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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-2014-0035

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Subject: **Comments on the Recordkeeping Requirements of the Export Administration Regulations (EAR)**
Reference: RIN 0694-AG30

Dear Mr. Emme:

General Electric Company (GE) submits the following comments for the referenced notice of inquiry. GE appreciates the Administration's effort in taking this initial step at looking at the recordkeeping provisions and encourages BIS to continue working on this part of the EAR to ensure it aligns with its export control reform simplification and modernization initiatives.

COMMENTS:

1. Current Impact & Recommended Changes

In today's corporate culture, email and other electronic tools have become the primary media for the exchange of information both domestically and across borders. GE believes the recordkeeping provisions identified in 762.2(a)(2)-(4) do not take into account how business is conducted today and create a great burden to multinational corporations that rely heavily on the use of electronic collaboration tools.

For GE, employees send more than 6 million emails on a daily basis. Due to this great number, email retention and management becomes a challenge. The cost of archiving these emails averages $175 a year per employee. For GE, that represents more than $4 million a year.

In addition to cost issues, these provisions assume that the creator of the correspondence can easily assess whether the communication pertain to a transaction subject to the EAR. For multinational corporations where hundreds of employees may be tangentially involved in a transaction subject to the EAR, it becomes almost impossible for everyone to know that they are working on a transaction subject to the EAR that may require retention requirements beyond those documents retained in the ordinary course of business.

Therefore, GE believes that 762.2(a) should be updated to eliminate items (1)-(11) and updated to capture export control documents, as defined in Part 772 of the EAR, PLUS those documents the exporter believes would recreate the key elements to the export or re-export (e.g. recipient, item description, end-use). BIS should leave it to the exporter's discretion to decide whether to create records as a mechanism to meet the record retention requirements. Record creation just to meet recordkeeping requirements may be a greater burden, particularly to multinational corporations dealing with numerous "license required" and "no license required" transactions.

GE would like to highlight that from an enforcement or government audit perspective, there should not be an impact to shifting the retention requirement to "those documents the exporter believes would recreate the key elements to the export or reexport transaction". The exporter would still have an obligation to retain and provide those documents to the government upon request.

Lastly, GE does not recommend using the ITAR as a model for defining recordkeeping requirements. GE is concerned that incorporating the ITAR's broad provisions will lead to interpretation issues that may make the EAR recordkeeping requirements more of a burden to industry than it is today. Additionally, it is important to flag that the ITAR actually requires record retention for transactions beyond export or reexports (e.g. manufacture, acquisition, and disposition of defense articles).

2. Outdated Provisions:

762.1: GE recommends the deletion of Paragraph (3) of this section as it seems to imply that there are no record retention requirements for exports to Canada.

762.2(b): GE believes that the record retention references listed in 762.2(b) should be eliminated. Several of these references are for items that no longer exist or for sections that do not add additional recordkeeping requirements.

762.2(c): GE recommends removing the special recordkeeping requirement for OFAC licenses for exports Libya. This seems to be an outdated requirement, but if not, BIS should be coordinating with OFAC to add this requirement to OFAC's regulations instead of the EAR.

762.3: GE encourages BIS to review this section thoroughly. Some of the records identified seem to be out of date and no longer used by industry. Also, for those records that are current, BIS should ensure that these retention exemptions are consistent with other regulatory requirements that may concurrently impact the transaction like the Foreign Trade Regulations or Office of Foreign Assets Controls Regulations.

3. Other considerations:

GE recommends creating a carve-out to transactions subject to recordkeeping for deemed exports that do not require a license to the recipient. It is extremely difficult for companies to manage this requirement as most collaboration tools are usually set to track only those deemed exports of technology or source code requiring an export license.

We appreciate the opportunity to provide comments on this Notice of Inquiry. 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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