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ELECTRONIC SUBMISSION VIA WWW.REGULATIONS.GOV

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Regulatory Policy Division
Bureau of Industry and Security
U.S .Department of Commerce
14th Street and Pennsylvania Avenue NW
Washington, DC 20230

Office of Defense Trade Controls Policy
Directorate of Defense Trade Controls
U.S. Department of State
2401 E Street NW
Washington, DC 20522-0112

RE: Notices of Proposed Rulemaking;
RIN 0694-AG47, EAR: Harmonization of the Destination Control Statements
RIN 1400-AC88, ITAR: Amendments to the Destination Control Statement

Dear Sir or Madam:

Federal Express Corporation (FedEx Express) appreciates the opportunity to submit the following comments in response to the Notices of Proposed Rulemaking (NPRM) of the U.S. Department of Commerce, Bureau of Industry and Security (BIS) and the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) regarding proposed amendments to the Export Administration Regulations (EAR) and the International Traffic at Arms Regulations (ITAR), respectively, to harmonize the regulatory requirements associated with the Destination Control Statement (DCS). FedEx Express supports the efforts of the Administration to refine and simplify the U.S. export control regulatory scheme via the Export Control Reform Initiative. FedEx Express further supports the goals of BIS and DDTC, with the above-referenced NPRMs, to harmonize the EAR and ITAR provisions that are intended to achieve the same purpose. To assist in this process, FedEx Express offers some specific comments below for BIS and DDTC to consider in their respective rulemakings. Given the interrelatedness of these companion rulemakings, FedEx Express has consolidated its comments on both NPRMs into this single submission, which it is filing in both the BIS and DDTC dockets.

I. Company Information

FedEx Express is the world's largest express transportation company and offers a wide range of express services for the time-definite transportation of documents, packages and freight throughout the world. FedEx Express provides its services to approximately 220 countries and territories. It is the corporate policy of FedEx Express to comply with all applicable laws and regulations that pertain to export controls and related concerns, such as defense trade controls and economic sanctions, while providing expeditious service needed in the time-sensitive global economy and global real-time supply chain logistics.

II. Preliminary Statement Regarding "Contractual Documentation"

BIS states in its NPRM that the "export control documents" referenced in its proposal include the commercial invoice and "contractual documentation." When BIS refers to "contractual documentation," it is fairly clear that they mean the contract between an exporter and the consignee rather than the contract between the shipper and the carrier (*i.e.* the carrier's air waybill). FedEx Express offers its comments to the BIS NPRM under this premise.

FedEx Express also requests that the language in the BIS NPRM be amended to clearly and unmistakably articulate that the air waybill is ***not included*** in the definition and/or meaning of "contractual documentation." Such clarification would remove any doubt or ambiguity concerning the specific export control documents impacted by the proposals. However, if the air waybill is to be included in the "contractual documentation" definition and/or meaning, then FedEx Express would have many additional comments regarding the operational and financial impact of providing mandatory space for this on the various air waybills used by FedEx Express customers, as well as the other potential changes contained in the BIS NPRM.

III. DCS Documentation Requirements -- Further Divergence in EAR and ITAR

While the regulations proposed by DDTC and BIS would harmonize the DCS language required by ITAR and EAR, the proposals do not harmonize the requirements imposed by the regulations in any other meaningful way. In fact, the impact of the proposed regulations is more likely to lead, in application, to further divergence in the practical documentation requirements depending upon whether a shipment contains an item controlled by ITAR. To this point, FedEx Express echoes a concern of the American Association of Exporters and Importers (AAEI) about the potentially detrimental compliance effects of the BIS and DDTC inconsistencies in the proposed implementation of the DCS changes. (See, AAEI Comments on BIS NPRM, June 30, 2015, at page 2.) FedEx Express would expand that concern as applicable to all parties in a U.S. export shipping transaction, including the transporting carrier.

A. EAR Proposed Change; 15 C.F.R. §758.6

This proposal would require incorporation of the DCS as an integral part of the commercial invoice and contractual documents. However, the BIS NPRM removes the requirement to incorporate the DCS as a part of the air waybill. FedEx Express agrees that such removal is the correct direction. The purpose of the DCS is to alert parties outside of the U.S. who receive an item that the item is subject to U.S. export controls. The contractual documents and commercial invoice are intended to detail the entirety of the transaction between the parties that are engaging in the transfer of the items. Incorporating the DCS into those documents is much more likely to achieve the intended purpose of the DCS than is including that information on the air waybill. Including the DCS as a part of the air waybill will do little, if anything, toward the regulatory goal of the DCS.

The other proposed changes in the BIS NPRM concern revisions to require the following information on export control documents: the Export Control Classification Number(s); the identification of the country of ultimate destination; and the license number or export authorization symbol. FedEx Express has no issues with these revisions ***provided that*** the air waybill is not included in the definition and/or meaning of "contractual documentation," (see Section II, supra) and therefore, by extension, export control documents.

B. ITAR Proposed Change; 22 C.F.R. §123.9

This proposal not only does not remove the requirement to incorporate the DCS as an integral part of the air waybill, but it also has additional requirements to incorporate the country of ultimate destination, end-user, and license or other approval number or exemption citation applicable to each item contained in a shipment. This additional information is not required under the rule proposed by BIS.

IV. ITAR Proposed Changes; 22 C.F.R. §126.4

FedEx Express supports the proposed changes in the DDTC NPRM relating to expanding the scope and type of export and temporary import shipments eligible for ITAR licensing exemptions under §126.4. This expanded list now includes: all export shipments and not just temporary export shipments; and export and temporary import shipments made to or on behalf of the U.S. Government or U.S. Government "contractor support personnel." Nevertheless, these positive, export control reform-progressing steps are substantially undercut by the new certification statement requirement included in the DDTC NPRM.

First, for U.S. export shipments made pursuant to §126.4(a)(1), having the new certification statement required to be printed on the air waybill is simply not necessary. The certification can be made on the Commercial Invoice, which is used for customs clearance at the destination port of entry. Mandating a certification to appear on the air waybill would be extremely burdensome as it will require costly modifications and adjustments to carriers' software systems, third party shipping software providers, and related automation and reporting elements.

Second, the proposal for this new certification statement to "be presented [in writing] at the time of export to the appropriate Port Directors of U.S. Customs and Border Protection" creates a burdensome and redundant compliance requirement. All §126.4(a)(1) shipments already require an Electronic Export Information filing and the associated mandatory Internal Transaction Number for U.S. export approval. Moreover, in most transactions, the U.S. Principal Party in Interest will be the U.S. Government point of contact. Further, the cost of adding this operational export approval step would be high and could create additional holds at the port(s) of exit.

V. Air Waybill Space Limitation

A number of the proposed regulatory changes discussed above involve putting additional information onto an air waybill. However, the space available for such additions to the air waybill is limited. This statement is especially true for the air waybills utilized by express carriers since most of that available space is taken up by information, required by regulation and industry standards, related to the carriage and delivery of the shipment. It can be difficult to fit the DCS alone into the remaining space without resorting to an extremely small font, making the information nearly impossible to read and thereby negating the regulatory intent. The addition of even a single instance of a country of ultimate destination, end-user, and license or other approval number or exemption citation information could be unduly burdensome. If a shipment were to contain multiple items with different countries of ultimate destination, end-user, and license or other approval number or exemption citation information, the task would quickly become unworkable and impossible.

VI. Conclusion

FedEx Express reiterates its statement at the outset of these comments that it supports the Administration's efforts with the Export Control Reform Initiative and the specific U.S. export regulatory harmonization efforts of BIS and DDTC with their companion Notices of Proposed Rulemaking. FedEx Express appreciates the opportunity to submit the above comments. Having U.S. international trade stakeholders work together toward a less confusing and less onerous U.S. export control regulatory scheme only serves to promote a shared goal of strengthening export control compliance.

We are happy to discuss our points further as these rulemaking processes continue. Please feel free to contact me or Alan Black, FedEx Express Global Trade Services, U.S. Regulatory Compliance Manager, if you have any questions concerning these comments.

Sincerely,

Courtney E. Felts

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Senior Counsel
Legal and Regulatory Affairs
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