Introduction:
The proposed harmonization of export clearance requirements between the EAR and ITAR provisions, in conjunction with Export Control Reform (ECR) are designed with the intent to reduce the burden on Exporters and improve compliance with export clearance requirements.

Overview and Impact
The improvements and harmonization provisions proposed in the RIN 0694-AG47 *Additional Improvements and Harmonization of Export Clearance Provisions* in actuality, will result in an increased burden on the private sector and generate additional confusion for correct export reporting. The revisions would create additional complexity in the export clearance system and result in additional cost to private industry infrastructure to support these changes, as well as risk to violations where none existed previously, with limited national security benefits.

A) Proposal to Require ECCNS on export control documents.
BIS is considering requiring the ECCN for all items on the Commerce Control List to be identified on all export control documents (i.e. commercial invoice and contractual documents). This would not include EAR99 items.

The generation of export control documentation is a heavily automated process. Very few items exported as part of our business process have an ECCN other than those at an AT level. Those items with a higher than AT level of control are reported in AES utilizing necessary licenses or license exceptions if required.

It is unclear if the intent of this requirement is to place the consignee on notice of the ECCN of the item, or to alert US Customs as to the ECCN of an item. In either event, foreign customers would be alerted by the destination control statement as required under 15CFR 758.6. To require the unique ECCN to be reproduced on commercial invoices for every AT level item would require significant reprogramming to the invoice generation systems and create additional monetary costs associated with them, which is contrary to the intent of the export reform initiative. If the intent is to provide US Customs enforcement visibility, then the information would be available to them via ACE/AES interface for items at higher than AT level.

In addition, what is the expectation of enforcement for this requirement? Barring any failure for proper use of a license or license exception, what would the liabilities be for error to place (for example) an AT level ECCN on a document? How would this be enforced practically by BIS?

B) Require identification of country of ultimate destination on export control documents
BIS is considering requiring the country of ultimate destination to appear on the export control documents.

The commercial invoices currently generated displayed on our commercial invoices have the ultimate consignee address, which includes the ultimate country of destination for each item. When BIS states that they believe the export control documents already identify the country of ultimate destination, we presume this is the information they are referring to.

The proposal does not specify if a separate line item stating the country of ultimate destination is required. If a separate line item is required to be added then additional programming costs would be

necessary to create a line item which duplicates already available information. If the format of the ultimate consignee address is acceptable we do not have any concerns with this proposal.

C) Require license export authorization symbol on export control documents.

BIS is considering requiring the license number for export control documents be identified on export control documents.

The requirement of placement of the license number on the commercial documents is an acceptable additional requirement given the sensitivity of licensed shipments. The addition of the license exception and the NLR statements, as stated above with the ECCN requirements, would require additional IT reprogramming along with associated costs in order to appear on the commercial invoices.

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

BIS proposes requiring EEI filings for exports to Canada for all items controlled under NS, MT, NP or CB items.

Generally, under our current business model, very few if the items controlled under these categories are shipped by our organization to end users in Canada, but we do have a very significant amount of trade volume that crosses the U.S.-Canadian border every day.

The proposal to require filing AES filings to Canada for these items does pose a potential complication of the supply chain for goods and JIT (just in time) logistics. Our logistics personnel and any Forwarders we use will have to train their staffs at the individual item level of control when an AES filing is required for shipments to Canada, to which previously no filings were required, unless a license was required or in certain unique situations.

For example, previous requirements have fallen into certain categories such as “used” vehicles, which are easier to identify for reporting purposes, and this is unique amongst other AES filing requirements. The proposal is more complex than this requirement as it stretches across multiple categories of goods.

In addition, our systems that generate paperwork for the forwarders will only have knowledge of potentially an ECCN and would not have detailed categorical reason of levels for the controls, leaving a question as to how to relay this information between the USPPI and the freight forwarder to identify which items to report and which items not to. A unique set of programming for Canadian shipments would need to be created to identify these items.

An additional concern is if Canadian goods would still benefit from the 30.37(a) exclusion of goods valued under $2500 per schedule B (and no license required) to maintain consistency with other AES filing requirements as there are shipments to other countries under a NLR scenario where an AES filing may not be required. Not allowing for this provision would even further complicate the AES reporting requirements. In addition, this will not cover issues such as technology transfers, which do not require an AES filing regardless if NLR.

If BIS wishes to gain greater visibility a solution may be to require reporting on a semi –annual basis of exports that fall into this category, similar to what is currently completed under some sections of license exception ENC. This would take the burden off the freight forwarders and limit the complexity of reporting to AES, as well as requiring any redesign to the AES system.

Conclusion

We appreciate the opportunity to comment on these proposals by BIS. In short, the attempt at harmonization between the ITAR and EAR will create additional burdens to those exporters who have traditionally fallen under the EAR exporting requirements. These burdens are both financial costs for reprogramming as well as operational costs by creating additional risks for error, while providing little additional national security protection. For those exporters already familiar with EAR and ITAR requirements, the differences are minimal enough to keep each process in place without major redesign or confusion.