We Make Global Trade Happen

July 6, 2015

Via E-Mail: *publiccomments@bis.doc.gov*.

Regulatory Policy Division, Bureau of Industry and Security
U.S. Department of Commerce
Room 2099B
14th Street and Pennsylvania Avenue NW.
Washington, DC 20230

Re: RIN 0694–AG47
EAR: Harmonization of the Destination Control Statements

Dear Sir or Madam:

On behalf of the American Association of Exporters and Importers (AAEI), the Association respectfully submits the following comments for the above referenced proposed rule published in the Federal Register at 80 FR 29554 (May 22, 2015).

I. Introduction

AAEI has been a national voice for the international trade community in the United States since 1921. AAEI represents the entire spectrum of the international trade community across all industry sectors. Our members include manufacturers, importers, exporters, wholesalers, retailers and service providers to the industry, which is comprised of brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. AAEI promotes fair and open trade policy. We advocate for companies engaged in international trade, supply chain security, export controls, non-tariff barriers, import safety and customs and border protection issues.

AAEI is the premier trade organization representing those immediately engaged in and directly impacted by developments pertaining to international trade. We are recognized as technical experts regarding the day-to-day facilitation of trade. We have commented extensively on regulations promulgated by the U.S. Department of Commerce regarding export and import compliance practices and procedures.

II. Export Control Reform Initiative

AAEI supports the Administration's efforts and progress toward reforming U.S. export controls. Our members welcome efforts to simplify and streamline what has often been an overly complex and technical U.S. export

controls system. We applaud the Administration's goal of harmonizing ITAR and EAR provisions that are intended to achieve the same purpose. Harmonization reduces the burden on exporters thereby improving compliance and ensures the regulations achieve their intended purpose. However the proposed regulation does none of these things.

III. Inconsistencies between ITAR and EAR Destination Control Statements Remain

While the proposed regulation does indeed harmonize the required language in the Destination Control Statements (DCS) under the ITAR and EAR, the proposed regulation fails to harmonize the implementation of the DCS requirement. The proposed rule requires exporters to include the DCS on "the bill of lading, airway bills, or other shipping documents" for exportation of ITAR items. However exportation of items subject to the EAR would no longer require inclusion of the DCS on the airway bill, bill of lading or other export control documents. Exports of items subject to the EAR would only require the DCS be included on the commercial invoice and contractual documentation.

This inconsistency in implementation of the DCS will increase the burden on exporters, increase the chances of export violations and undermines the intended purpose of the proposed regulation.

IV. Inconsistencies in Implementation Raises Chances of Export Violations

The export clearance phase of corporate export controls compliance programs relies heavily on information technology (IT) as standardization conserves resources and improves compliance. By having different DCS implementation requirements for the ITAR and EAR, the proposed regulation will force companies to have two different IT systems—one for the ITAR and one for the EAR. This proposal will increase compliance costs.

Further, companies will have to re-train their compliance staff to be able to determine which commercial document to insert the required DCS statement. Is it the airway bill or is it the commercial invoice? This analysis will become increasingly difficult as Export Control Reform has blurred the lines between the ITAR and EAR. Inadvertent mistakes will occur thereby reducing compliance not increasing it. As compliance with the proposed regulation increases in difficulty, will BIS dedicate its limited enforcement tools to punish exporters for these technical violations? Will BIS chase down documents instead of true national security threats?

V. Conclusion

AAEI appreciates the opportunity to submit our member's concerns for your consideration. We would be happy to meet with you and your staff to discus in further detail.

Sincerely,

Marianne Rowden
President & CEO