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Office of National Security & Technology Transfers Controls and/or
Office of the Assistant Secretary for Export Administration
Bureau of Industry and Security
Room 2705
U.S. Department of Commerce
Washington, D.C. 20230

Regulation Id: BIS-2014-0009

June 6, 2014

Subject: **Comments on Proposed Revisions to the Support Document Requirements of the Export Administration Regulations (EAR) in Response to Executive Order 13563 Retrospective Regulatory Review**

RIN 0694-AG00

Dear Mrs. Muldonian, Mr. Emme:

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

SUMMARY COMMENTS:

GEA commends the Administration's efforts to simplify and contemporize the EAR. GEA concurs that eliminating the requirement to obtain non-US import certificates prior to filing US license applications would be easier for US exporters. With that said, GE believes that there additional opportunities to line up the EAR's support document requirements to export control reform initiatives and to better align these requirements to how companies currently operate. To that effect, GEA recommends the following changes and considerations:

SPECIFIC COMMENTS

Background Section [Federal Register (FR) Pages 19552-19554]

As a way to provide context to the rationale for this proposed rule, BIS mentions how it has "attempted to implement changes to the IC/DV system through the Wassenaar Arrangement, [however], the participating countries have not reached consensus at this time". Nonetheless, BIS does not address in this proposed rule how stopping the issuance of import certificates currently required by other countries would impact US companies, especially in light that "the participating countries have not reached consensus [to eliminate this requirement] at this time". GEA is concerned that this change, without regime coordination, would cause non-US license issuance delays or potential license denials by countries currently requiring this type of documentation. GEA encourages BIS to continue its coordinating efforts through Wassenaar and also to notify formally each Wassenaar member state that if it ceases to issue ICs.

15 CFR 748.9

(1) GEA believes that paragraph (a) should include a clarifying note stating that applicants are not required to obtain support documents from end-users. While the section does state "ultimate consignee and purchaser", BIS has stated that at times the terms ultimate consignee and end-users are used interchangeably.

(2) GEA recommends the deletion of the phrase "for certain transactions" from subparagraph (b)(1). This section includes an exclusions paragraph (paragraph (d)) which is referenced in the introduction to paragraph (b). Therefore, the phrase becomes unnecessary and simplifies the subparagraph's language.

(3) GEA believes the creation of the defined term "Americas" in addition to the reference to the Organization of American States (OAS) creates an unnecessary level of complexity in subparagraphs (b)(2) and (b)(3). GEA believes that it would be simpler to include the OAS members to Country Group A (Supp. 1 to Part 740) and just make the cross reference to the new sub-country group in these subparagraphs. The OAS is a multilateral organization/regime the US participates in, similar to all the other sub-groups identified in Country Group A. This would ensure all similar country groupings are found in one section (740), versus having exporters go to multiple sections to review the different country groupings. With this in mind, GEA proposes rewording subparagraphs (b)(2) and (b)(3) as follows:

- (2) "'License applications for exports of firearms and related commodities to **destinations identified in Country Group A:7**"
- (3) "License applications for exports to destinations **NOT identified in Country Group A:7**"

(4) GEA believes that the requirement to obtain original support documents should be eliminated. Most companies are eliminating paper records and fulfilling its record retention requirements electronically. Additionally, it may take several weeks (to months) for an ultimate consignee to provide an original support document when an electronic copy can be provided to the US applicant in a few days. GEA believes that provided the copy fulfills the requirements set forth in 762.5, BIS should strike all requirements in Part 748 for originals. With this in mind, GEA recommends subparagraph (f)(1) is modified as follows:

- License applicants must retain on file ~~the original copy of any~~ **the** support document**(s)** ~~issued in support of~~ **related to** a license application submitted to BIS. All recordkeeping provisions in Part 762 apply to this requirement~~, except that reproductions may not be substituted for the officially authenticated, original support document.~~

(5) In light of the proposed elimination of the import certificate requirement, GEA recommends striking the reference to "import certificate" in paragraph (h).

15 CFR 748.10

(1) Subparagraph (a)(3) requires a PRC end-user statement for "any commodity(ies) requiring a license for any reason on the Commerce Control List, and the value of the commodity(ies) requiring a license exceeds $50,000". However, it is not clear whether if this requirement is based on one (1) unit, line item value, or total license value. GEA seeks clarification on this point.

(2) Subparagraph (b)(2) includes the contact information as to where to go to obtain a PRC end-user statement. In the past, BIS has not kept these contact information sections up to date. GEA believes that the BIS website may be a better place to keep this contact information as it can be updated with more ease and frequency.

(3) As BIS is aware, US companies spend several months (and perhaps a year) waiting for PRC end-user statements to be issued by China's Ministry of Commerce (MOFCOM). Therefore, waiting until these are received to submit a US license application adds additional lag time to time-sensitive programs/exports. Therefore, GEA recommends replacing the requirement currently proposed in subparagraph (d)(1) with the following language "license applicants must obtain a PRC End-User Statement prior to exporting items to China". A license condition could be added to this effect.

(4) Subparagraph (d)(5) establishes a 6 months validity period for PRC end-user statements to be used in conjunction with a license application. However, this validity period does not take into account the impact of multi-year programs and MOFCOM's reluctance to issue new PRC end-user statements UNTIL all items identified in the original end-use statement are shipped. In light of this, GEA believes that the validity period proposed in this section should be eliminated. Instead the validity of PRC end-user statements should be based on whether the quantities identified in the documents have been shipped.

(5) As stated above, GEA believes that electronic copies should suffice provided they meet the requirements of 762.5 and recommends the following modification to subparagraph (e)(1):

- "~~Original~~ PRC End-User statements used to support license applications must be retained on file by the applicant. All recordkeeping provisions in Part 762 apply to this requirement~~, except that reproductions may not be substituted for the officially authenticated, original support document.~~"

(6) GEA does not understand the rationale for paragraph (e)(2). Since PRC end-user statements are issued to a specific US applicant, for a specific set of items, for specific end-use, how could the document be used in a license application not filed by the same US applicant? In light of this and the recommendations based above regarding record retention, GEA believes this whole subparagraph, and its related cross-reference in 748.9(f)(2), should be deleted.

15 CFR 748.11

(1) In light of ECR goals and objectives, GEA believes that requiring Statements by Ultimate Consignee and Purchaser for all transactions over $50,000 (except those exempted in 748.9(d)) is more burdensome than the current DDTC requirements for end-use certificates. Consequently, most items transitioning from the USML to the CCL did not require end-use certificate when they were subject to the USML may not require this additional supporting documentation. Therefore, consistent with DDTC requirements, GEA recommends BIS require Statements by Ultimate Consignee and Purchaser only for transactions involving items subject to the Wassenaar Very Sensitive List.

(2) GEA struggled to understand note 2 to paragraph (a). It seems circular. Could BIS provide examples of what this note is intending to cover?

(3) GEA appreciates BIS effort of giving exporters several options on how to comply with the Statement by Ultimate Consignee and Purchaser requirement. With that said, including in this section all the requirements exporter must follow if using company letterhead makes this section heavy and difficult to read. Similar to the requirement for unique license applications, GEA recommends moving paragraph (c) to a supplement and include an example of what this letter should look like.

(4) Consistent with the new license validity period, GEA recommends that the validity period for a Statement by Ultimate Consignee and Purchaser used to support multiple applications be updated from two (2) to four (4) years (See proposed (d)(1)(ii)).

15 CFR 748.13

(1) GEA appreciates BIS providing an exception for when a company cannot obtain a support document. However, this proposed process seems too onerous. GEA recommends for this process to be replaced with a requirement by the exporter to keep a letter on file (or provide with license application) as to why it was not able to obtain the support document. This

seems more in line with the current requirement, since support documents are not required to be submitted with the application.

Supp. 4 to Part 748:

(1) While GEA appreciate BIS' efforts on using simpler tools to better communicate EAR requirements, GEA believes the proposed table is confusing. GEA recommends eliminating this table and instead for BIS to add to its website a decision tree tool.

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) 637-4206 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
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