Comments in response to the ANPR dated May 22, 2015:

"Additional Improvements and Harmonization of Export Clearance Provisions"

Docket No. 150220163-5163-01

Identification Number BIS-2015-0012

RIN 0694-AG51

The National Customs Brokers and Freight Forwarders Association of America Inc. ("NCBFAA") hereby submits these comments in response to the Department of Commerce Bureau of Industry and Security ("BIS") Advanced Notice of Proposed Rulemaking ("ANPR") regarding the harmonization of the Export Clearance provisions published in the Federal Register on May 22, 2015. By way of background, and as relevant here, the NCBFAA, together with its regional affiliated associations, represents the interests of the nation's freight forwarders, non-vessel operating common carriers, and indirect air carriers and is accordingly familiar with the various export control regulations. The Association regularly meets with BIS and the other regulatory agencies that promote and enforce United States commercial, political and security interests and provides information to its members to support these regulatory goals.

NCBFAA commends both the Departments of State and Commerce for the great efforts being made to harmonize processes and documentation wherever possible.

For clarity and to conform to the pending Destination Control Statement NPRM, we recommend that BIS define "contractual documentation" either to state that it does not include bills of lading / air waybills (which are "contracts of carriage"), or to state "contractual documentation between seller and buyer". In the comments the NCBFAA filed this date in that NPRM (Docket No. BIS -2015-0013, RIN 0694-AG47), the Association explained why the DCS need not, and should not, be placed on the transport documents and incorporates those comments here. The comments below are based on the assumption that the information stated would not be required on transport documents.

The NCBFAA is in favor of requiring the ECCNs, Country of Ultimate Destination and License number or export authorization symbol on the commercial invoices. For absolute clarity, we recommend that BIS take this one step further and also require the notation of EAR99 so there is no question as to whether the goods are EAR99 or that the ECCNs are simply missing. EAR99 products are also subject to the EAR and subject to diversion risk to certain countries. Additionally, as freight forwarders, tremendous effort and resources are expended to obtain this information for export reporting (AES) from exporters, many of which are unaware of their responsibilities under the EAR. Requiring this information on the commercial invoices will help to streamline the process for freight forwarders while enhancing compliance to the EAR for exporters.

The NCBFAA does not recommend that these data elements also be required on the transport documents (Bills of Lading, Air Waybills), but instead should be confined to the export control documentation that is defined in this NPRM to be the commercial invoice and contractual documentation. This information is not traditional transport document information. As the destination country on transport documents may or may not be the country of ultimate destination, and as the parties on the commercial documentation may differ substantially to those identified on the transport documents, even assuming the forwarder or carrier had access to such information - which may not be the case - obtaining and placing the suggested additional items on the transport documents would require significant system programming by the entire transportation industry as well as additional intrusion by forwarders and carriers into the commercial processes of the parties to that transaction.

NCBFAA understands that BIS is requesting AES filing for exports to Canada. Should this proceed, we recommend that BIS not limit this to NS, MT, NP and CB, but rather require it for all reasons for control, i.e., all ECCNs. The reason for control is rarely shared with the freight forwarder; therefore, it would pose an additional burden to freight forwarders to collect this additional data to enable the forwarder to know when and when not to file the AES transmission. NCBFAA therefore recommends that BIS either require AES reporting for all transmissions that include ECCNs or not require the reporting at all.

This concludes the NCBFAA comments. We appreciate the opportunity to present our comments to the Bureau of Industry and Security and we hope that these comments will assist BIS in achieving a final rule that meets its objective of harmonizing the export clearance provisions with the Department of State requirements.

Sincerely,

Geoffrey C. Powell
NCBFAA President