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September 13, 2011

Mr. Timothy Mooney
Regulatory Policy Division
Bureau of Industry and Security, Room 2099B
U.S. Department of Commerce
14th Street and Pennsylvania Ave, NW
Washington D.C. 20230

**Re: Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML); Docket No. 110310188-1335-01; RIN 0694-AF17**

Dear Mr. Mooney:

General Kinetics, LLC ("GK") of Manchester, New Hampshire designs and develops semi-active shock absorbers and suspension systems for commercial, military, and marine high-performance vehicles. As a producer of dual-use products, GK dedicates a significant amount of time and resources to ensure compliance with U.S. export controls. GK appreciates the opportunity to comment on the above-referenced proposed rule and to participate in the effort to streamline and reform U.S. export control regimes.

GK is registered with the Department of State's Directorate of Defense Trade Controls ("DDTC") pursuant to the requirements of the International Traffic in Arms Regulations ("ITAR"). GK, formerly known as Active Shock LLC, ultimately is owned by General Kinetics Engineering Corporation of Ontario, Canada. Any and all ITAR-controlled exchanges between GK and its Canadian parent are conducted strictly in accordance with the terms and conditions of the applicable ITAR licenses and authorizations issued to GK by DDTC.

Although originally conceived for high performance automotive and racing applications, GK's suspension systems have found broad application in military vehicles as they help the U.S. military and our allies manage challenging terrain, particularly in Afghanistan and Iraq.

GK designs and manufactures suspension systems that are categorized as 1) parts and components of tanks and military vehicles under Category VII(g) and (h) of the United States Munitions List ("USML"), and 2) equipment on the Wassenaar Arrangement Munitions List under Commerce Control List ("CCL") ECCNs 9A018(b), 9D018, and 9E018. GK makes use of its existing Manufacturing License Agreement ("MLA"), Technical Assistance Agreements ("TAA"), other licenses and authorizations
(*e.g.,* DSP-5) issued under the International Traffic in Arms Regulations ("ITAR"), and licensing exceptions and exemptions available under the ITAR and EAR, as applicable, to export its suspension systems to Canada and the United Kingdom for incorporation into commercial and military vehicles.

**Impact of the Proposed Rule**

**Overview**

We note that suspension systems are not included in the "list of items controlled" in proposed ECCN 0A606.y, but such systems are parts and components that are specially designed for 0A606.b vehicles. Thus, the proposed rule likely would move GK's suspension systems (parts and components, associated software, and technology) from USML Category VII(g) and (h) and CCL categories 9A018(b)/9D018/9E018 to the proposed CCL categories 0A606.x, 0D606, and 0E606. These new ECCNs have a license requirement for Country Group B countries, but license exceptions LVS and TSR are not available for the new ECCNs.[1] We recognize that license exception STA will be available for these ECCNs, but such exception is limited to items destined, at the time of export, for ultimate end use by the government of one of the License Exception STA–36 countries. GK, for example, would export its items for final end use by both government and non-government entities in STA-36 countries. Therefore, where GK previously may have exported 9A018(b)/9D018/9E018 commodities to Country Group B countries under license exceptions LVS and TSR, as applicable, the proposed rule creates a licensing requirement for these items due to the unavailability of those license exceptions for the new 600 series ECCNs. Based on the foregoing, and for the reasons discussed below, we kindly encourage BIS to consider including suspension systems in 0A606.y.

GK understands that a goal of the proposed rule is to provide affected U.S. companies, like GK, with the benefit of a Commerce Department licensing scheme for these commodities, while retaining control on militarily significant items that move from USML Category VII to the new ECCN 600 series. GK appreciates the balance that the proposed rule aims to establish, and with this background in mind, we provide the following comments to the proposed rule.

**Comment 1: Include "Suspension system parts and components" in the list of items controlled by ECCN 0A606.y**

GK respectfully suggests that suspension systems that have little or no military significance be included in the positive list of items controlled by ECCN 0A606.y. While GK probably is known best for developing high performance suspensions systems, it also designs suspension systems for a wide range of high and low performance vehicles. At the lower performance end of the spectrum, GK designs suspension systems for common construction vehicles. At the other end of the spectrum, GK designs its highest performance systems for world class off road commercial motor sport vehicles. The suspension systems that GK designs for military vehicles range from the middle to the highest end of this performance spectrum, depending on GK's military customer's needs.

Each GK suspension system has unique dimensions, attach points, weight bearing capabilities, and surface coatings depending upon the specific requirements of the vehicle into which the system will be integrated. GK recognizes that certain features of GK suspension systems for military vehicles are militarily significant. For example, GK's patented software algorithms are coded uniquely for the vehicle in question. At the point that such specially configured software is activated for a military suspension system, GK acknowledges that it becomes a vehicle part with military significance, and as set forth in the proposed rule, controlled under ECCN 0A606.x.

However, absent such specially configured software, or other unique attribute that makes the system militarily significant, the suspension system is comprised largely of parts and components that already are listed in proposed category 0A606.y (*e.g.*, hydraulic hoses, cables, valves, o-rings, bearings). In fact, we estimate that items already listed in ECCN 0A606.y comprise about half, if not more of GK suspension systems. The remaining parts are either EAR99 or not controlled. What makes GK's suspension systems valuable to users are the patented software algorithms that control the system and its subcomponents to provide performance not available in passive, uncontrolled systems.

Further, as an assembled unit GK's suspension system is comparable to the parts and components that are itemized in the proposed category 0A606.y. For example, brake systems (item 0A606.y.1) originally designed for commercial applications recently have been incorporated into military vehicles (anti-lock brake systems are an example). Alternators and generators (item 0A606.y.2) for military vehicles are built to different specifications than those for commercial vehicles because military vehicles require greater on board power generation than a commercial vehicle. Axles (item 0A606.y.3) are built with dimensions and load bearing capabilities specific to the commercial or military vehicles for which they are designed. However, GK would interpret differences in features like dimensions, attach points, weight bearing capabilities, power generation, or electronic assemblies that incorporate only commercially

[1] As proposed, license exception LVS is available for 0A606.a, .b, and .c only, and TSR is N/A for 0D606 and 0E606.

available components to have little or no military significance. Variations in commercial vehicles could require the same variations in these parts and components.

Similarly, suspension systems will vary in dimensions, attach points, and weight bearing capabilities according to the vehicle for which they are designed. If such features may be viewed as having of little or no military significance, GK would recommend that suspension systems with these characteristics be included in the list of items controlled in 0A606.y. Because GK agrees that a suspension system with significant military characteristics would move to category 0A606.x, this recommendation would divide GK's products between two classifications—0A606.x and 0A606.y—depending upon whether a militarily significant characteristic is incorporated into the design.

GK recommends a similar outcome for the Electronics Control Unit ("ECU") (currently categorized 9D018 and USML Category VII(g), as applicable). GK configures this ECU with parameters specific to the vehicle into which the suspension system will be incorporated, and the ECU can be used only when it is incorporated into a suspension system. GK acknowledges that when it configures the ECU with the parameters required to control the suspension system used by a military vehicle, the ECU becomes militarily significant and should be classified 0D606.x. However, when GK configures the ECU with parameters to control a suspension system with little or no military significance, the firmware should be classified 0D606.y.

Lastly, GK recommends that 0E606 (technology required for the development, use, production of 0A606 items) have a similar division between technology required for 0A606.x and 0A606.y parts and components. For example, when GK exports technical drawings of its suspension systems and those drawings call out features that are militarily significant (*e.g.*, the military specifications for chemical resistive coating that GK must apply to the system), the drawing would be classified in the new CCL as ECCN 0E606.x.

**Comment 2: Apply a carve-out from NS1 and RS1 control to 0D606.y and 0E606.y**

In an effort to align the controls for the new related ECCNs, GK proposes that the reasons for control for new ECCNs 0D606.y and 0E606.y be adjusted to match those of proposed ECCN 0A606.y. The proposed ECCN 0A606.y reflects a carve-out from NS1 and RS1 control,[2] while the proposal is not clear as to the whether ECCNs 0D606.y and 0E606.y will have a similar carve-out. The ECCN entries for 0D606.y and 0E606.y on page 41984 of the proposed rule do not include a carve-out from NS1 and RS1 control. However, section 742.6(a)(1) of the proposal on page 41976 incorporates the carve-out from RS1 control as follows:

> "As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A521; 0A606 **(except 0A606.y);** 0B521; 0B606 (except 0B606.y); 0C521; 0C606 (except 0C606.y); 0D521; 0D606 **(except 0D606.y)**; 0E521; 0E606 **(except 0E606.y)**; . . ."[3] (emphasis added)

We agree with proposed section 742.6(a)(1) that ECCN 0A606.y and its related software and technology in ECCNs 0D606.y and 0E606.y should include a carve-out from RS1 control and additionally from NS1 control. The proposal recognizes that 0A606.y parts and components warrant no more than AT1 control because of the category's low military significance. Similarly, the software and technology that would be used to develop, produce, or use 0A606.y parts and components would have equally low military significance and should be treated with the same controls.

**Comment 3: Include License Exception LVS for ECCNs 0A606.x, 0D606, and 0E606**

If suspension systems are not included in the list of items controlled in ECCN 0A606.y, but instead fall into ECCN 0A606.x as proposed, then the absence of the LVS license exception for 0A606.x parts and components will increase the controls for 9A018.b parts and components that move to this new category. GK understands that the proposed license exceptions for 0A606 support the control of the USML Category VII items that will move to 0A606. Allowing the STA license exception to apply to certain 0A606 commodities supports the goal of controlling those USML items to non-government end users. However, GK offers that allowing the LVS exception for 0A606.a, .b, .c items, while not allowing the LVS exception for *parts and components* of 0A606.a, .b, .c items, furthers the goal of controlling the export of former USML parts and components. Under the proposal, 0A606.x parts and components of

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[2] Proposed Rule, 76 Fed. Reg. 41982.
[3] Proposed Rule, 76 Fed. Reg. 41976.

0A606.a construction equipment could be exported under LVS as long as those parts and components were integrated into the 0A606.a item. GK suggests allowing those 0A606.x parts and components to be exported under LVS separate from the 0A606.a item. The low value limit ($1500) associated with LVS ensures that high value parts and components that moved over from USML category VII would still require further scrutiny before export.

Alternatively, the LVS exception could apply to a carve-out of commercial parts and components in 0A606.x. This option succeeds in retaining the LVS exception for the 9A018.b commodities that move to the new 0A606.x category, which reflects the current construct of the CCL.

In closing, GK finds this proposed rule which will result in the moving of items from USML Category VII to the new 600 series of the CCL as a positive development, and we appreciate greatly the Commerce and State Department's efforts in this regard. We believe that, once adopted, a CCL revised in this fashion will enable us to better serve our military and commercial customers and help us to be more competitive in the global marketplace.

If you have any questions or require any further information, please contact me directly at (603) 627-8547 x115 or pkelly@activeshock.com or our Washington, D.C. counsel, Franceska Schroeder of Fish & Richardson P.C., at (202) 626-7718 or schroeder@fr.com.

Thank you for your attention to and consideration of our comments.

Sincerely,

Patrick Kelly
Director of Production Engineering, Manchester Division
General Kinetics, LLC