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Regulation Id: BIS-2015-0013 and BIS-2015-0012

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Subject: **Comments on Proposed Rule regarding Harmonization of the Destination Control Statements and Advance Notice of Proposed Rulemaking regarding Improvements and Harmonization of Export Clearances**

RIN 0694-AG47 and RIN 0694-AG51

Dear Mr. Mooney

The General Electric Company submits the following comments for the referenced proposed rule and advance notice of proposed rulemaking. GE appreciates the Administration's proactive efforts to harmonize the export clearance process, but GE has concerns about the proposed changes, which do not appear to provide any benefits to industry and in fact will create more requirements. These changes will be more burdensome to business units not currently exporting items that have been impacted by export control reform.

SPECIFIC COMMENTS

Proposed Changes to § 758.6 Destination control statement and other information furnished to consignees.

GE believes that the proposed Destination Control Statement (DCS) language focuses too much on harmonizing the EAR's language with the ITAR's DCS. While this is a potentially positive outcome for companies involved in defense trade, this approach does not take into account non-military exporters and the nature of commercial transactions.

First, the proposed language uses the terms "ultimate destination" and "ultimate end-user." While in the export of military items, the US exporter is expected to know that information beforehand, commercial exporters often will not know that information. Therefore, GE recommends the deletion of the word "ultimate" to the terms ultimate destination and ultimate end-user, to read instead destination and ultimate consignee.

Second, the imposition of a DCS requirement in contracts will be extremely burdensome to companies. It assumes that the US-company has prior knowledge during negotiations that the item(s) subject to the contract will actually be exported. There will be scenarios were that will not be apparent until point of shipment or servicing stage, which may be several years after the contracts negotiation. It is important to highlight that most contracts clauses require redrafting as the customers do not usually accept the compliance clauses "as-is". In addition, to the extent this would be a requirement for certain goods and not others (EAR99 exempt, for example), what would happen if the understood classification of the goods changed? Would the exporter need to renegotiate the contract prior to shipping or else face an export violation? GE recommends keeping the DCS requirements to shipping documentation only (e.g. commercial invoice, packing slip).

Third, the 600-series ECCN requirement as part of the DCS would require, in the context of contracts, for companies to know all the potential items being exported at the time of negotiating a contract, in order to assess which items are -600 series and which ones are not. This is not feasible most of the time.

> For example, at the time of contract negotiations, a company may be negotiating the servicing of a military or -600 series engine, but it won't be until the point of export that it will know which specific parts and/or components being repaired or replaced are -600 series items. A requirement to provide the -600 series items in the contract's DCS would require a company to "explode" an item's bill of material to assess which potential items are -600 series, which may or may not be exported in the future.

Please also note in your consideration of changing the DCS:

First, changes to the DCS can be costly because it requires recoding the logic for each ERP system printing the DCS in the export control documentation. Companies may have different ERPs. GE currently has dozens of ERPs that would require modification.

Second, based on several industry meetings, GE believes that as currently proposed, the destination control statement language may be misconstrued to mean that the actual technical data being exported (tangibly or intangibly) needs to be marked. This misconception would create a great burden to industry because most technical legends are added to documents upon creation rather than export. The re-markings of old technical documents would require a lot of time and would be very costly to implement.

Harmonization of Export Clearance Provisions:

A. Require ECCNs on export control documents:

- The requirement to provide ECCNs in the actual technical data being exported, particularly if exported intangibly, will be extremely burdensome to industry. It would not only require establishing a process for all new documents to include the ECCNs, but also going back and remarking every piece of existing technical information. This effort would be greater and more costly than export control reform reclassification efforts. Instead, GE recommends clarifying the requirement as limited to commercial invoices or shipping slips pertaining to tangible exports.

B. Require identification of country of ultimate destination on export control documents.

- As mentioned in the DCS section above, most commercial exporters do not know the country of ultimate destination of its item. If the intent is really to understand the country the export is destined to, GE recommends removing the term "ultimate" from the requirement.

C. Require license number or export authorization symbol on export control documents.

- In addition to the burden identified in paragraph A, the same piece of technical data may be exported in different years and, therefore, may be authorized under different export licenses. Requiring an export license number in the actual technical data would require companies to continuously remark its technical documents to reflect most current information, which will be extremely costly. Instead, GE recommends clarifying the requirement as limited to commercial invoices or shipping slips pertaining to tangible exports.

D. Require AES filing for exports to Canada for items controlled for NS, MT, NP and CB

- This requirement will be extremely burdensome and costly to industry. In addition to adding time to the processing of the export transaction, it would require companies to hire more resources to do these filings or pay additional fees to freight forwarders for the work. GE believes that the detriment to industry outweighs the statistical benefits BIS may receive from this.

E. Other suggestions for improving and harmonizing export clearance requirements

- GE would like to take this opportunity to suggest harmonization on license lodging and value tracking. While GE recognizes this is a BIS ANPR request, GE believes the agencies need to harmonize when a hardware license is ready for use. GE believes that lodging requirement for DSP-5s and DSP-73s should be eliminated. In addition, GE believes that exporters should be notified when a license is reaching ten percent of its remaining value.
- In February 2015, the Customs Operations Advisory Committee (COAC) made recommendations to Customs regarding the need for additional interagency cooperation and instituting certain efficiency-related improvements in the processes for exporting licensed commodities. GE encourages BIS to review those recommendations as it considers the comments in the current ANPR. The COAC recommendations are available at this link:

http://www.cbp.gov/sites/default/files/documents/Export%20Subcommittee%20Draft%20Recommendations%20and%20Commodity%20License%20Working%20Group%20Report.pdf

We appreciate the opportunity to provide comments on this Proposed Rule and Advance Notice of Proposed Rulemaking. 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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