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Subject: **Comments on Proposed Revisions to the Export Administration Regulations: Implementation of Export Control Reform; Revision to License Exceptions after Retrospective Regulatory Review**

Reference: RIN 0694-AF65

Dear Ms. Hess,

The General Electric Company, acting through its GE Aviation business unit (GEA), submits the following comments for the aforementioned proposed rule. GEA appreciates the effort by the Administration to address this issue and its recognition that there are very practical issues that must be addressed in order for the export control reform effort to work in a 21st century international economy. GEA commends the Administration's efforts on export control reform and agrees with the overall proposed structure for a smooth and seamless transition. However, GEA believes that additional clarification is required to ensure these concepts are practical once reform is finalized.

Additionally, GEA would like to stress that while we strongly support Export Control Reform and its objectives, this proposed rule will require companies to undergo multiple implementation changes (e.g. classification changes, tool updates, training, licensing) that will require time, thought and resources. Therefore, the effective date for a final version of this rule should be of at least 180 days from its publication. Having a delayed effective date for this rule is fully consistent with the approach that has been taking by the Bureau of the Census in rules that have a wide impact across the exporting community on hardware shipments, such as this proposed rule would have.

SPECIFIC COMMENTS

Part 734:

1. *"De Minimis" Content:* While GEA understands the Administration's rationale for having a no *de minimis* level for items destined to a country subject to a US arms embargo, GEA believes BIS is making an assumption as to when companies conduct *de minimis* calculations. Based on GEA's experience, foreign exporters DO NOT conduct *de minimis* calculations at the point of export, but at

the development stage. At this stage, the foreign manufacturer is not necessarily aware where their customers are going to be located and therefore, most likely will use the most stringent *de minimis* level. If BIS implements a zero *de minimis* rule for "600 series" items, there is the risk for foreign manufacturers to implement "CML/EAR-free" practices. GEA believes that BIS should eliminate this exclusion for "600 series" items destined to a country subject to an arms embargo and consider substituting the current 10% *de mininis* level applicable to Country Group E.

Part 736:

1. General Prohibition Three (Direct Product Rule): GEA does not understand the rationale behind some of the modifications proposed to General Prohibition 3. If the controls driving the "600-series" are national security (NS) and regional stability (RS), then why is BIS expanding the country scope for the direct product of "600-series" items to include countries of concern due to nuclear proliferation or missile technology reasons? GEA recommends the removal of country groups D3 and D4 from the country scope proposed for General Prohibition 3.

2. Supp.1 to Part 736: GEA encourages BIS to include in proposed General Order 5 guidance on how exporters should complete shipping documentation. Furthermore, GEA recommends that for items exported under a grandfathered license, the exporter be allowed to reference either the old USML code or the new ECCN. Given the varying needs of US exporters through the transition period, there will be times that a single company will want to ship the same part under an old USML code/license and also ship under the new ECCN. Giving exporters the maximum flexibility on this issue will greatly ease the cost and compliance burden associated with the transition.

Part 740:

1. Introduction of the term Major Defense Equipment: 15 CFR 740.2 introduces the ITAR-term major defense equipment, but does not define it in Part 772. GEA recommends adding quotation marks to the term and including the definition in Part 772, if BIS decides it is necessary to retain this concept in the EAR.

2. License Exception TMP: GEA likes the proposed structure for license exception TMP. However, GEA seeks clarification for the following paragraphs:

    a. In paragraph (a), BIS uses the phrase "order to acquire the item," but does not provide a definition or an example to what this means. GEA seeks clarification on this term. Would a purchase order be considered an example of an "order to acquire the item"?

    b. In subparagraph (a)(1), BIS creates an exclusion for destinations in E:2, Sudan, or Syria. GEA believes this should be replaced with country group E1, as it is the way exclusions of this type are typically referenced in the EAR.

    c. For subparagraph (a)(3), GEA seeks clarification that the term "their employees" in the following sentence "only US persons or their employees traveling or on temporary assignment abroad may export, reexport, transfer (in-country) or receive technology under the provisions of this paragraph (a)(3)," not only includes all employees located at US locations of a company organized under the laws of the United States (US company), but also includes all employees located at foreign branches of a US company.

    d. Paragraph (a)(3)(B) creates an undue burden to employers by introducing additional logging requirements for data previously authorized to the traveling user, if the user is a non-US person. In order for a non-US person to have access to the data at issue, BIS would have granted a deemed export license or authorized its use under another license exception in the first place. It would be onerous to impose additional requirements for data that has already

been licensed just because its non-US user is traveling. If the concern driving this paragraph is due to potential unauthorized transfers, BIS should rest assured that companies currently invest on encryption software and other data loss prevention tools to ensure their proprietary information stored on employees' devices is protected. Therefore, a requirement to demonstrate the need to travel with each piece of technology stored on the device is not only impractical, but creates non-compliance risk, even if such requirement is only for non-US persons. This requirement parts from the premise that employees are aware of all the information they have created and stored in their devices. GEA urges BIS to remove this paragraph.

e. For paragraph (a)(10), GEA recommends the addition of the term "materials."

f. For paragraph (a)(14)(iii), if an exporter is going to be required to apply for a license to retain an item abroad beyond one year, then the extension should match the standard validity period of a license, four years. Indeed, it would be consistent with the existing ITAR temporary export license (DSP-73) practice, to extend the TMP validity period to four (4) years.

For paragraph (b)(3), GEA seeks confirmation that it applies to technology. If it does apply to technology, GEA recommends the inclusion of a note stating that editorial modifications do not constitute a technology enhancement. If it does not apply to technology, then GEA recommends BIS adds language to the new paragraph (g) to 740.13 (TSU) to include returns of foreign-origin technical data.

3. License Exception RPL: GEA seeks clarification that paragraph (a)(3)(ii) can be used in conjunction with license exception LVS.

4. License Exception GOV: GEA agrees with the proposed structure for license exception GOV. However, GEA seeks clarification for the following paragraphs:

   a. GEA recommends BIS defines cooperating countries beyond A:1, as this country group is based on a defunct trade control regime. Instead, GEA encourages BIS to replace the references to "A:1" with "Wassenaar member countries."

   b. GEA would like to seek confirmation that proposed paragraph (c)(2) will apply to agencies of cooperating countries, even if these agencies are no longer at the national level. For example, as part of the European Union integration, member countries delegated the airworthiness authority to the European Aviation Safety Agency (EASA). EASA's authority is identical to the FAA's, except that it reaches multiple countries as opposed to just one. It is not an international agency, at least in the traditional sense of term, because it actually mandates airworthiness rules and standards across the EU.

   c. GEA believes that the exclusions listed in paragraphs (3)(i) and (3)(ii), should not be titled "Items on the Sensitive List" or "Items on the Very Sensitive list." Since BIS is not using the same numbering system, retaining the same titles as the Wassenaar Control Lists will lead to confusion. Instead GEA recommends BIS removes these titles and just references the supplement numbers.

5. License Exception STA: GEA seeks clarification as to how BIS envisions the implementation of proposed note 2. Will exporters be required to provide this information? If so, what type of information will the exporter be required to provide and how often will the exporter be required to provide the information. GEA believes that the exporter should only be required to provide the information on the initial export to the party.

6. License Exception MLX: At one point in time, BIS discussed publicly the idea of a license exception (MLX) that would allow CML items to accompany USML-controlled items that are exported under a

valid State Department authorization. Introducing a license exception of this type would be very helpful in allowing defense exporters to manage complex transactions, which inevitably include items subject to both Agency requirements. Even in an initial platform delivery, there are inevitably additional items that accompany the end item, and post-reform, many of those items will be controlled under the 600 series after ECR. This not an exception but the rule of how defense exports occur today.

While license exception STA may be available for some of these deliveries, there will be platform exports that occur to non-STA-eligible countries, under ITAR authorizations. Because of the ITAR authorization, the end user and end use will have already been authorized by the interagency process (including Congressional Notification on many transactions and major platform deliveries). Thus, the license exception would eliminate duplication of effort by the US Government in reviewing and authorizing similar transactions. Finally, there would be the ability to track such transactions through data in AES. If BIS determines that a license exception would not be feasible, GEA urges BIS to consider authorizing these "accompanying" transactions through a General Order or other mechanism.

Part 743:

1. GEA recommends the removal of a congressional notification requirement for "600-series" items. If the intent of reform is to transfer items that no longer warrant USML control, then it seems misguided to require congressional notification for these less sensitive items. For future programs, this could result in multiple notifications to Congress at the same time for the same transaction. Once items are moved through section 38(f) of the AECA, there is no national security or policy justification for retaining the notification requirement.

   In practice, most transactions involving significant volumes of 600-series items will have been subject to concurrent or prior notification under the ITAR. At a minimum, GEA urges BIS to modify this requirement to make clear that Congressional Notification would not be required if the transaction is subject to a concurrent or prior Congressional Notification for the same platform to the same end user. If the platform sale has or will concurrently receive the foreign policy and national security reviews, there is simply no need for the CML-specific aspects of the transaction to go through Congressional review. Duplicative and add-on notifications would create significant review and processing time. The delays that can be part of the Congressional Notification process are already a source of frustration to foreign customers, and are a unique part of the US export control process – thus serving as a competitive disadvantage to US exporters.

2. If BIS retains the concept of Major Defense Equipment under the EAR (if it eliminates the Congressional Notification proposal, this proposed change would not be needed), GEA recommends moving the definition of major defense equipment to Part 772, since it is referenced in different parts of the EAR.

Part 744:

GEA believes that proposed paragraph (a)(2) to Section 744.21 creates an unnecessary burden on ".y items", especially if items currently in a non-enumerated AT-controlled ECCN end-up in a ".y" entry. If this control is driven by end-use, which is what is reflected in the title for this section, then ".y items" should only be restricted to China only if intended for a military end-use. Additionally, there is no need to restate in this section the denial for all other "600 series" items to China. This is currently reflected in Section 742.6. Therefore, GEA recommends for paragraph (a)(2) to be deleted and instead for ".y items" to be called-out in Supp.2 to Part 744, consistent with the current China Military End Use restrictions.

Part 758:

1. GEA believes that requiring AES filing for certain license exceptions but not others will lead to confusion and potential non-compliance. If the intent is for BIS to track the export of "600-series" items, then GEA recommends an amendment to Part 743to include all "600-series" items, excluding ".y items". Based on previous proposals, ".y items" are to be controlled for AT-reasons only. If that is the case, reporting requirements for such low-level items seem like a bigger burden to the exporter than any benefit the USG would receive from information collected.

2. GEA is concerned that the proposed new destination control statement specific for 600-items will add cost to exports and not achieve the apparent goal of the proposal, to raise awareness of the restrictions on reexport of 600-series items. We believe that it is appropriate to impose a requirement that the exporter notify the recipient in writing of the items that are subject to the 600 series and the associated limitations on reexport of those items as a condition for using a license exception for any item under the 600-series. A written notification requirement (including the ECCN) will achieve the awareness goal that BIS desires without forcing exporters to reprogram shipping systems for a custom destination control statement applicable to only certain items. Further, an exporter is more likely to send the written notification to an individual in the company that would better understand the restrictions on subsequent reexport of the item (someone in contracts, sourcing or legal) vs. a destination control statement which would be primarily viewed by the individuals in a receiving area handling the physical shipment. Giving exporters flexibility to make the written notifications separate from the shipping documentation will assist exporters in addressing the requirement in a way that best fits with their automated systems.

GEA appreciates 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) 637-4206 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,

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