quotation marks on defined terms and the inclusion of the phrase "or subject to a voluntary self-disclosure closed with no action" to subparagraph (a)(2)(ii) to read as follows:

""Parts," "components," "accessories," and "attachments" may be exported only to replace, on a one-for-one basis, "parts," "components," "accessories," and "attachments," respectively, contained in commodities that were: lawfully exported **(or subject to a voluntary self-disclosure closed with no action)** from the United States, lawfully reexported; or made in a foreign country incorporating authorized US origin "Parts," "components," "accessories," and "attachments."

### 740.11 Governments, International Organizations, International Inspections under the Chemical Weapons Convention, and the International Space Station (GOV)

GEA recommends the inclusion of the term "US Government entities outside of the United States" in new subparagraph (b)(3)(iii) to read as follows:

"*Agency of a government eligible to receive "600 series" items.* Only the countries listed in§740.20(c)(1) and **US Government entities outside of the United States** are eligible to receive "600 series" items.

### 740.20 License Exception Strategic Trade Authorization

GEA recommends the inclusion of the term "US Government" in the Note to paragraph (c)(1) to read as follows:

"License Exception STA under §740.20(c)(10) may be used to authorize the export, reexport, or transfer (in-country) of "600 series" items, provided the ultimate end-use for "parts", "components", "accessories and attachments" or for any item classified in a "600 series" product group B or C ECCN is by a government in one of the countries listed in §740.20(c)(1) **or by the US Government."**

(3) GEA recommends that the timeline requirements set forth by proposed paragraph 740.20(g)(3) be similar those set forth by 740.17(b)(2) for ENC classifications. Specifically, GEA recommends that thirty days (30) after the submission of the License Exception STA eligibility request ("STA eligibility request"), this paragraph to authorize the exports and reexports of "600 series" subject to the request.

Additionally, BIS should provide a defined list of the information required to be included with the STA eligibility request. The term "sufficient" is too subjective.

(4) GEA recommends BIS to move the new Wassenaar Arrangement reporting requirement set forth by proposed §743.4(c)(1) to §743.1. Proposed paragraph §743.4 should be limited to reporting requirements set forth by the UN Register of Conventional Arms, as it is not currently required by the EAR.

*(C) De minimis and "600 series" items:*

(1) There should not be a separate *de minimis* provision for "600 series" items. First, BIS has not stated, and GE is not aware of, a compelling rationale for why these low-level items warrant a different *de minimis* threshold, than other items on the CCL. Second, a different threshold will create confusion when conducting the required calculations. The foreign party will now be required to conduct three (3) calculations in some circumstances: (1) 600-items content, (2) non-600 controlled-content, and (3) 600-items + non-600 controlled-content.

(2) GEA disagrees with the introduction of a new ECCN to capture foreign-made munitions containing "600 series" items, when reaching *de minimis* threshold (the 0A919 proposed ECCN). These items would be subject to the EAR because they have more than *de minimis* US content. The situation also exists today that items with more than *de minimis* US content can require EAR licenses, but would not be subject to the jurisdiction of the EAR if physically present in the United States. This new ECCN is unnecessary and creates confusion, particularly as those items would be considered 0A919 if outside the US, but potentially a 600-series item or an ITAR-controlled item if inside the United States.

*(D) Other Conforming Changes:*

(1) GEA noticed the inclusion of additional countries to the UN control. GEA believes that if the intent is to amend the UN control to list all countries currently subject to UN embargoes, then this should be done in a separate rule.

(2) GEA proposes a few minor modifications to some of the updated sections. Those modifications read as follows:

### 732, Supplement 3 - Red Flags

GEA recommends the modification of red flag No. 13 to read: "**An order received** for "parts" or **"components"** for an item in the "600 series"..." This will ensure consistency with the other enumerated red flags.

### 738.2 - Commerce Control List (CCL) Structure

GEA recommends the following modification for the proposed reasons for control:

5- **Unilateral National Security or Foreign Policy Reasons**

6 - **Commerce Munitions List**

## II- Creation of ECCN 0Y521 as an equivalent to USML Category XXI

*(A) 0Y521:*

(1) BIS should clarify that 0Y521 classification would only be used in extraordinary circumstances.

(2) GEA agrees that a positive list of items included within ECCN classifications for 0Y521 is preferable, but is unclear on:
   a. what will be the process for identifying 0Y521 items,
   b. who has the underlying responsibility for the initial 0Y521 ECCN determination,
   c. what will be the potential risk to industry by positively and publicly identifying items via Supplement No. 5 to Part 774, and
   d. what is (if any) the appeals mechanism if a company disagrees with the determination.

(3) GE disagrees with the identification of items subject to this ECCN by "model number or broader descriptor that would not necessarily be company specific." Currently, common nomenclatures and standards are used across different industries. Therefore, an overly generic descriptor may be too confusing. On the other hand, BIS would need to avoid publishing company proprietary information.

(4) BIS must contact the impacted industry/exporter prior to adding any item to the list. This would allow industry to comment on whether the item should be subject to this control and what descriptor would best describe the item. Industry often has more detailed and accurate information about an item's capabilities, foreign availability etc., and BIS risks listing an item unnecessarily if it fails to collect information from industry concerning the item prior to listing it on the CCL.

## III- Definitions

*(A) "Specially Designed" Definition:*

GEA commends BIS efforts to define "specially designed" for national security items. However, GEA believes that this proposed definition is extremely confusing; the frequent use of double negatives makes it difficult to understand. Moreover, this proposed definition, as it applies to parts or components in paragraph (b) is very sweeping and broad, which makes it necessary to define a number of exclusions for the definition to work its intended effect of having higher fences around fewer items.

Our specific comments on this definition are:

(1) BIS must review the use of quotation marks and defined terms (*e.g.*, enumerated) as they are used inconsistently throughout the definition.

(2) GEA understands the Administration's intent of capturing "600 series" "parts" and "components" under the definition of "specially designed." However, the approach used under the proposed definition is too complicated. GEA believes that when this term is applied to non- "600 series" "parts" and "components," the definition stated in paragraph (a) referencing "properties peculiarly responsible" is appropriate. Accordingly, GEA recommends the removal of the phrase "other than a "part" and component" from paragraph (a), and significant changes to the current paragraph (b). To deal with "600 series" "parts" and "components," GEA further recommends stating in a revised paragraph (b) that all "parts" and "components" listed under a "600-series" ECCN will be deemed "specially designed," unless the "parts" and "components" fit within the exclusions provided in the definition. This would make the definition simpler, avoids the confusion of defining the same term in vastly different ways and make the term easier to understand.

(3) GEA believes "the *nuts and bolts exclusion*" (exclusion paragraph 1) should be broader. Specifically, GEA believes simple assemblies and very-low technology items should be eligible for this exclusion.

The proposed exclusion intends to carve out simple items with simple common functions that have the identical utility regardless of the application. As such, GEA believes that the exclusion should not be limited to only fasteners and common hardware as illustrated in the proposed exclusion, but should be expanded to a wider range of parts and components having low levels of technology. Notably this would result in the exclusion of simple assemblies or "minor components" that incorporate civil technologies and are commonly used in a wide range of end. For example, components that should be eligible under this paragraph include wiring harnesses, thermo-couples and pressure sensors. Such items are used broadly in a number of diverse civil products (*e.g.* planes, trains and automobiles), and they incorporate civil technologies that are not specifically controlled on the USML or the CCL.

GEA also requests that BIS expressly state that all classes/types of the enumerated items meet the exclusion (e.g., all screws vs. just a particular screw that is itself used in multiple applications).

(4) In paragraph (2) above, GEA recommended certain changes to the definition of "specially designed" to make it more simple and straightforward. However, if BIS retains multiple definitions for "specially

designed," GEA recommends that BIS also retain the current "specially designed" definition for items controlled for Missile Technology (MT) reasons.

The existing definition has well established meaning when classifying equipment, components and parts subject to MT controls. GEA believes that replacing the existing definition with the unified definition will bring more items under MT controls because the definition will cover parts and components that may have uses in other air transport applications and that do not contribute any unique capability to a missile. For example a composite or laminated structure, may be common to two different engine configurations having a common base design, one for small manned aircraft propulsion categorized under 9A001 and one for a missile. An identical component for such engines might be classified under 9A003 for the aircraft engine, but be controlled under 9A110 because it is also used in the engine configuration designed for an UAV that falls under the definition of "missile." The component would have no unique property to distinguish it for the UAV, but because of the broader definition for specially designed components, it would be considered to be "specially designed" for use in missiles under 9A110 because none of the exclusions would apply. The component would not qualify for exclusion (c) because 9A003 has "specially designed" as a design criterion. It would also not qualify for other exclusions to the definition.

(5) GEA would also like to highlight that due to the new definitions for "components" and "parts", BIS must update the headings and descriptions of certain items enumerated in the CCL.

For example, ECCN 9A003, which currently controls previously undefined "specially designed assemblies and components," should be changed to reflect the new definitions of "components" and "parts".

(6) The proposed "specially designed" definition, by use of the defined term "enumerated," does not apply to AT-only controlled items. GEA recommends rewording AT-only controlled ECCN's to avoid the use of "specially designed" (*e.g.*, 9A991). Avoiding the term makes sense since these are unilaterally-controlled ECCNs.

(7) GEA requests that exclusions, similar to those proposed for parts and components, be included for software. For example, if an identical piece of software source code is used in multiple types of applications, that specific code would not be considered "specially designed."

(8) With respect to exclusion paragraphs 3 and 4, GEA recommends that instead of introducing new undefined terms to the EAR (*i.e.*, "form, fit and function"), BIS use the concept of changes or improvements to basic characteristics, which concept is currently well-established under Part 740.10 (RPL) of the EAR.

GEA notes the stated intent for the Department of State to use this definition of "specially designed" in the USML. However, Note 2 to the definition makes it very clear that the term is not interchangeable with the term "specifically designed," which is use throughout the USML. It should not be assumed by the US Government that because industry has commented on the proposed definition in the context of the EAR, that these comments address any concerns about its use in the USML. Since industry is not in a position to know how the terms will be used in the USML either in conjunction with, or in replacement of, each other to one degree or another, it is not possible to judge the impact that the current definition would have as applied in the USML.

Industry would need to understand the full context in order to determine if any items would be controlled differently under the ITAR as a result of the application of a new definition. Accordingly, GEA strongly requests that the public be given a similar opportunity to comment on the definition prior to any adoption in the USML.

In light of the above comments, GEA recommends the following specific changes to the definition of "specially designed":

"Specially designed.—

a) A "specially designed" item~~, other than a "part" or "component",~~ is an item that is "enumerated" on the CCL and, as a result of "development", has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions of the referenced item identified in the CCL.

**b)** **"Parts" and "components"** enumerated in a "600-series" ECCN **will be deemed "specially designed", unless the "part" or "component" is otherwise excluded by paragraph (c) below** ~~A "specially designed" "part" or "component" is a "part" or "component" of an item 'enumerated' in a category of the CCL.~~

**c)** For purposes of the definition set forth in paragraphs (a) and (b) above, an item is not considered "specially designed" if it is one or more of the following:

(1) ~~A single, unassembled~~ "Parts**" and "components" of a type** used in multiple types of civil items such as threaded fasteners (*e.g.* screws, bolts, nuts, nut plates, studs, inserts), other fasteners (*e.g.* clips, rivets, pins, common hardware (*e.g.* washers, spacers, grommets, bushings), springs, **wire harnesses, thermo-couples, pressure sensors** and wire; or

(2) An item specifically excluded from control on the USML or the CCL; or

(3) A "part" or "component" used as a "part" or "component" of an end-item in "serial production" and not 'enumerated' on the USML or CCL (*i.e.* the end-item is an EAR99 **or AT-only item**) and the part's or component's **basic characteristic has not been improved** ~~form, fit, and function have not been altered~~ for use in another end-item enumerated on the USML or CCL after "serial production" of the end-item not enumerated on the USML or CCL has begun; or

(4) A "part," "component" **or "software"** that can be exchanged with an EAR99 or AT-only controlled "part", "component" **or "software"** on a one-for-one replacement basis without ~~the modification to the form, fit, and function~~ **improving the basic characteristic of the end-item or equipment in which it is installed.** ~~EAR99 or AT-only "part" or "component", and the EAR99 or AT-only part's or component's function is identical to the "part" or "component" at issue.~~"

We appreciate the opportunity to provide comments on this Proposed Rule. GEA looks forward to the opportunity to comment on other notices related to Export Control Reform in the near future. If you have any questions or require additional information concerning this submission, please contact the undersigned at (202) 637-4206 or by email at: kathleen.palma@ge.com or Laura J. Molinari at (202) 637-4401 or by email at: laura.molinari@ge.com

Sincerely,

Kathleen Lockard Palma
Executive
International Trade Compliance