Comments in response to the

Bureau of Industry and Security NPRM dated May 22, 2015: "Export Administration Regulations (EAR): Harmonization of the Destination Control Statements.
Docket No. BIS-2015-0013, RIN 0694-AG47

State Department NPRM dated May 22, 2015: "Amendment to the International Traffic in Arms Regulations: Exports and Temporary Imports Made or on Behalf of a Department or Agency of the U.S. Government; Procedures for Obtaining State Department Authorization To Export Items Subject to the Export Administration Regulations: Revision to the Destination Control Statement; and Other Changes"
Docket – Public Notice 9139, RIN 1400-AC88

The National Customs Brokers and Freight Forwarders Association of America Inc. ("NCBFAA") submits these comments in response to the Department of Commerce Bureau of Industry and Security ("BIS") and State Department Notices of Proposed Rulemaking ("NPRM") published in the Federal Register on May 22, 2015 regarding the harmonization of the Destination Control Statement. 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 comments are limited to the language and use of the Destination Control Statement (DCS).

NCBFAA commends both the Bureau of Industry and Security (BIS) and the Directorate of Defense Trade Controls (DDTC) for their proposal to harmonize the Destination Control Statement. In the Association's view, this effort by the agencies does help carry forward President Obama's Export Control Reform Initiative and has the opportunity to reduce significant confusion on the part of exporters and forwarders and to minimize unnecessary regulatory processes. In that regard, we commend both BIS and DDTC for their willingness to have a single DCS. By going forward with the proposals to amend 15 CFR § 758.6 and 22 CFR §123.9 to have common form language for the DCS, the proposed rules should significantly simplify the export process.

The NCBFAA also supports the approach taken by BIS, and in particular for recognizing that this lengthy statement does not offer value on the transport document (Bill of Lading, Air Waybill) and that the DCS should be required only on the commercial and contractual documents that relate to the transactions between the vendors, purchasers and other parties that may be involved in the commercial relationship for exports. Those are the parties who have

primary responsibility for ensuring that all licensing responsibilities are satisfied and that controlled items are not to be sold or otherwise transferred to inappropriate parties. Accordingly, BIS has correctly concluded that adding the DCS onto transport documents does not have any meaningful value to the goal of preventing unauthorized transfer of controlled items.

Respectfully, the NCBFAA believes that DDTC should come to a similar conclusion and agree that the entire process should be harmonized. In other words, DDTC should modify its proposed rule so that it comports with the BIS proposal, and that the DCS should only be placed on commercial invoices and contractual documentation, whether under the jurisdiction of the EAR or the ITAR. In our view, the parties to the transaction are well aware that the goods being exported are subject to US export restrictions, especially when the items are ITAR controlled, so that having the DCS also added onto transport documents does not accomplish anything of value. On the other hand, by maintaining that requirement, section 123.9 continues to raise compliance problems for the forwarder or carrier that prepares the bills of lading and other transport documents. Forwarders and carriers do have the appropriate obligation to ensure that they perform their duties in accordance with any license restrictions or other controls that might pertain to a given transaction, so that requiring that they observe a DCS that may be placed on the transport documents does nothing to advance the goals underlying the purpose of the DCS.

In addition, it is not entirely clear what DDTC believes to be "shipping document." Clearly, the house and master bills of lading and air waybills are transport documents. But so may be dock receipts, inland or domestic bills of lading, packing lists, warehouse check lists, booking confirmations, etc. Is the DCS to be on any document that has a bearing to the transportation function?

Moreover, the NCBFAA believes that there may well be security concerns associated with continuing to show the DCS on transport documents (whether the old version or proposed version). The transport documents alert anyone in the supply chain that the shipment contains sensitive goods, thus signaling that they are prime candidates for possible theft or diversion.

If the State Department, in fact, believes that some form of a DCS does nonetheless need to be included on the transport document, then the NCBFAA recommends that it consider a simpler statement. For example, a statement, such as: "This shipment contains goods under the jurisdiction of the ITAR." This form of a statement could more easily be converted to an EDI message than the complete DCS, which would be very beneficial to forwarders and carriers as transport documents continue to move into an electronic environment.

From a practical aspect, under the proposed language and State Department proposal, , the information previously embedded in the ITAR DCS will still be required on the transport document (end user, country of ultimate destination, and license number). However, not all ITAR controlled transactions are consigned to the end user / ultimate destination in any given transaction. Goods may be consigned to other parties named on the license; therefore the transport document may not contain all of the details relating to the planned movement of export cargo, so that having the DCS on the transport document really does not serve the intended

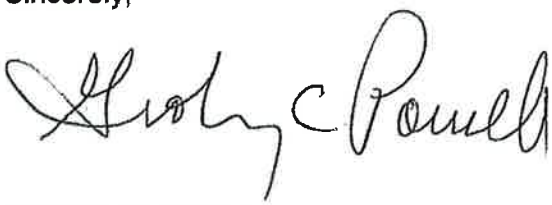
purpose. And, with respect to the government, all of these details are available to Customs and Border Protection, the Bureau of Industry and Security, etc. through the Automated Export System (AES) on all ITAR controlled shipments of goods, so that, again, the DCS does little to enhance either compliance or sensitivity as to the controlled nature of the goods.

Additionally, NCBFAA requests that for clarity, BIS defines "contractual documentation" to either state outright that it does not includes transport documents, or to say "contractual documentation between the seller and the buyer" so that it is not confused with the "contract of carriage" between the shipper and the carrier.

Lastly, NCBFAA asks that, should the proposed rule move forward, that it include a period of time to allow freight forwarders to use up preprinted stock that shows the current EAR Destination Control Statement without possibility of penalty.

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

Sincerely,



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