NATIONAL ASSOCIATION OF Manufacturers

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

Re: BIS-2015-0013 "Export Administration Regulations (EAR): Harmonization of the Destination Control Statements" (RIN 0694-AG47)

Via e-mail: PublicComments@bis.doc.gov

The National Association of Manufacturers (NAM) welcomes the opportunity to comment on the proposed rule issued by the U.S. Department of Commerce (80 Fed Reg. 99) to amend the Export Administration Regulations (EAR) regarding "Harmonization of the Destination Control Statements."

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Our members play a critical role in protecting the security of the United States. Some are directly engaged in providing the technology and equipment that keep the U.S. military the best in the world. Others play a key support role, developing the advanced industrial technology, machinery and information systems necessary for our manufacturing, high tech and services industries.

The proposed rule revises the destination control statement (DCS) in the EAR and is a welcomed development to harmonize with the Department of State International Traffic in Arms Regulations (ITAR). The following comments recommend changes to the proposed DCS, including technical edits to mirror the DCS proposed by the Department of State in a separate rule (80 Fed. Reg. 99 at 29565) and modifications to increase flexibility for documentation that would display DCS and related information. These proposed changes will help to achieve the stated intent of the Export Control Reform (ECR) initiative principles to clarify and harmonize the ITAR and EAR definitions and requirements as well as eliminate unnecessary export compliance burdens.

Harmonizing State and Commerce Department Proposed DCS

While the proposed rule takes a major step toward ensuring parity between the DCS required by the Departments of State and Commerce, the proposals are not truly identical. Making the statements identical would achieve the desired outcome described in the Proposed Rule. Without identical text for the DCS, exporters – as well as forwarders and integrated carriers – will still be required to maintain distinct DCS documents in their compliance programs and electronic systems, at odds with the desired outcome described in the Proposed Rule. To achieve harmonization, identical statements are suggested for both agencies in 22 CFR 123.9(b)(1)(iv) and

15 CFR 758.6(a)(1). This recommendation is being submitted under separate cover to the State Department in response to a proposed rule (RIN 1400-AC88).

Documentation Type Requiring Display of DCS

We applaud the Commerce Department's rational for removing a DCS requirement for "the air waybill, bill of lading or other export control documents" and concur that the commercial invoice and contractual documentation are the "two documents. . .most likely to travel with the item from its time of export from the United States to its ultimate destination and ultimate consignee." In the interest of harmonizing the ITAR and EAR requirements to prevent differing compliance requirements for USML and CCL exports, we have recommended to the State Department that Sec. 123.9 of the ITAR contain the same requirements.

We also recommend a change to clarify that a DCS and related Information may be placed on implementing documentation supporting a contract, in lieu of the contractual documentation. An Export Control Classification Number (ECCN) for some components may not be determined at the time of contracting, particularly when contracting covers the servicing and/or repair of any number of components of a large platform. Accordingly, we recommend modifications to the proposed language for Sec. 758.6(a) to allow the exporter to utilize "documentation implementing a contract providing for the export of items on the Commerce Control List."

While the requirement to place the DCS found in Sec. 758.6(a)(1) on the commercial invoice is reasonable, the requirement to place the DCS and the ECCN for "600 series" or 9x515 item, when required, on contractual documentation, when such contractual documentation exits, may require a level of specificity that is not available at the time of contracting.

In addition, the requirement to place the EAR DCS on contractual documentation creates an unnecessary administrative burden: contracts may cover a broad scope of activity (e.g., servicing of an entire platform containing myriad components) and smaller contract line-items or purchase orders may develop later to align with the shipment of hardware. For example, a contract may cover the warranty repair of hundreds of components on an end-item sold by a U.S. party to a non-U.S. party; however, the components to be returned to the U.S. for repair and subsequent return export to the non-U.S. party will not be identified until repair is needed. Thus, while the service price, labor costs, or warranty provisions may be established in a contract, the ECCNs for which parts may need to be exported may not be known in advance.

The suggested change would clarify that the contract itself need not contain each "600 series" or 9x515 ECCN if subsequent contract implementing documentation will be the vehicle by which actual commitments for shipment of such items are made.

In addition, we recommend a statement in a final rule to clarify that for existing, valid licenses previously issued by the Bureau of Industry and Security, any license condition to place a DCS on any shipping documentation (e.g., on all bills of lading or airway bills) not specifically required in the revised EAR is rescinded. A common current license condition is as follows: "Place a Destination Control Statement on all bills of lading, airway bills, and commercial invoices." This clarification will relieve exporters with numerous licenses, wherein the license condition to apply DCS to shipping documentation appears, from the need to petition the Commerce Department for relief from the condition.

Conclusion

Thank you for the opportunity to provide comments on the proposed rule to amend the EAR DCS and other changes. Manufacturers remain committed to working with the Department of Commerce and other U.S. agencies to improve and streamline U.S. export control requirements that will promote U.S. economic, national security and foreign policy interests.

Thank you,

Linda Dempsey

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