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

PROPOSED RULE:
EXPORT ADMINISTRATION REGULATIONS (EAR): HARMONIZATION OF THE DESTINATION CONTROL STATEMENT

Comments by

UPS

June 29, 2015

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Communication with respect to this document should be addressed to:

Don Woods, Director
UPS Supply Chain Solutions, Inc.
Customs and Trade Compliance Dept.
1930 Bishop Lane, Ste. 600
Louisville, KY 40218
donwoods@ups.com

Cheryl Hostetler, Manager
UPS Supply Chain Solutions, Inc.
Customs and Trade Compliance Dept.
1930 Bishop Lane, Ste. 600
Louisville, KY 40218
chostetler@ups.com

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UPS is filing these comments in response to the U.S. Department of Commerce, Bureau of Industry and Security (BIS) proposal to revise the destination control statement in the Export Administration Regulations (EAR) to harmonize the statement required for the export of items subject to the EAR with the destination control statement in the International Traffic in Arms Regulations (ITAR). This proposed change was published in the Federal Register May 22, 2015 (Volume 80, Number 99), pages 29551-29554.

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 expresses significant concerns below and requests clarification but also wishes to note that in general UPS supports BIS' efforts to harmonize the Destination Control Statements 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 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 NPRMs and due to the impact to the entire trade community (exporters, freight forwarders, agents, and carriers), UPS recommends these changes be thoroughly reviewed with the public well in advance of publication of the Final Rule. A public comment period with relevant meetings will provide the necessary fora 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 inappropriate disadvantage. UPS also requests that BIS strongly consider setting the implementation date 180-240 days after publication of the Final Rule to allow sufficient time for all effected 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:

NPRM Page 29551, 15 CFR 758.6

Revision of 758.6 of the EAR to harmonize the Destination Control Statement requirement text with 123.9(b) (1) of the ITAR.

This proposed change would harmonize the language between the EAR and ITAR requirements to a single statement as an integral part of the bill of lading, air waybill, or other shipping documents, and the purchase documentation or invoice whenever defense articles are to be exported. The new statement adopts language that would be equally applicable under the EAR as well as the ITAR.

While expressing concern and requesting clarification below, UPS supports one aspect of this proposed change and agrees harmonization can provide benefits by reducing confusion as to which statement to utilize, as well as the need to incorporate both in relevant documentation. 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 has the potential to help facilitate preparation of documentation, especially for those exporters shipping articles subject to the ITAR and the EAR in the same shipment.

NPRM Page 29552, 15 CFR 758.6 (a) (1)

The proposed new introductory text paragraph (a) would specify that the exporter shall incorporate the information specified under paragraph (a) (1) and (a)(2) as an integral part of the commercial invoice and contractual documentation…

This proposed requirement would mean this section of the EAR would no longer include a requirement to include the destination control statement on the air waybill, bill of lading, or other carrier/forwarder export control documents, and would otherwise set forth the requirement on the two documents—the commercial invoice and contractual documents (when such exists) between the Shipper/USPPI and Consignee/Buyer.

UPS is in favor of this proposed requirement and recognizes this change as a key element to reinforcing the intent of the regulation which is to provide the foreign consignee with needed information to ensure compliance with the EAR. The foreign consignee is far more likely to receive the commercial invoice and contractual documents between the Shipper/USPPI and Consignee/Buyer than any transportation documentation produced by the carrier/forwarder for any such contract of carriage.

UPS does not agree with or support the DDTC proposed change, as it imposes additional burdens and cost on the public and trade to add this information separately to the bill of lading, air waybill and other transportation documentation where it has no perceived value and in fact may have the result of inappropriately signaling package contents to third parties. UPS agrees this information should remain an integral part of the Commercial Invoice and Contractual Documents, when they exist, between the Shipper/USPPI and Consignee/Buyer, which are tendered, along with the Shipper's Letter of Instructions, to complete all required export filings. UPS can see no benefit and therefore, in the interests of lessoning the burden on the trade and public, does not support this proposal to require this information on transportation documents such as the bill of lading, air waybill, or any such contract of carriage.

NPRM Page 29552, 15 CFR 758.6 (a) (2)

Although the new destination control statement is not ITAR or EAR specific, in the case of the USML the classification of the USML items would be required on the documentation….

This classification would alert the parties that the items are subject to the ITAR. For military items under the EAR, anyone receiving a "600 series" military item or an ECCN 9x515 item would know that specific item was subject to the EAR because the classification information would also need to be included on the same documentation.

Except as noted below, UPS supports this proposed change and recognizes minimal impact in requiring this additional "600 series" military item or an ECCN 9x515 item information on the same documentation as the Destination Control Statement—Commercial Invoice and Contractual Documents (when such documents exist), between the Shipper/USPPI and Consignee/Buyer. This information is currently required on these documents to facilitate the necessary AES filing.

UPS can see no benefit and therefore, in the interests of lessening the burden on the trade and public, does not support such information being required on transportation documents such as the bill of lading, air waybill, and any such contract of carriage.