BEFORE THE
U.S. DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY

PROPOSED RULE:
EXPORT ADMINISTRATION REGULATIONS (EAR): ADDITIONAL IMPROVEMENTS AND HARMONIZATION OF EXPORT CLEARANCE PROVISIONS

Comments by

UPS

July 1, 2015

BIS ID# BIS-2015-0012
RIN #0694-AG51

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UPS is filing comments in response to the U.S. Department of Commerce, Bureau of Industry and Security (BIS) proposal to harmonize and improve Export Compliance provisions under the Export Administration Regulations (EAR). This ANPR is part of Commerce's retrospective regulatory review and ongoing harmonization efforts being undertaken by Commerce and State as part of the Export Control Reform (ECR) implementation. This proposed change was published in the Federal Register May 22, 2015 (Volume 80, Number 99), pages 29554-29555.

UPS is the world's largest package delivery and supply chain services' company, offering the most extensive range of options for synchronizing the movement of goods, information and funds. UPS serves more than 220 countries and territories, and employs over 408,000 people worldwide. We deliver approximately 15 million packages and documents each day.

UPS has a number of significant concerns reflected below, however UPS generally supports BIS' efforts to improve and harmonize the Export Compliance provisions and thereby reduce the burden on exporters, promote consistency, improve compliance, and ensure the regulations are achieving the intended purpose for use under the U.S. Export Control System, specifically under the transactions "subject to the ITAR" and "subject to the EAR." UPS recognizes the key role this harmonization will play to further facilitate the implementation of the President's Export Control Reform Initiative.

As has customarily been done for past ANPRs and due to the impact to the entire trade community (exporters, freight forwarders, agents, and carriers), UPS recommends that BIS conducts public meetings well in advance of publication of the Final Rule. This will provide the necessary forum to engage with the government and discuss mutually-beneficial alternatives to accomplish the government's objectives without putting any sector of the trade at an economic disadvantage. UPS also requests that BIS strongly consider setting the implementation date at 180-240 days after publication of the Final Rule to allow sufficient time for all affected parties to make the required changes to system programming, document revision and related procedural tasks.

In consideration of the effects the proposed change may have on the time sensitive nature of our business, UPS respectfully submits the following comments on certain provisions of the proposed change:

APRN Page 29554, 15 CFR 758

This ANPR requests comments for how the requirements under part 758 (Export clearance) of the Export Administration Regulations (EAR) (15 CFR parts 730-774) can be improved, including how the EAR export clearance provisions can be better harmonized with the export clearance requirements under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130).

This ANPR is part of Commerce's retrospective regulatory review and ongoing harmonization efforts being undertaken by Commerce and State as part of Export Control Reform (ECR) implementation.

UPS agrees harmonization will provide extreme benefit in reducing confusion, lessening burden, and ease efforts in compliance by eliminating inconsistencies in the regulations between the ITAR and EAR. With the transfer of many formerly ITAR controlled defense articles and components to the Commerce Control List in the EAR under the jurisdiction of the Department of Commerce, this proposed change should facilitate preparation of documentation, especially for those exporters shipping articles subject to the ITAR and the EAR in the same shipment. Any reduction in differences currently driving the need for redundant and separate processes between the ITAR and EAR to comply with similar but different requirements increases the risk of inadvertent errors.

As changes are proposed, it is vitally important to ensure the key objective is maintained, in that, changes should further align both sets of regulations to the extent possible, not create sub-requirements in either the ITAR or EAR to recapture what is removed and/or changed. The recent NPRMs presented by BIS and State to align the Destination Control Statement is positive, in that the text is aligned, however, the documents on which this statement will be required differs between the two proposals. Such differences, in practice, are not easily managed between the various members of the trade given utilization of multiple control systems.

ANPR Page 29555, 15 CFR 758

Require ECCNs on export control documents.

The ECCN for all 9x515 and "600 series" items is currently required to be identified on the export control documents, along with the destination control statement. BIS is considering requiring that the ECCN be identified for all items on the Commerce Control List. This would not include items that are designated EAR99.

UPS has significant concern with this proposed requirement. Primarily, it is unclear as to what is meant by "Export Control Documents." This should be further defined to allow the trade and public to realistically analyze the overall impact of this proposed change. Secondly, to add additional requirements on the trade and public to begin identifying the ECCN for the majority of items on the Commerce Control List (CCL) outside of the current requirements to show on the Commercial Invoice, as well as the Automated Export Filings, will likely be extremely burdensome, depending on the final definition of "export control documents."

Finally, given the overlying intended relief of the President's Export Reform Act and preparation for a consolidated agency with a single set of regulations, this proposed requirement, in general, seems counter-productive to that effort. UPS also sees no benefit in burdening the trade further with additional requirements given CBPs current direction of a single system, ACE, utilizing the "single window concept" where all participating government agencies can access specific information for both imports and exports in an automated, non-paper environment. As the US Government and the trade move to an "electronic" environment, it is reasonable to assume the ECCN currently part of the EEI filing in AES ACE would more than satisfy any visibility needed by any government agency, as opposed to the additional expense on the trade and public to program systems for this information outside of the current requirements. UPS can see no benefit and therefore, in the interests of lessoning the burden on the trade and public, does not support this proposed requirement of the ECCN on transportation documents such as the bill of lading, air waybill, and any such contract of carriage.

ANPR Page 29555, 15 CFR 758

Require identification of country of ultimate destination on exports control documents. BIS is considering requiring that the country for ultimate destination be identified on the export control documents.

BIS is considering requiring that the country of ultimate destination be identified on the export control documents. This requirement would mirror the requirement in the ITAR and BIS believes that this would only impact a small number of exports where additional actions would be needed by exporters, because in most cases, the export control documents already identify the country of ultimate destination.

UPS has significant concern with this proposed requirement. Primarily, it is unclear as to what is meant by "Export Control Documents" and this should be further defined to allow the trade and public to realistically analyze the overall impact to this proposed change. Along this line, further explanation of this proposed requirement is warranted, as not all exports fall within the criteria set forth by DDTC for shipments subject to the current ITAR Destination Control Statement where this additional information is required.

Secondly, to add additional requirements on the trade and public to begin identifying the country of ultimate destination outside of the current ITAR requirements to show on the Commercial Invoice Destination Control Statement, as well as the Automated Export Filings, will

likely be extremely burdensome, depending on the final definition of "export control documents" and further explanation of when this requirement is applicable.

Finally, given the overlying intended relief of the President's Export Reform Act and preparation for a consolidated agency with a single set of regulations, this proposed requirement, in general, seems counter-productive to that effort. UPS also sees no benefit in burdening the trade further with additional requirements given CBPs current direction of a single system, ACE, utilizing the "single window concept" where all participating government agencies can access specific information for both imports and exports in an automated, non-paper environment. As the US Government and the trade move to an "electronic" environment, it is reasonable to assume the country of ulitimate destination, currently part of the EEI filing in AES ACE, as required, would more than satisfy any visibility needed by any government agency, as opposed to the additional expense on the trade and public to program systems to supply this information outside of the current requirements. UPS can see no benefit and therefore, in the interests of lessoning the burden on the trade and public, in general, does not support this proposed requirement of the country of ultimate destination on transportation documents such as the bill of lading, air waybill, and any such contract of carriage.

ANPR Page 29555, 15 CFR 758

Require license number or export authorization sysmbol on export control documents. BIS is also considering requireing that the license number or export authorization symbol be identified on export control documents.

This proposed revision would require that the license number, license exception code, or "no license required" designation be entered on the export control documents. BIS specifically requests comments on the application of this requirement to mixed authorization and mixed jurisdiction shipments.

UPS has significant concern with this proposed requirement. Primarily, it is unclear as to what is meant by "Export Control Documents" and this should be further defined to allow the trade and public to realistically analyze the overall impact to this proposed change. Along this line, further explanation of this proposed requirement is warranted, as not all exports fall within the criteria as set forth by the Department of Commerce for shipments warranting a license designation.

Secondly, to add additional requirements on the trade and public to begin identifying a licensing designation outside of the current requirements to show on the Commercial Invoice, as well as the Automated Export Filings, as required under 15 CFR 30, seems extremenly burdensome, depending on the final definition of "export control documents" and further explanation of when this requirement is applicable.

Finally, given the overlying intended relief of the President's Export Reform Act and preparation for a consolidated agency with a single set of regulations, this proposed requirement, in

general, seems counter-productive to that effort. UPS also sees no benefit in burdening the trade further with additional requirements given CBPs current direction of a single system, ACE, utilizing the "single window concept" where all participating government agencies can access specific information for both imports and exports in an automated, non-paper environment. As the US Government and the trade move to an "electronic" environment, it is reasonable to assume licensing designation, as required and, currently part of the EEI filing in AES ACE would more than satisfy any visibility needed by any government agency, as opposed to the additional expense on the trade and public to program systems to supply this information outside of the current requirements. UPS can see no benefit and therefore, in the interests of lessoning the burden on the trade and public, in general, does not support this proposed requirement of licensing determination on transportation documents such as the bill of lading, air waybill, and any such contract of carriage.

ANPR Page 29555, 15 CFR 758

Require AES filing for exports to Canada for items controlled for NS, MT, NP and CB. BIS seeks comments on the potential impact and feasibility of changing section 758.1 under paragraph (b) to require EEI filing in the AES for all exports to Canada of items controlled for National Security (NS), Missile Technology (MT), Nuclear Nonproliferation (NP), and Chemical & Biological Weapons (CB) reasons, regardless of license requirements (meaning regardless of whether the export was authorized under a license, license exception, or designated as no license required).

Because of the AES filing exemption for non-licensed items to Canada, BIS currently has little visibility into the movement of these items into Canada, except for exports to Canada that involve a licensed item, a 9x515 or "600 series" item, or are to be transhipped to a third country which do require EEI filing in the AES. Therefore, BIS is seeking information that would help us determine:

- The volume of trade that would be impacted by this filing requirement;
- If this filing requirement would be beneficial and practical or detrimental and burdensome for industry;
- If this filing requirement would have a commercial impact on exporters; and
- If there are alternative methods to collecting or accessing this data.

As Canada is the United States largest trading partner, UPS estimates this change would impact thousands of exports daily that are currently falling into the "non-licensed items to Canada" export category and would impose a significant burden on the trade and public in complying with this proposed requirement. Expense in reprogramming current operational and trade control systems, including AES, would be exponential with no clear indication of a benefit of this proposed increased visibility.

Additionally, given the overlying intended relief of the President's Export Reform Act and preparation for a consolidated agency with a single set of regulations, this proposed

requirement, in general, seems counter-productive to that effort. UPS also sees no benefit in burdening the trade further with additional requirements given CBPs current direction of a single system, ACE, utilizing the "single window concept" where all participating government agencies can access specific information for both imports and exports in an automated, non-paper environment. As the US Government and the trade move to an "electronic" environment, it is reasonable to assume this information could be obtained without imposing this additional requirement. In addition, as the US and Canadian governments currently and routinely share data, it may be assumed there are already alternative means to increase visibility of information being sought through existing avenues.

UPS estimates a significant impact to the industry and can see no benefit, therefore, in the interests of eliminating a significant burden and expense on the trade and public, in general, does not support this proposed requirement.