RECORD OF PUBLIC COMMENTS

ADVANCED NOTICE OF PROPOSED RULEMAKING: *ADDITIONAL IMPROVEMENTS AND HARMONIZATION OF EXPORT CLEARANCE PROVISIONS*

Publication in the *Federal Register*: May 22, 2015 (80 FR 29554)
Comments due July 6, 2015

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From: Arvikar, Ram <rarvikar@vectron.com>

Sent: Thursday, June 04, 2015 3:05 PM

To: PublicComments

Subject:Public Comment 2. R Arvikar. 2015-6-3_DCS and Export clearance

Attachments: Export Commodity Declaration Template.pdf

Vectron thanks the BIS for providing the opportunity to comment on the proposed changes to the destination control and export clearance rules by BIS. Other ANPRM's related to this subject have also been posted so Vectron is providing its comments to not only to the BIS proposal but also to the DDTC proposal.

It appears the Dept. of State is also posting a proposed rule that covers the same subject although the requirements related to export clearance appear to differ from those in the proposed rules by BIS. For example it will allow the DCS to be printed on the bill of lading and the invoice or purchase documentation. The BIS rule would not require it to be on the bill of lading but on the invoice and the contractual documentation accompanying the shipment. Further the proposed ITAR changes will also require that if a shipment includes both ITAR and EAR controlled items then the ECCN of items in the shipments must be listed including any EAR99 designation (if the authorization for the export was through an approved State license) and would require the country of ultimate destination, end-user, licensee information to be provided on the export documents. It would appear that in the spirit of harmonization perhaps a format that will meet both the ITAR and EAR export clearance requirements is in order and perhaps an alternate format for providing this information be considered.

Our proposal would be to provide this information on a completely separate document (let's say " Export Commodity Declaration") that can serve multiple purposes and can be sent with the items being

shipped or separately in order to convey to the consignees that the items are U.S. export regulated and are intended only for the designated end user and the destination identified. This should be similar to a certificate of compliance or documents of similar nature (usually from a quality perspective) that are usually sent to customers.

This stand-alone, flexible document if formatted properly (we are enclosing a suggested format) can serve multiple purposes:

· It will include the required destination control language

· It will specify the classification of the items (with the USML and/or the ECCN designation) for each item if the shipment includes both ITAR and EAR items

· It will list the license authority for both ITAR and EAR controlled items (or license exception or exemption) if one or both types of items are included in the shipment

· It will list the ultimate destination and the end user

· It will also state that the document can be used to provide this information critical to the USG to all downstream consignees. Note that if the information is annotated only on the CI or the bill of lading or the contractual/purchase documentation there is a risk that this information may not be transmitted to all involved consignees since commercial invoice and bill of lading will be retained by the first party to whom the items are shipped and they may or may not not be relayed to other consignees downstream and the ultimate end-user/destination.

· Since this document will have all the information available in one place in a concise form it will allow the shipping personnel to reference the information and easily enter the required information into the AES

· Document is “stand-alone” so it can be sent separately , e.g. electronically/email etc. to the party to whom items are being exported (to the required contacts at the company who need this information and will act on it properly , such as transmitting it downstream). CI’s and bill of lading may

just get filed by the receiving party with the risk that the critical export information Is not relayed to other consignees.

A suggested format is attached for your consideration. Several examples of how this document can be filled such as for an EAR-controlled shipment only, or for an ITAR-controlled shipment only or a shipment with both type of items are shown. Companies (with any moderate IT skills) can set up this document as an excel file which can be populated from their existing ERP system and easily changed by making it a standard “template”.

Thank you.

Ram J. Arvikar

Dir. Global Quality & Compliance

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Description: cid:image002.png@01CF7FDF.61F0CF80

COMPANY LOGO etc.

EXPORT COMMODITY DECLARATION

These items are controlled and authorized by the U.S. Government for export only to the specified country of ultimate destination for use by the end-user herein identified.
They may not be resold, transferred, or otherwise be disposed of, to any other country or to any person other than the authorized end-user or consignee(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

EAR (Sec. 758.6)				ITAR (123.9)			
ECCN	**Ultimate Destination**	**End-user**	**Lic./Lic. Exception**	**USML Category**	**Ultimate Destination**	**End-user**	**Lic./Lic. Exemption**

NOTE TO CONSIGNEE:
This document should be forwarded to other authorized users/consignees/transferees to communicate this important export information

(SEE EXAMPLES FOLLOWING)

Company Representative_____
Name:_____
Title:_____
Contact Info:_____
Date_____

EXAMPLE FOR A SHIPMENT WITH BOTH EAR & ITAR Items

EAR (Sec. 758.6)				ITAR (123.9)			
ECCN	**Ultimate Destination**	**End-user**	**Lic./Lic. Exception**	**USML Category**	**Ultimate Destination**	**End-user**	**Lic./Lic. Exemption**
9A515.e	**Argentina**	**XXXX**	**AAAAAA**	**XIII(x)**	**Argentina**	**xxx**	**AAAAAA**

(Note: The shipment is authorized under a single ITAR license)

EXAMPLE FOR A SHIPMENT WITH ONLY EAR Items (with a required license)

EAR (Sec. 758.6)				ITAR (123.9)			
ECCN	**Ultimate Destination**	**End-user**	**Lic./Lic. Exception**	**USML Category**	**Ultimate Destination**	**End-user**	**Lic./Lic. Exemption**
9A515.e	**Argentina**	**XXXX**	**XXXXXX**	**N/A**	**N/A**	**N/A**	**N/A**

EXAMPLE FOR A SHIPMENT WITH ONLY ITAR Items (with a required license)

EAR (Sec. 758.6)				ITAR (123.9)			
ECCN	**Ultimate Destination**	**End-user**	**Lic./Lic. Exception**	**USML Category**	**Ultimate Destination**	**End-user**	**Lic./Lic. Exemption**
N/A	**N/A**	**N/A**	**N/A**	**XIII(x)**	**Israel**	**XXXX**	**XXXX**

EXAMPLE FOR A SHIPMENT WITH ONLY EAR Items (600-series with ECCN other than EAR99)

EAR (Sec. 758.6)				ITAR (123.9)			
ECCN	**Ultimate Destination**	**End-user**	**Lic./Lic. Exception**	**USML Category**	**Ultimate Destination**	**End-user**	**Lic./Lic. Exemption**
9A515.e	**Spain**	**XXXX**	**NLR**	**N/A**	**N/A**	**N/A**	**N/A**

EXAMPLE FOR A SHIPMENT WITH ONLY EAR Items (with License exception)

EAR (Sec. 758.6)				ITAR (123.9)			
ECCN	**Ultimate Destination**	**End-user**	**Lic./Lic. Exception**	**USML Category**	**Ultimate Destination**	**End-user**	**Lic./Lic. Exemption**
3A001.b.10	**India**	**XXXX**	**GBS**	**N/A**	**N/A**	**N/A**	**N/A**

EXAMPLE FOR A SHIPMENT WITH ONLY EAR99

EAR (Sec. 758.6)				ITAR (123.9)			
ECCN	**Ultimate Destination**	**End-user**	**Lic./Lic. Exception**	**USML Category**	**Ultimate Destination**	**End-user**	**Lic./Lic. Exemption**
EAR99	**xx**	**xx**	**NLR**	**N/A**	**N/A**	**N/A**	**N/A**

(Note: NOT REQUIRED PER BIS REGULATION BUT OPTIONAL FOR INFORMATION ONLY)

CISTEC
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June 29, 2015

Mr. Eric L. Hirschhorn, Under Secretary for Industry and Security
Mr. Kevin J. Wolf, Assistant Secretary for Export Administration
Bureau of Industry and Security
US Department of Commerce

Re: RIN0694-AG51 (The advanced notice of proposed rulemaking (ANPR) titled "Additional Improvements and Harmonization of Export Clearance Provisions" in 80 FR 29554 dated May 22, 2015)

Dear Mr. Hirschhorn and Mr. Wolf:

Thank you so much for your continued supports to us, Center for Information on Security Trade Control (CISTEC), and Japanese industries.

We would refer to your 80 FR 29554 of May 22, 2015 in which you requested comments for how export clearance requirements under the EAR can be improved. We understand through the document that you made the request under your consideration to harmonize export clearance provisions between the ITAR and the EAR, and thereby to reduce the burden on U.S. exporters. On this occasion, we are pleased to submit to you our comments as stated below. We are submitting this because this subject, especially your proposed measures of the paragraphs A and C in the FR, is quite relevant even to us non-U.S. re-exporters. We are sure that our comments made from re-exporters' perspective will support your decision making.

Also, taking this opportunity, we would like to re-make our ultimate requests on the US reexport control, which we have been making for a very long time.

1. Our Comments on the BIS's proposals in the above-mentioned Federal Register

1.1 Our Conclusion

Regarding the BIS's proposals A and C quoted below and the addition of the examples of the export control documents published in the above-captioned Federal

Register, we fully agree and would like to ask BIS to stipulate these as the final rules in the EAR as soon as possible.

QUOTE
A. Require ECCNs on export control documents.
The ECCN for all 9x515 and "600 series" items is currently required to be identified on the export control documents, along with the destination control statement. BIS is considering requiring that the ECCN be identified for all items on the Commerce Control List. This would not include items that are designated EAR99.
UNQUOTE

QUOTE
C. Require license number or export authorization symbol on export control documents.
BIS is also considering requiring that the license number or export authorization symbol be identified on export control documents. This proposed revision would require that the license number, license exception code, or no license required designation be entered on the export control documents.
UNQUOTE

QUOTE
Export control documents in paragraphs (A) through (C) include the commercial invoice and contractual documentation.
UNQUOTE

Note: The current EAR §758.5(b) stipulates only Electronic Export Information(EEI) filing, bill of lading or air waybill as the examples of export control documents.

1.2. Our Reasons

If BIS would stipulate the above-mentioned A and C and addition of the examples of the export control documents as the final rules in the EAR, we reexporters/non-US companies could easily and surely know the ECCN, license exception code, or no license required designation, etc., which are indispensable for our non-US companies/reexporters to sufficiently comply with the EAR's re-export control regulations. Therefore, the above-quoted BIS's proposals A and C and addition of the examples have substantially reflected the following continued requests (1) to (5).

(1) Our requests in Section 2.1 in our attached letter to Mr. Mancuso, Under

Secretary for Industry and Security, US Department of Commerce, at that time, dated November 7, 2007, which we submitted and explained to him when our delegation team, including me, visited BIS (Attachment 1)

(2) Our request in Section 4.2 in our attached letter to Mr. Wall, Assistant Secretary of Export Administration, BIS, US Department of Commerce, at that time, dated February 19, 2009, which we submitted to him as our public comment in response to 74FR413 of January 5, 2009 (Attachment 2)

(3)Our oral request to Mr. Wolf when our delegation team visited BIS in Nov. 2011

(4)Our oral request to Mr. Wolf in the Q&A session in the US Export Control seminar in Tokyo, Japan, on February 19, 2015

(5)Section VI (Export-Related Regulations) of "RECOMMENDATIONS BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE UNITED STATES REGARDING REGULATORY REFORM AND COMPETITION POLICY" dated October 15, 2008, which has been published on the following website of Ministry of Foreign Affairs of Japan
http://www.mofa.go.jp/region/n-america/us/economy/report0810.pdf

More specific reasons of our conclusion are as follows, as stated in our above-mentioned attached letter dated November 7, 2007.

(i)In order for our non-US companies/reexporters to sufficiently comply with the EAR's re-export control regulations, it is indispensable for them to be able to know the EAR classification information (i.e. Whether the items are EAR99 or ECCN item?; In case of a ECCN item, what is the specific ECCN of the item?) as to the items exported from the US exporters. However, there are many cases where US companies are reluctant to provide the non-US importers with the EAR classification information and also reluctant to describe such information on the export control documents mainly because the EAR does not oblige US exporters to do so.

(ii)Under the EAR §748.3, anyone can ask BIS about the classification and receive the BIS's reply. Due to this BIS's assistance, the stipulation of BIS's proposals A and C in the EAR would not cause a heavy burden on the US exporters. On the contrary, non-stipulation of the BIS's proposals A and C in the EAR would substantially force the non-US importers to spend much time in confirming BIS's classification judgment, which would be a heavy burden on non-US importers because non-US importers do not have sufficient information on the items provided by the US exporters. Considering US exporters have much more information on their own

items to be exported than the non US importers, we believe it fair to stipulate the BIS's proposals A and C as the final rules in the EAR and thereby to have the US exporters confirm BIS's judgment under the EAR §748.3 in difficult cases without shifting back to non-US importers.

2. Our ultimate request

Taking this opportunity, we would like to remind you that it is our ultimate request that the BIS exempt countries including Japan that are members of international export control treaties/regimes and are implementing robust controls consistent with international standards and norms from re-export controls. We have been requesting this repeatedly in the past as stated in (1) to (4) below. We know that you responded to our request at each time, but would be pleased if you could again consider our request, which is quite reasonable, we believe.

(1)Our above-mentioned letter to Mr. Mancuso. (Attachment 1)

(2)Our above-mentioned letter to Mr. Wall (Attachment 2)

(3)Our oral request to Mr. Wolf when our delegation team visited BIS in Nov. 2011

(4)The above-mentioned Section VI of "RECOMMENDATIONS BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE UNITED STATES REGARDING REGULATORY REFORM AND COMPETITION POLICY" dated October 15, 2008

Thank you again for your assistance and cooperation.

Sincerely,

Tsutomu Oshida

Tsutomu Oshida
Executive Managing Director
Center for Information
on Security Trade Control (CISTEC)

Attachment 1:
CISTEC's letter to Mr. Mancuso, Under Secretary for Industry and Security, US Department of Commerce, at that time, dated November 7, 2007

Attachment2:
CISTEC's letter to Mr. Wall, Assistant Secretary of Export Administration, BIS, US Department of Commerce, at that time, dated February 19, 2009

Attachment 1

別紙 1

CISTEC

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November 7, 2007

Mr. Mario Mancuso
Under Secretary for Industry and Security
U.S. Department of Commerce

CISTEC's Requests to BIS on the U.S. Reexport Control

Dear Mr. Mancuso:

Thank you for your acceptance of the CISTEC delegation's meeting with you and the other BIS's senior management officials on November 15, 2007.

Concerning the above-captioned matters, first of all, we would like to express our gratitude to the U.S.'s understanding of Japanese concerns regarding the operation of the reexport control system and the U.S.'s efforts to settle the issues. These U.S.'s understanding and efforts are stated in the "THIRD REPORT TO THE LEADERS ON THE U.S.-JAPAN REGULATORY REFORM AND COMPETITION POLICY INITIATIVE" dated June 8, 2004 and the "SIXTH REPORT" on the same dated June 6, 2007, which were jointly written and published by both the U.S. government and Japanese government.

We would be very grateful if BIS would accept CISTEC's following requests and thereby further enhance the U.S. entire reexport control systems.

1. Our ultimate request

We would like to ask BIS to exempt countries which are members of all of export control treaties/multilateral regimes and also have established appropriate export control laws/systems (e.g. Japan) from U.S. re-export control.

Alternatively, it would be also appreciated if BIS would create a new license exception for reexports from countries which meet the above-mentioned criteria in the EAR (Export Administration Regulations), as requested in "Recommendations for Modernizing Export Controls on Dual Use Items" dated March 6, 2007 of the "Coalition for Security and Competitiveness" formed by the U.S. leading industrial associations, such as NAM, AeA, and so on.

CISTEC

2. Our requests as transitional measures

2.1. US exporters' legal obligation to provide ECCN

As a transitional measure, we would like to ask BIS to stipulate as soon as possible in the EAR the US exporters' legal obligation to provide the importers with the classification information (e.g. ECCN), as requested by "RECOMMENDATIONS BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE U.S. REGARDING REGULATORY REFORM AND COMPETITION POLICY" dated October 24, 2003 and December 5, 2006.

The reasons are as follows:

(i)Although "Best Practice for Transit, Transshipment, and Reexport of Dual Use Items subject to the EAR" published by BIS on November 23, 2003 requests exporters to provide the ECCN to the end users and the ultimate consignees, this guideline stipulates that it creates no legal obligation to comply with such best practices.

(ii)In order for our non-US companies to sufficiently comply with the re-export control regulations by the EAR, it is indispensable for them to receive the EAR classification information (i.e. Whether the items are EAR99 or ECCN item?; In case of a ECCN item, what is the specific ECCN of the item?) as to the items exported from the US exporters. However, there are many cases where US companies are reluctant to provide the non-US importers with the EAR classification information mainly because the EAR does not oblige US exporters to do so.

(iii)Under the EAR § 748.3, anyone can ask BIS about the classification and receive the BIS's reply. Due to this BIS's assistance, the stipulation of the above-stated US exporters' legal responsibilities would not cause a heavy burden on the US exporters. On the contrary, non-stipulation of the above-stated US exporters' legal responsibilities would substantially force the non-US importers to spend much time in confirming BIS's classification judgment, which would be a heavy burden on non-US importers because non-US importers do not have sufficient information on the items provided by the US exporters. Considering US exporters have much more information on their own items to be exported than the non US importers, we believe it fair to stipulate the above-stated US exporters' legal responsibilities and thereby to have the US exporters confirm BIS's judgment under the EAR § 748.3 in difficult cases without shifting the task to non-US importers.

CISTEC

2.2. U.S. Industries' Recommendations

The above-mentioned "Recommendations for Modernizing Export Controls on Dual Use Items" dated March 6, 2007 of the "Coalition for Security and Competitiveness" make recommendations on various EAR issues in addition to its above-stated recommendations on a new license exception. We think these recommendations on the EAR are also important and reasonable and thus would like to ask BIS to accept them as much as possible.

3. Background of the CISTEC's requests above

3.1 Our Japanese companies' efforts and burdens for complying with the EAR

Japanese companies spend a long time and large cost in complying with the EAR (e.g. education and training to the employees, including making the internal EAR textbooks or manuals in Japanese language). According to the results of the questionnaire survey to major companies, in general, the cost for coping with the EAR is 10% to 30% of the entire export control cost.

3.2 Avoidance of the purchase or adoption of US origin items due to the EAR reexport control

We non-US companies are sometimes substantially forced to avoid the purchase or adoption of US origin items and replace them with non-US origin items, even at the stage of the design (i.e. "design out"), for the purpose of reducing the time and human cost to be caused by coping with the EAR and avoiding the risk of the violation of the EAR.

(Note):

Although CISTEC tried to precisely estimate the value amount of the above-mentioned avoidance and replacement of US origin items by Japanese industries, it was practically very difficult to do so.
Therefore, instead of showing the value amount, we would like to show the actual examples of Japanese industries in the attachment.

3.3 Loss of the business chances due to the EAR reexport control

Furthermore, there are some cases where we non-US companies are substantially forced to give up the reexport businesses which are involved with the items subject to the EAR in order to reduce the time and human cost and avoid the risk of the violation of the EAR.

CISTEC

3.4 CISTEC and JMC's efforts for enhancing the Japanese industries' awareness of the EAR

(i)CISTEC and JMC (Japan Machinery Center for Trade and Investment) publish the following useful EAR guidebooks.

- "Beginner's Guide for the US Reexport Control"(published by CISTEC)
- "Q&A/Case Study on the US Export and Reexport Control"(published by CISTEC)
- "Explanation of EAR Violation Cases" (published by CISTEC)
- "Guidance for Experienced Export Control Personnel on the US Reexport Control"(published by JMC)

(ii)CISTEC also holds various seminars and training courses on the EAR for Japanese companies, the lecturers of which are EAR experts of Japanese companies and a U.S. lawyer.

Thank you for your understanding and assistance.

Sincerely yours,

Tsutomu Oshida

Tsutomu Oshida
Executive Managing Director
Center for Information
on Security Trade Control (CISTEC)

Attachment

Japanese industries' actual examples of avoidance or replacement of U.S. origin items due to the U.S. reexport control

[Example 1]:

- The entire non-U.S. origin items exported from Japan:
  ------Plasma cleaning equipment ($125,000 - $165,000 per each)

- U.S. origin item which was avoided and replaced with non-U.S. origin items for the incorporation into the above-mentioned non-U.S. origin plasma cleaning equipment :
  ------U.S. origin pressure transducer (ECCN: 2B230) ($1,700 per each)
  →This was replaced with Liechtenstein origin one.

- Reasons of the avoidance/replacement:
  ----- The pressure transducers themselves sometimes need to be exported to the customers from Japan for the maintenance of the plasma cleaning equipment. However, as for the U.S. origin pressure transducer (ECCN: 2B230), although APR (EAR740.16(j)) is applicable in case of the reexport from Japan to designated countries, the reasons for control are NP Column 1 and AT Column1 and also the license exceptions LVS, GBS or CIV are not applicable (N/A) at all under the Commerce Control List of the EAR. Therefore, there are various possible cases where none of license exceptions are applicable and thus the reexport would require license.

[Example 2]:

- The entire non-U.S. origin items exported from Japan:
  ------Routers ($42,000 per each)

- U.S. origin item which was eliminated from the above-mentioned non-U.S. origin routers:
  ------U.S. origin encryption software (ECCN: 4D003) ($25 per each)

- Reasons of the elimination/avoidance:
  ------Although it was indispensable to precisely confirm the license exception status of the above-mentioned U.S. origin encryption software (ECCN: 4D003) for complying with the EAR, it was practically difficult to do so.

[Example 3]:

- The entire non-U.S. origin items exported from Japan:
  ------Solar batteries for artificial satellites

- U.S. origin item which was avoided and replaced with non-U.S. origin items for the incorporation into the above-mentioned non-U.S. origin solar batteries
  ------ U.S. origin cover glass
  →This was replaced with U.K. origin one.

- Reasons of the avoidance/replacement:
  ------For reducing the burdens of the confirmation of ECCN of the U.S. origin cover glass and also decreasing the time and human cost for coping with the EAR.

Attachment 2

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February 19, 2009

The U.S. Department of Commerce
Bureau of Industry and Security

Attention: Mr. Christopher R. Wall, Assistant Secretary of Export Administration

Dear Mr. Wall,

Subject: Parts and Components Inquiry

We the Center for Information on Security Trade Control (CISTEC), a non-profit organization in Japan, are very pleased to submit herewith our comments in response to your parts and components inquiry made in the Federal Register 74 FR 413 dated January 5, 2009. Over the past years, as you may be aware, CISTEC has been constantly sending a delegation to BIS to exchange views mainly on the issue of extraterritorial application of the U.S. export control regulations. We would therefore take this as the right opportunity to present our views once again, with live data this time, for your due perusal.

To respond to your request, we conducted a quick survey making a questionnaire based on your inquiries. We sent it to our 352 member companies and received answers from 116 respondents, who are all leading companies in Japan operating businesses worldwide. The responses shown here do represent the majority opinions of Japanese industry. The answers, together with the questionnaire, are all translated into English, graphed out and attached to this letter for your reference and analysis.

The individual facts, comments and opinions collected here are direct voices of your "CUSTOMERS," and, therefore, we sincerely hope that you take those into serious consideration when you review your policies.

But before going into the details attached, please read the key points we summed up as below:

1. When actually required in the past to elect either non-U.S. or U.S.-origin items;

   (1) 17% of the respondents answered that they straightaway elected non-US items disregarding the classification of the U.S.-origin items because they thought it's more efficient and cost effective. (Question 1-a-3)

(2) 13% of the respondents answered that, in order to avoid any legal risks, they elected non-US items even if they knew that the U.S.-items were non-controlled. (Question 1-a-4)

Please refer to the answers to Questions 1-a-5 and 2(c), which are a collection of lost businesses to America.

2. When required in the future to elect either non-U.S. or U.S.-origin items;

(1) 90% of the respondents answered that they would elect non-U.S. items in case the U.S.-origin items were controlled and required a license. (Question 1-b-1)

(2) 50% of the respondents answered that they would straightaway elect non-U.S. items disregarding the classification of the U.S.-origin items because they think it's more efficient and cost effective. (Question 1-b-3)

The above results imply a trend that the stricter the U.S. export control regulations become, the more non-U.S. exporters elect non-U.S. parts and components for their products.

3. The free opinions received as responses to Question 6-f can be summarized as below.

(1) The U.S. Government should abandon the extraterritorial application of its export control regulations since it's a violation of the international law and moreover imposes dual burden on non-U.S. exporters.

(2) Or otherwise it should be rearranged and be maintained within the framework of the international export control systems so that its unilateral aspect can be eliminated.

(3) If, however, the U.S. Government still insists on keeping the extraterritorial application as it is now, it must at least take the following steps immediately.

a) The member nations of the multilateral export control regimes should be excluded from the countries subject to the control because those countries, including Japan, are considered implementing national export controls no less strictly than the U.S.

b) It must be made mandatory for U.S. exporters to inform relevant ECCNs to their foreign importers.

c) Useful guidance must be published and face-to-face consultation service must be provided, both in our language.

d) The complicated regulations of the EAR must be simplified and streamlined so that everybody can understand them without difficulties. Moreover, the present multi-agency regulatory system, where different sets of regulations are intertwined, must be reformed into one single set of regulations that should be administered under one single authority.

4. Conclusion

On the basis of the attached comments from Japanese companies, we would like to make the following requests to your BIS, as we did in our official letter dated September 7, 2007 to Mr. Mario Mancuso, the then Under Secretary for Industry and Security, U.S. Department of Commerce.

4.1 Our ultimate requests

First of all, we must respectfully stress that the current extraterritorial way of applying the U.S. export control regulations is seriously influencing your own economy in disproportionate to contributing to national security. We believe BIS should make 'good foreign exporters', who are your customers and never a threat for national security, to easily and properly choose and purchase US-origin items.

Therefore, we would like to request BIS to exempt countries which are members of all of export control treaties/multilateral regimes and also have established appropriate export control laws/systems (e.g. Japan) from U.S. re-export control, as requested in "RECOMMENDATIONS BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE UNITED STATES REGARDING REGULATORY REFORM AND COMPETITION POLICY" dated October 15, 2008.

Alternatively, it would be also appreciated if BIS would create a new and much broader license exception for reexports from countries which meet the above-mentioned criteria in the EAR (US Export Administration Regulations), as requested in "Recommendations for Modernizing Export Controls on Dual Use Items" dated March 6, 2007 of the "Coalition for Security and Competitiveness" formed by the U.S. leading industrial associations, such as NAM, AeA, and so on.

4.2. Our requests as a transitional measure

As a transitional measure, we would like to request BIS to stipulate as soon as possible in the EAR the US exporters' legal obligation to provide the importers with the export control classification information (e.g. ECCN), as requested in the above-mentioned "RECOMMENDATIONS BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE UNITED STATES REGARDING REGULATORY REFORM AND COMPETITION POLICY" dated October 15, 2008.

In this regard, we must point to the fact that many of the respondents indicate that a good percentage of U.S. companies are even unable to classify their products themselves or reluctant to provide the classification information to the importers mainly due to the lack of the above-mentioned legal obligation, and that it is causing considerable amounts of extra time and money to each company in Japan. This is one of the main reasons of Japanese companies' avoidance of the purchase or adoption of US origin items.

CISTEC

It is our strong desire that our comments presented here be a good help for your policy review.

Sincerely,

Tsutomu Oshida

Tsutomu Oshida
Executive Managing Director, CISTEC

Attachments:

Exhibit 1: The questionnaire
Exhibit 2: Survey results for Category No.1 to No.6
Exhibit 3: Comments in response to questionnaire Category No.1 (a-5)
Exhibit 4: Comments in response to questionnaire Category No.1 (a-6)
Exhibit 5: Comments in response to questionnaire Category No.2 (c)
Exhibit 6: Comments in response to questionnaire Category No.4 (a-2) and (b-2)
Exhibit 7: Comments in response to questionnaire Category No.5 (b)
Exhibit 8: Comments in response to questionnaire Category No.6 (f)

Access USA Shipping, LLC
d/b/a MyUS.com
4299 Express Lane
Sarasota, FL 34238

July 1, 2015

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

Subject: Advance Notice of Proposed Rulemaking, Request for Public Comment on the Additional Improvements and Harmonization of Export Clearance Provisions, RIN 0694-AG51

Reference: Federal Register / Vol. 80, No. 99 / Friday, May 22, 2015 / Proposed Rules

To Whom It May Concern:

Access USA Shipping, LLC ("Access USA" or "the Company") appreciates the opportunity to submit comments regarding the Bureau of Industry and Security's ("BIS") advanced notice of proposed rulemaking concerning additional improvements and harmonization of export clearance provisions within the Export Administration Regulations ("EAR"). Access USA believes in the reform, harmonization, and streamlining of export controls to ensure that BIS, and the U.S. government in general, effectively can manage the U.S. exporting environment while ensuring that industry can continue to grow compliantly and competitively within the global marketplace. Access USA also understands the importance of ensuring a proper compliance program, especially with regards to control classification and designation of an ECCN status for a commodity, software or technology (hereinafter referred to as an "item") intended for export. Access USA, however, does not believe that requiring Export Control Classification Numbers ("ECCNs") on export control documents will provide sufficient benefits to outweigh the associated administrative burdens. Access USA believes that there are more efficient ways ensure that all parties within the supply chain have proper visibility into the control status of exported items.

Founded in 1997 in Sarasota, Florida, Access USA offers package consolidation services that permit customers to save on international express transportation charges by consolidating orders for export. In most instances, Access USA is not involved in the title chain, but instead acts as an agent of the Foreign Principal Party in Interest ("FPPI"), including when necessary by coordinating with the Seller, *i.e.*, the U.S. Principal Party in Interest ("USPPI"), to gather information required for export. The Company opens each package for its customers, identifies what has been received, and confirms the export classification of items for export before they leave the Company's facility. Because of the Company's history in this industry, Access USA has invaluable experience and insight on consumer purchasing habits and thus has developed core competencies on the proper application of regulatory controls prior to export (and throughout the exporting process). This insight is based on the large volume of items that are received at the Company's facility; on average, Access USA reviews thousands of items daily.

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Access USA opens every package that arrives at its facility in order to inspect and confirm the classification of the contents of the package for export purposes. Access USA employs a fourteen member Trade Compliance Team ("TCT"), which consists of ten trained trade compliance professionals, three additional warehouse staff members who have received specialized compliance training, and one administrative assistant. Items for which classifications cannot readily be confirmed for export purposes by the regular package log-in staff are flagged for further review by the TCT. The TCT then conducts research to determine if the product may be exported. If the item can be exported, Access USA notifies the customer that the contents of the package are available for export.

As a matter of current company policy, Access USA does not intend to participate in any way, directly or indirectly, in any transaction involving any item exported or to be exported from the United States that is subject to the International Traffic In Arms Regulations ("ITAR") or that would require an export license to the destination country under the EAR (other than for items that may be exported pursuant to EAR License Exception ENC, pursuant to the semi-annual reporting obligations).

With the rapid growth and development in technology, and in particular of consumer electronics, increasingly large numbers of readily available consumer products fall under the Commerce Control List ("CCL") (*e.g.*, iPhones/Android smartphones, GPS devices for automobiles, mass market available computers and tablets, low-level home networking equipment). While these items are deemed to be "dual-use" and thus warrant certain levels of export control, they have become ubiquitous in today's domestic and global markets. As a provider of export consolidation services and agent of the FPPI, Access USA reviews thousands of items for admissibility and control requirements. However, this review practice is focused on determining licensing requirements based on the four control classification criteria (*i.e.*, Product Specification, End Use, End User, and Destination Country). When Access USA receives an item that is classified under an ECCN controlled only for Anti-Terrorism ("AT") reasons, it is generally possible for the regular package log-in staff to review for the "catch all controls" (e.g., prohibitive end use/end user, destination controls, red flag identification, EAR General Prohibitions), just as the regular log-in staff would do for an EAR99 item. Currently, only items that may fall under an ECCN requiring a higher level of control are escalated to the TCT. If all ECCNs needed to be listed on the export documents, then more and more items with lower levels of control would need to be held by Access USA while the TCT confirms an export classification. To require an AT-level ECCN to be included on the export control documents would shift the process from the higher level licensing review to add the lower level administrative need to mark export documents. Based on the resources needed to comply with this proposed rule, Access USA feels strongly that the administrative burden would be significantly impactful.

The framework of the CCL is designed to include varying degrees of control status. For example, the difference in requirements for an item with an ECCN controlled only for AT reasons compared to an item controlled for Missile Technology ("MT") or National Security ("NS") reasons can be significant. The opposite is generally true when comparing an item with an ECCN controlled only under AT with an item designated EAR99; the levels of control are similar. We do not feel that the benefit to industry, government, and the greater supply-chain of including additional information on the export control documents related to items controlled only for AT reasons is significant enough to outweigh the administrative costs that would be imposed.

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As previously stated, Access USA also fully believes in the necessity for proper control classification and compliance oversight. Access USA recognizes the benefit of putting the end user and carrier on notice when an item is subject to higher-level export controls. Due to the broad scope of items that the CCL encompasses, Access USA does not feel that simply discounting this rule would be prudent. We suggest that the rule be further specified to require the listing of an ECCN when it is controlled for other than AT. This would help consolidators such as Access USA avoid increased administrative costs for items under lower levels of control, while also communicating to the recipient of the exported items that items they receive with listed ECCNs are subject to a higher level of control and may require a re-export license to certain destinations.

Thank you again for the opportunity to comment and for considering Access USA's input. Please do not hesitate to contact me should you have any questions or require any additional information.

Sincerely,

Corey Bonasorte
Director, Trade Compliance

As of: 7/7/15 5:19 PM
Received: June 03, 2015
Status: Posted
Posted: July 07, 2015
Tracking No. 1jz-8j7r-msw0
Comments Due: July 06, 2015
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PUBLIC SUBMISSION

Docket: BIS-2015-0012
Request for Comments on Additional Improvements and Harmonization of Export Clearance Provisions

Comment On: BIS-2015-0012-0001
Export Administration Regulations: Export Clearance Provisions; Additional Improvements and Harmonization

Document: BIS-2015-0012-0003
Public Comment 4. Anonymous. Anonymous. 2015-7-3_Export clearance

Submitter Information

Name: Anonymous Anonymous

General Comment

A. I support this. Many companies already print the ECCN on their commercial invoices so it shouldn't be a burden for the rest of the exporting community to do this as well. After all you have to determine the ECCN in order to export so why not document it to all in the supply chain (forwarders, brokers, foreign parties etc). It can only help.

B. I disagree that this is already standard with most exporters. Standard export invoices show the "bill to" party and the "ship to" party. Often the "ship to" party may be the ultimate user and therefore it's country be the "country of ultimate destination", but a fair amount of the time it is not. How would you propose reporting the "country of ultimate destination" in the case of exporting ("ship to") to a foreign distributor? There are many other scenarios where the "ship to" is not necessarily = to the country of ultimate destination. I feel this could be a trap for exporters if they become "required" to document/report this, with ensuing enforcement for mis-reporting. We also export containers of stuff to our foreign affiliates that they may then use to service customers in multiple countries. How would we report a country of ultimate destination? So if you proceed with this just please put better definition about what's to be reported - industry may be able to comply with some guidelines.

C. I support this - exporters are responsible for determining this, so asking them to DOCUMENT it should not be a burden, and will also benefit others in the supply chaing (forwarders, foreign recipients etc).

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

PROPOSED RULE:
EXPORT ADMINISTRATION REGULATIONS (EAR):
ADDITIONAL IMPROVEMENTS AND HARMONIZATION OF EXPORT CLEARANCE PROVISIONS

Comments by

UPS

July 1, 2015

BIS ID# BIS-2015-0012
RIN #0694-AG51

Communication with respect to this document should be addressed to:

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

PROPOSED RULE: EXPORT ADMINISTRATION REGULATIONS (EAR): ADDITIONAL IMPROVEMENTS AND HARMONIZATION OF EXPORT CLEARANCE PROVISIONS

Comments by UPS
July 1, 2015

UPS is filing comments in response to the U.S. Department of Commerce, Bureau of Industry and Security (BIS) proposal to harmonize and improve Export Compliance provisions under the Export Administration Regulations (EAR). This ANPR is part of Commerce's retrospective regulatory review and ongoing harmonization efforts being undertaken by Commerce and State as part of the Export Control Reform (ECR) implementation. This proposed change was published in the Federal Register May 22, 2015 (Volume 80, Number 99), pages 29554-29555.

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 has a number of significant concerns reflected below, however UPS generally supports BIS' efforts to improve and harmonize the Export Compliance provisions 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 to 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 ANPRs and due to the impact to the entire trade community (exporters, freight forwarders, agents, and carriers), UPS recommends that BIS conducts public meetings well in advance of publication of the Final Rule. This will provide the necessary forum 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 economic disadvantage. UPS also requests that BIS strongly consider setting the implementation date at 180-240 days after publication of the Final Rule to allow sufficient time for all affected 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:

APRN Page 29554, 15 CFR 758

This ANPR requests comments for how the requirements under part 758 (Export clearance) of the Export Administration Regulations (EAR) (15 CFR parts 730-774) can be improved, including how the EAR export clearance provisions can be better harmonized with the export clearance requirements under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130).

This ANPR is part of Commerce's retrospective regulatory review and ongoing harmonization efforts being undertaken by Commerce and State as part of Export Control Reform (ECR) implementation.

UPS agrees harmonization will provide extreme benefit in reducing confusion, lessening burden, and ease efforts in compliance by eliminating inconsistencies in the regulations between the ITAR and EAR. 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 should facilitate preparation of documentation, especially for those exporters shipping articles subject to the ITAR and the EAR in the same shipment. Any reduction in differences currently driving the need for redundant and separate processes between the ITAR and EAR to comply with similar but different requirements increases the risk of inadvertent errors.

As changes are proposed, it is vitally important to ensure the key objective is maintained, in that, changes should further align both sets of regulations to the extent possible, not create sub-requirements in either the ITAR or EAR to recapture what is removed and/or changed. The recent NPRMs presented by BIS and State to align the Destination Control Statement is positive, in that the text is aligned, however, the documents on which this statement will be required differs between the two proposals. Such differences, in practice, are not easily managed between the various members of the trade given utilization of multiple control systems.

ANPR Page 29555, 15 CFR 758

Require ECCNs on export control documents.

The ECCN for all 9x515 and "600 series" items is currently required to be identified on the export control documents, along with the destination control statement. BIS is considering requiring that the ECCN be identified for all items on the Commerce Control List. This would not include items that are designated EAR99.

UPS has significant concern with this proposed requirement. Primarily, it is unclear as to what is meant by "Export Control Documents." This should be further defined to allow the trade and public to realistically analyze the overall impact of this proposed change. Secondly, to add additional requirements on the trade and public to begin identifying the ECCN for the majority of items on the Commerce Control List (CCL) outside of the current requirements to show on the Commercial Invoice, as well as the Automated Export Filings, will likely be extremely burdensome, depending on the final definition of "export control documents."

Finally, given the overlying intended relief of the President's Export Reform Act and preparation for a consolidated agency with a single set of regulations, this proposed requirement, in general, seems counter-productive to that effort. UPS also sees no benefit in burdening the trade further with additional requirements given CBPs current direction of a single system, ACE, utilizing the "single window concept" where all participating government agencies can access specific information for both imports and exports in an automated, non-paper environment. As the US Government and the trade move to an "electronic" environment, it is reasonable to assume the ECCN currently part of the EEI filing in AES ACE would more than satisfy any visibility needed by any government agency, as opposed to the additional expense on the trade and public to program systems for this information outside of the current requirements. UPS can see no benefit and therefore, in the interests of lessoning the burden on the trade and public, does not support this proposed requirement of the ECCN on transportation documents such as the bill of lading, air waybill, and any such contract of carriage.

ANPR Page 29555, 15 CFR 758

Require identification of country of ultimate destination on exports control documents. BIS is considering requiring that the country for ultimate destination be identified on the export control documents.

BIS is considering requiring that the country of ultimate destination be identified on the export control documents. This requirement would mirror the requirement in the ITAR and BIS believes that this would only impact a small number of exports where additional actions would be needed by exporters, because in most cases, the export control documents already identify the country of ultimate destination.

UPS has significant concern with this proposed requirement. Primarily, it is unclear as to what is meant by "Export Control Documents" and this should be further defined to allow the trade and public to realistically analyze the overall impact to this proposed change. Along this line, further explanation of this proposed requirement is warranted, as not all exports fall within the criteria set forth by DDTC for shipments subject to the current ITAR Destination Control Statement where this additional information is required.

Secondly, to add additional requirements on the trade and public to begin identifying the country of ultimate destination outside of the current ITAR requirements to show on the Commercial Invoice Destination Control Statement, as well as the Automated Export Filings, will

likely be extremely burdensome, depending on the final definition of "export control documents" and further explanation of when this requirement is applicable.

Finally, given the overlying intended relief of the President's Export Reform Act and preparation for a consolidated agency with a single set of regulations, this proposed requirement, in general, seems counter-productive to that effort. UPS also sees no benefit in burdening the trade further with additional requirements given CBPs current direction of a single system, ACE, utilizing the "single window concept" where all participating government agencies can access specific information for both imports and exports in an automated, non-paper environment. As the US Government and the trade move to an "electronic" environment, it is reasonable to assume the country of ulitimate destination, currently part of the EEI filing in AES ACE, as required, would more than satisfy any visibility needed by any government agency, as opposed to the additional expense on the trade and public to program systems to supply this information outside of the current requirements. UPS can see no benefit and therefore, in the interests of lessoning the burden on the trade and public, in general, does not support this proposed requirement of the country of ultimate destination on transportation documents such as the bill of lading, air waybill, and any such contract of carriage.

ANPR Page 29555, 15 CFR 758

Require license number or export authorization sysmbol on export control documents. BIS is also considering requireing that the license number or export authorization symbol be identified on export control documents.

This proposed revision would require that the license number, license exception code, or "no license required" designation be entered on the export control documents. BIS specifically requests comments on the application of this requirement to mixed authorization and mixed jurisdiction shipments.

UPS has significant concern with this proposed requirement. Primarily, it is unclear as to what is meant by "Export Control Documents" and this should be further defined to allow the trade and public to realistically analyze the overall impact to this proposed change. Along this line, further explanation of this proposed requirement is warranted, as not all exports fall within the criteria as set forth by the Department of Commerce for shipments warranting a license designation.

Secondly, to add additional requirements on the trade and public to begin identifying a licensing designation outside of the current requirements to show on the Commercial Invoice, as well as the Automated Export Filings, as required under 15 CFR 30, seems extremenly burdensome, depending on the final definition of "export control documents" and further explanation of when this requirement is applicable.

Finally, given the overlying intended relief of the President's Export Reform Act and preparation for a consolidated agency with a single set of regulations, this proposed requirement, in

general, seems counter-productive to that effort. UPS also sees no benefit in burdening the trade further with additional requirements given CBPs current direction of a single system, ACE, utilizing the "single window concept" where all participating government agencies can access specific information for both imports and exports in an automated, non-paper environment. As the US Government and the trade move to an "electronic" environment, it is reasonable to assume licensing designation, as required and, currently part of the EEI filing in AES ACE would more than satisfy any visibility needed by any government agency, as opposed to the additional expense on the trade and public to program systems to supply this information outside of the current requirements. UPS can see no benefit and therefore, in the interests of lessoning the burden on the trade and public, in general, does not support this proposed requirement of licensing determination on transportation documents such as the bill of lading, air waybill, and any such contract of carriage.

ANPR Page 29555, 15 CFR 758

Require AES filing for exports to Canada for items controlled for NS, MT, NP and CB. BIS seeks comments on the potential impact and feasibility of changing section 758.1 under paragraph (b) to require EEI filing in the AES for all exports to Canada of items controlled for National Security (NS), Missile Technology (MT), Nuclear Nonproliferation (NP), and Chemical & Biological Weapons (CB) reasons, regardless of license requirements (meaning regardless of whether the export was authorized under a license, license exception, or designated as no license required).

Because of the AES filing exemption for non-licensed items to Canada, BIS currently has little visibility into the movement of these items into Canada, except for exports to Canada that involve a licensed item, a 9x515 or "600 series" item, or are to be transhipped to a third country which do require EEI filing in the AES. Therefore, BIS is seeking information that would help us determine:

- The volume of trade that would be impacted by this filing requirement;
- If this filing requirement would be beneficial and practical or detrimental and burdensome for industry;
- If this filing requirement would have a commercial impact on exporters; and
- If there are alternative methods to collecting or accessing this data.

As Canada is the United States largest trading partner, UPS estimates this change would impact thousands of exports daily that are currently falling into the "non-licensed items to Canada" export category and would impose a significant burden on the trade and public in complying with this proposed requirement. Expense in reprogramming current operational and trade control systems, including AES, would be exponential with no clear indication of a benefit of this proposed increased visibility.

Additionally, given the overlying intended relief of the President's Export Reform Act and preparation for a consolidated agency with a single set of regulations, this proposed

requirement, in general, seems counter-productive to that effort. UPS also sees no benefit in burdening the trade further with additional requirements given CBPs current direction of a single system, ACE, utilizing the "single window concept" where all participating government agencies can access specific information for both imports and exports in an automated, non-paper environment. As the US Government and the trade move to an "electronic" environment, it is reasonable to assume this information could be obtained without imposing this additional requirement. In addition, as the US and Canadian governments currently and routinely share data, it may be assumed there are already alternative means to increase visibility of information being sought through existing avenues.

UPS estimates a significant impact to the industry and can see no benefit, therefore, in the interests of eliminating a significant burden and expense on the trade and public, in general, does not support this proposed requirement.

Japan Machinery Center for Trade and Investment

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Japan

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July 6, 2015

Bureau of Industry and Security
Department of Commerce

Re: Comments in response to the Advanced notice of proposed rulemaking
Identification Number BIS-2015-0012, RIN 0694-AG51
Additional Improvements and Harmonization of Export Clearance Provisions

The Japan Machinery Center for Trade and Investment ("JMC") is a non-profit industry organization consisting of 250 firms that manufacture and export machinery products worldwide. JMC understands the significance of export controls in the global trade, and JMC has assisted its member companies to comply not only with the Japan's export control regulations but also with the U.S. reexport regulations. Therefore, JMC is concerned very much with the advanced notice of proposed rulemaking ("ANPR") published in the Federal Register on May 22, 2015 in association with the extraterritorial application of the reexport regulations and hereby submit our comments.

1. Points which could make impacts on the foreign importers and Our understandings

The proposals in paragraphs A and C of the ANPR indicate the points which could make impacts on the foreign importers.

Bureau of Industry and Security, Commerce Department ("BIS") stated in the paragraph A that BIS is considering requiring that the ECCN be identified for all items on the Commerce Control List, and also stated in the paragraph C that this proposed revision would require that the license number, license exception code, or no license required designation be entered on the export control documents.

Summing up the paragraph A and C, we understand what BIS is considering in the ANPR as follows;

- For the purpose of ensuring consignees' awareness of their involvement in a

transaction of the controlled items, BIS is considering requiring that for all items on the Commerce Control List, ECCN, license number, license exception code or no license required designation be entered on the export control document including the commercial invoice and contractual documentation.

2. Support for the requirements of the Paragraphs A and C

If our understandings mentioned above can be deemed correct, we are pleased to support the requirements described in the paragraphs A and C for following reason;

- While ECCN is indispensable information for the foreign importers in ensuring compliance with the reexport regulations, Japanese importers have so often faced with the problems that ECCN is not furnished smoothly from the U.S. exporters. For this purpose we requested BIS in the past to make it mandatory for the U.S. exporters to furnish the foreign importers with ECCN. If the requirements of the paragraphs A and C would be reflected in the final rule, it could solve this kind of problem and help the Japanese importers effectively comply with the reexport regulations.

3. Conditions for reinforcing our support for the requirements of the Paragraphs A and C.

We strongly wish BIS to take followings into account in case that the requirements of the paragraph A and C could cause the foreign importers unexpected burden;

- **The foreign importers may place reasonable reliance on the ECCN furnished by the U.S. exporters unless the consignee knows that the ECCN is in error.**
  In page 35282 of Federal Register, June 16, 2011 on "Export Control Reform Initiative: Strategic Trade Authorization License Exception", BIS stated responding to the Comment 24 that the consignee may rely on the ECCN provided to it by the party required to furnish the ECCN to the consignee unless the consignee ''knows'' that the ECCN is in error. We wish this comprehension will be applied to the requirements of the paragraph A and C.

4. Our additional request

Hopefully the countries listed in all of the country groups A1 to A4 of supplement No.1 to part 740 of the EAR should be exempted from the extraterritorial application of the reexport regulations because those countries including Japan have fulfilled stringent export controls at

same level as the U.S. in accordance with the multilateral export control regimes, namely the Wassenaar Arrangement, the Missile Technology Control Regime, the Australia Group, and the Nuclear Suppliers Group.

The reexport regulations have imposed additional and duplicative costs on the Japanese industries because they must comply with both Japan's national export control regulations and the US regulations. The additional costs account for a significant share of a company's total compliance costs.

Finally we would like to thank BIS for giving us an opportunity to submit comments and taking our comments into account.

Please accept my best regards,

Shozo Hirata
Chairman
Committee on Security Export Controls
Japan Machinery Center for Trade and Industry

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July 6, 2015

Sent via email to: 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

Subject: RIN 0694-AG51

Re: Export Administration Regulations (EAR) Additional Improvements and Harmonization of Export Clearance Provisions

Dear Sir or Madam:

The Computing Technology Industry Association (CompTIA) is a non-profit trade association serving as the voice of the information technology industry. With approximately 2,000 member companies, 3,000 academic and training partners and nearly 2 million IT certifications issued, CompTIA is dedicated to advancing industry growth through educational programs, market research, networking events, professional certifications and public policy advocacy.

Thank you for the opportunity to provide comments on this advanced notice of proposed rulemaking (ANPR) which requests comments on how the export clearance requirements under the Export Administration Regulations (EAR) can be improved, including how the EAR export clearance provisions can be better harmonized with the export clearance requirements under the International Traffic in Arms Regulations (ITAR).

With regard to the proposed revisions to Part 758 of the EAR CompTIA has the following comments:

> ***"Export control documents in paragraphs (A) through (C) include the commercial invoice and contractual documentation."***

CompTIA is unable to support the requirement of specific export data in contractual documentation as proposed in Part 758. Contractual documentation does not accompany

shipments and would not accomplish the objective of improving and/or harmonizing export clearances.

Should BIS move forward on the proposed revisions as written and include the "contractual documentation" as part of "export control documents", BIS should explain how the contractual documentation will achieve the objective of improving and/or harmonizing export clearances, including examples of contractual documentation that would accomplish this objective. Additionally, BIS must very carefully define the scope and context of contractual documentation, addressing concerns such as multiple "ultimate destinations", multiple product ECCNs, and the battle of forms when the commercial invoice data differs from the "contractual documentation." There could be numerous "contractual" agreement documents created between the parties, ranging from master agreements, statements of work, purchase orders, etc., none of which travel with the item to its ultimate destination and ultimate consignee. One CompTIA member estimates that such a rule would require amendments or other revisions to more than 650,000 master agreements, contracts and purchase orders. Companies consider information in most contractual documentation as highly confidential, and would not have such documentation accompany shipments. Rather than improving export clearance provisions, this requirement will create substantial burdens, the potential for misalignment of ECCNs and ultimate destinations in addition to work for exporters to track down, revise, and/or generate new contractual documentation they believe is needed to demonstrate compliance with this requirement.

A. Require ECCNs on export control documents. The ECCN for all 9x515 and ``600 series'' items is currently required to be identified on the export control documents, along with the destination control statement. BIS is considering requiring that the ECCN be identified for all items on the Commerce Control List. This would not include items that are designated EAR99.

CompTIA has similar questions as described above. We are unclear what contractual documents are intended to be considered export control documents. Contractual documentation would only include the ECCNs in effect at the time of the signing or issuance of the contract documentation. The documentation would not take into account changes in classification, or provide the most current products that could be shipping under the contract. CompTIA further notes that at the time master agreements and/or statements of work are negotiated the items to be supplied or delivered may not be available. For example, in cases in which systems, such as information technology networks consisting of multiple hardware and software products are supplied to a customer, the supplier may not have available a list of specific products or ECCNs at the time a master agreement or statement of work is executed. Even where such information is available at the time a master agreement or statement of work is negotiated, the ECCN may change as items or software are updated and/or rules change. This will potentially require an amendment to an exporter's master agreements, statements of work, etc. each time there is a change, for example, to the CCL based on modifications under the Wassenaar Arrangement or other international agreements.

In addition, significant investments in system updates and systems integration would be necessary to be able to provide ECCNs on commercial invoice documents. Alternatively, to avoid systems investments, new manual procedures would be required to generate separate reports to list ECCNs by item for each invoice, requiring coordination with existing documentation and product flows, and significantly hindering rather than improving export clearance processes. Although the ANPR states that EAR99 items would be excluded, CompTIA would like to know how co-mingled shipments (e.g. those with EAR99 and CCL items) should be handled. We would also like to request that ECCNs subject to AT controls only be excluded.

B. Require identification of country of ultimate destination on export control documents. BIS is considering requiring that the country of ultimate destination be identified on the export control documents.

CompTIA has the same concerns as described above. An exporter may not know the country of ultimate destination at the time of the signing or issuance of contract documentation. One contractual agreement may cover multiple destinations and therefore would be difficult or impossible to associate with individual export transactions. It's also unclear if the requirement would apply only to items exported under license authorization to the ultimate consignee. Many companies use distribution hubs and/or 3rd party distribution centers which would not typically be considered an ultimate consignee for the purposes of the export transaction from the U.S and may have multiple locations identified as ultimate destinations.

C. Potential impact and feasibility of requiring AES filing for exports to Canada for items for National Security (NS), Missile Technology (MT), Nuclear Nonproliferation (NP), and Chemical & Biological Weapons (CB) reasons, regardless of whether the export was authorized under a license, license exception, or designated as no license required.

CompTIA believes that such a filing requirement would be burdensome for industry. For example, the filing requirement would include items classified as ECCN 5x002 items, which do not require a license for export to Canada. CompTIA would suggest that the Department of Commerce identify the list of items for which it wishes to gather export data and, instead of mandating AES filings, require after-the-fact reporting, similar to that already required for items exported pursuant to License Exception ENC.

We look forward to clarification on the comments and concerns listed above. Thank you once again for the opportunity to provide comments on this ANPR.

Sincerely,

Ken Montgomery
Vice President, International Trade Regulation & Compliance

The Boeing Company
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MC 7949-5929
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July 6, 2015

Mr. Timothy Mooney
Regulatory Policy Division
Office of Exporter Services
Bureau of Industry and Security
Department of Commerce
14th Street and Pennsylvania Avenue NW
Washington, DC 20230

Subject: RIN 0694-AG51, Additional Improvements and Harmonization of Export Clearance Provisions

Reference: Federal Register/ Vol. 80, No. 99/ Friday, May 22, 2015/ Proposed Rules

Dear Mr. Mooney,

The Boeing Company ("Boeing") appreciates the opportunity to provide comments to the Advanced Notice of Proposed Rulemaking ("ANPR") on Export Clearance Provisions in the Export Administration Regulations ("EAR"). The stated Bureau of Industry and Security ("BIS") reasoning for the changes under consideration are to improve export clearance requirements, to make them more effective, and to better harmonize them with the International Traffic in Arms Regulations ("ITAR"). The principle of harmonization is explained as being desirable where regulatory provisions are intended to achieve the same purpose - except where there are reasons to have different requirements.

Boeing believes it is not appropriate to subject largely No License Required ("NLR") commodities to the requirements described in the ANPR that are currently applied to military and satellite items. At Boeing, 72 percent of our EAR-controlled shipments in 2014, more than 40,000, were NLR. Requiring transaction-specific information on multiple documents for commodities with a low level of control would have a significant negative resource impact. Specifically, it would require extensive re-work of systems, processes, trainings, handoffs to freight forwarders, and multiple other aspects of shipping transactions.

1. Export Control Documents

It is not clear what documents are within the scope of the proposed changes, which is critical when trying to determine impacts. The definition of "export control documents" in Part 772 includes a long list of export-related items. In the ANPR, BIS states that "export control documents" means "contractual documentation" and the commercial invoice. However, the

term "contractual documentation" is not defined. One could reasonably interpret the term to mean those documents that address the legal obligations between the parties to the transaction, such as the governing contract. However, contracts and their amendments and multiple annexes and attachments do not travel with shipments. Also, a contract may have been in place for years and are invariably executed before any orders are actually shipped. At Boeing, all contracts include standard clauses requiring the parties to comply with relevant export and import control laws and regulations. Amending contracts to include information specific to a particular shipment would be both difficult and would not alert shipment recipients of classifications and requirements. If the term 'contractual documentation' is used it should be clearly defined, and should specifically exclude the governing contract, as amended.

2. ECCNs on Export Control Documents

Boeing does not agree with a blanket requirement to include ECCNs on all export control documents. Boeing, as an AES*Direct* filer, can include ECCN information in our commercial invoice. We also provide ECCNs to freight forwarders. It is therefore unclear whether BIS would require freight forwarders to include ECCNs on their documents (air waybills or bills of lading) as part of the changes being considered in the ANPR. As stated in our comments to BIS's Proposed Rule on Harmonization of the Destination Control Statement ("DCS"), Boeing recommends that required information (whether DCS or ECCN) be placed on only one document that accompanies the freight and leave it to exporters to determine the appropriate document in accordance with its shipping practices. Imposing requirements on exporters that they must then flow to other parties to a shipping transaction adds complexity and compliance risk.

3. Country of Ultimate Destination on Export Control Documents

BIS states in the ANPR that in most cases the country of ultimate destination is already identified on shipments. The ultimate consignee country is provided on all shipping documents, including for NLR exports. This may not be the ultimate destination country (in the case of further distribution) or the ultimate end use country. For example, Boeing may ship commercial airplane parts, which in almost all cases are NLR, to a Maintenance, Repair and Overhaul facility in Amsterdam, which are then issued to airline customers from other countries. Should this requirement be adopted, BIS needs to clarify that the country of ultimate destination does not mean country of ultimate end use. Including country of ultimate end use on NLR items would be very difficult in the case of mixed and consolidated shipments and is not justified for commodities with low levels of control. Boeing recommends requiring ultimate consignee country only on the appropriate document in accordance with an exporter's shipping practices.

4. License Number or Export Authorization Symbol on Export Control Documents

Our comments in item 2 above apply here as well. Including license numbers or authorization symbols on export control documents is a capability exporters may already have for some documents, but not for all. Boeing recommends that this information be required only on the commercial invoice or other document in accordance with an exporter's shipping practices.

5. Require AES Filing for exports to Canada for NS, MT, NP and CB items.

Boeing exports thousands of shipments to Canada annually for which AES filing is not required. Many of these exports relate to commercial aircraft production, including items that are assembled in Canada to be returned to the United States for use in Boeing production facilities. If AES filings for Canada were required for only the CB, MT, NP, and NS reasons for control, exporters would have to examine each export to find the few that likely must be filed in the Automated Export System ("AES"). This would result in a significant burden as automated trade control tools and systems do not currently exist for this type of identification. Given the potential impact, Boeing recommends the establishment of a working group with industry that can develop a solution that meets the BIS desire for visibility with minimal disruption to trade with Canada.

6. Other Suggestions for Improvement

The current text in 758.1(b)(6) would be much clearer if revised as follows:

(b) When is an EEI filing required to be filed in the AES

~~Except when the export of items subject to the EAR is to take place electronically or in an otherwise intangible form, y~~ You must file EEI in the AES ~~with the United States Government for~~ **when exporting tangible** items subject to the EAR, including exports by U.S. mail, in the following situations: ….

Thank you for the opportunity to provide comments. Please do not hesitate to contact me if you have any questions or need additional information. I can be reached at 703-465-3505 or via email at christopher.e.haave@boeing.com.

Sincerely,

Christopher Haave
Director, Global Trade Controls

Comments in response to the ANPR dated May 22, 2015:

"Additional Improvements and Harmonization of Export Clearance Provisions"

Docket No. 150220163-5163-01

Identification Number BIS-2015-0012

RIN 0694-AG51

The National Customs Brokers and Freight Forwarders Association of America Inc. ("NCBFAA") hereby submits these comments in response to the Department of Commerce Bureau of Industry and Security ("BIS") Advanced Notice of Proposed Rulemaking ("ANPR") regarding the harmonization of the Export Clearance provisions published in the Federal Register on May 22, 2015. 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 commends both the Departments of State and Commerce for the great efforts being made to harmonize processes and documentation wherever possible.

For clarity and to conform to the pending Destination Control Statement NPRM, we recommend that BIS define "contractual documentation" either to state that it does not include bills of lading / air waybills (which are "contracts of carriage"), or to state "contractual documentation between seller and buyer". In the comments the NCBFAA filed this date in that NPRM (Docket No. BIS -2015-0013, RIN 0694-AG47), the Association explained why the DCS need not, and should not, be placed on the transport documents and incorporates those comments here. The comments below are based on the assumption that the information stated would not be required on transport documents.

The NCBFAA is in favor of requiring the ECCNs, Country of Ultimate Destination and License number or export authorization symbol on the commercial invoices. For absolute clarity, we recommend that BIS take this one step further and also require the notation of EAR99 so there is no question as to whether the goods are EAR99 or that the ECCNs are simply missing. EAR99 products are also subject to the EAR and subject to diversion risk to certain countries. Additionally, as freight forwarders, tremendous effort and resources are expended to obtain this information for export reporting (AES) from exporters, many of which are unaware of their responsibilities under the EAR. Requiring this information on the commercial invoices will help to streamline the process for freight forwarders while enhancing compliance to the EAR for exporters.

The NCBFAA does not recommend that these data elements also be required on the transport documents (Bills of Lading, Air Waybills), but instead should be confined to the export control documentation that is defined in this NPRM to be the commercial invoice and contractual documentation. This information is not traditional transport document information. As the destination country on transport documents may or may not be the country of ultimate destination, and as the parties on the commercial documentation may differ substantially to those identified on the transport documents, even assuming the forwarder or carrier had access to such information - which may not be the case - obtaining and placing the suggested additional items on the transport documents would require significant system programming by the entire transportation industry as well as additional intrusion by forwarders and carriers into the commercial processes of the parties to that transaction.

NCBFAA understands that BIS is requesting AES filing for exports to Canada. Should this proceed, we recommend that BIS not limit this to NS, MT, NP and CB, but rather require it for all reasons for control, i.e., all ECCNs. The reason for control is rarely shared with the freight forwarder; therefore, it would pose an additional burden to freight forwarders to collect this additional data to enable the forwarder to know when and when not to file the AES transmission. NCBFAA therefore recommends that BIS either require AES reporting for all transmissions that include ECCNs or not require the reporting at all.

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

Sincerely,

Geoffrey C. Powell
NCBFAA President

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July 6, 2015

VIA ELECTRONIC MAIL

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

Re: Comments on BIS Advanced Notice of Proposed Rule: Harmonization of Export Clearance Provisions; RIN 0694-AG51

To whom it may concern:

The Chemours Company appreciates the opportunity to submit comments regarding the Advanced Notice of Proposed Rulemaking (ANPR) published in the May 22, 2015, Federal Register. The proposed regulatory changes seek to harmonize the export clearance requirements of §758 of the EAR with corresponding requirements under the ITAR. While Chemours supports efforts to harmonize and streamline the regulations, we caution that the suggestions for harmonization would cause significant resource and financial burden on industry and would ultimately create inconsistencies for exporters.

A. Inclusion of "Contractual Documentation"

The term "contractual documentation" referred to in the proposed rule is vague and is not otherwise used anywhere in the EAR or the ITAR. The ANPR explains that the proposed rule would require the DCS "on the commercial invoice and contractual documentation because these two documents are the most likely to travel with the item from its time of export from the United States to its ultimate destination and ultimate consignee" However, we note particularly that none of these types of documentation customarily accompany a shipment. Neither the contract or invoice customarily accompany any shipment.

B. Requiring ECCNs on Export Control Documents

Requiring ECCNs on export control documentation does not serve a meaningful purpose in ensuring compliance with the EAR or preventing diversion. Buyers receiving exports are generally non-U.S. persons for whom a detail such as the ECCN is not very meaningful. Furthermore, this requirement exceeds the ITAR (§123.9), which does not require the USML category. Thus, this proposal creates an inconsistency that does not currently exist. In addition, the proposed requirement exceeds the current EAR requirement for exporting "500" and "600" ECCN exports under license exception STA, which requires a notification to the consignee of the ECCN, though not one necessarily with every shipment. We submit that the Destination Control Statement on the export control documents is instructive and sufficiently informs the recipient of obligations under the EAR. The proposed rule change is unnecessary.

C. Requiring Country of Ultimate Destination on Export Control Documents

We suspect that at least one purpose of this proposal is to achieve consistency with the ITAR requirement in §123.9. However, in this case, the difference between the ITAR and the EAR is justified.

Most defense exports are either direct to the ultimate consignee or for incorporation within another foreign-made military item. Since all ITAR exports require a State Department license, defense exporters know the country of ultimate destination. This is not true for many dual-use exporters, who often sell to distributors. The U.S. exporter may not know the country of ultimate destination, especially where the distributor is located in a country for which no export license is required. The proposed requirement will impose an additional burden on exporters to ascertain the county of ultimate destination. Compliance with this rule would further be hampered by the fact that distributors are reluctant to identify their customers, for fear the U.S. exporter will sell directly to the customers.

D. Requiring License Numbers or Export Authorization Symbol on Export Control Documents

For the same reasons noted above, Chemours does not see sufficient value to justify the cost to exporters to reprogram systems or otherwise change current export processes to provide information that does little to assist customers or prevent diversion and is already available to BIS.

E. Requiring AES Filing for Exports to Canada for Items Controlled for NS, MT, NP & CB

Chemours also counsels against requiring AES filing for exports to Canada for items controlled for NS, MT, NP and CB. Canada is one of our largest trading partners with readily accessible road and rail deliveries. Requiring AES filing for such exports would add an unnecessary administrative burden to exporters. Many exporters such as Chemours are able to use the Canadian exemption (15 CFR 30.36) for items not on the ITAR or EAR and therefore their electronic systems are not set up to notify their freight forwarder.

Each of the proposed changes discussed in sections B through E above pose unique challenges and would necessitate specific changes to electronic systems across multiple ERP systems; both internally and externally for shipping partners. Without greater detail regarding programming requirements, we roughly estimate that costs to analyze, program and implement the proposed changes would be tens of thousands of dollars.

Additionally, the proposed changes would require a significant amount of time to implement. We estimate that at least six (6) months would be required between the time a final rule is published and the effective date for implementation. Defining the solutions, identifying all affected systems in the sales and delivery process, and determining how much outside programming resources are needed must be considered. Furthermore, we suggest BIS survey the ERP system support industry to gauge the strain on resources the proposed rule may cause and the ability to provide the IT services broadly across all U.S. exporters.

For the foregoing reasons, Chemours submits that the proposed rule changes are largely unnecessary, would cause significant burdens on industry, would create inconsistencies for exporters, and should, therefore, not be pursued. Thank you for your consideration of these comments. Please do not hesitate to contact me if you have any questions at 302-773-1318.

Sincerely,

/s/ PEDRO DE LA TORRE

Pedro de la Torre
International Trade Counsel &
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The Chemours Company

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United Technologies

Submitted Via Email

July 6, 2015

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

Attn: RIN 0694-AG51

Re: Advanced Notice of Proposed Rulemaking; Additional Improvements and Harmonization of Export Clearance Provisions (80 Fed. Reg. 29554, May 22, 2015)

Dear Mr. Mooney:

United Technologies Corporation ("UTC")[1] appreciates the opportunity to submit these comments to the Bureau of Industry and Security ("BIS") on the Advanced Notice of Proposed Rulemaking ("ANPR") relating to the export clearance provisions in the Export Administration Regulations ("EAR"). UTC supports the overall harmonization efforts as part of Export Control Reform implementation, and encourages BIS and the Directorate of Defense Trade Controls ("DDTC") to continue efforts to conform the export clearance requirements.

The ANPR specifically sought comments on five changes to Part 758 of the EAR. Three relate to inclusion of additional information on export control documents - Export Control Classification Numbers ("ECCNs"), the country of ultimate destination, and the license number or export authorization symbol; one is a significant change to the Automated Export System ("AES") filings requirements for Canada; and the last is a general request for any additional comments to improve and harmonize the export clearance requirements. UTC provides comments to each of these potential changes.

I. Additional Information on Export Control Documents

Although the ANPR does not specify, it appears that the most logical place for the potential changes to require the identification of ECCNs, country of ultimate destination, and

[1] UTC is a global, diversified corporation based in Hartford, Connecticut, supplying high technology products and services to the aerospace and building systems industries. UTC's companies are industry leaders, among them Pratt & Whitney, Sikorsky, UTC Aerospace Systems, UTC Building & Industrial Systems, and United Technologies Research Center.

license number/authorization symbols (collectively referred to as "data elements") on all export control documents would be in EAR § 758.6. BIS recently published a proposed rule on revisions to the destination control statement ("DCS") and narrowed the scope of documents requiring DCS to two documents – the invoice and contractual documentation.[2] This rule also revised the requirement to identify the ECCN for 9x515 and "600 series" items to those two documents. Therefore, UTC expects that any potential change to require identification of these data elements would be limited to those documents identified in EAR § 758.6(a) and only apply as part of the export clearance process.

UTC supports a change to require the identification of ECCNs on the commercial invoice.[3] UTC companies are doing this for exports of 600-series hardware in accordance with the current requirement in EAR § 758.6(b), and some UTC companies are doing this for exports of other items subject to the EAR. Moreover, for UTC's non-U.S. based companies that receive product from U.S. suppliers, it would be particularly helpful for export compliance reasons to have the ECCN of the product they are receiving. Given that the commercial invoice is the document that will be received by the ultimate consignee, UTC recommends that identification of ECCNs be on the commercial invoice.

However, in the ANPR, BIS used the term "export control document" - a defined term in the EAR. UTC does not support a change that mandates inclusion of these data elements on all export control documents because export control documents include not only shipping documents and all other documents prepared pursuant to export clearance requirements in Part 758 (such as the invoice), but also include International Import Certificates, Delivery Verification Certificates, boycott-related documents, and Customs Form 7512. Requiring identification of the data elements on all export control documents is overly broad, conflicts with the change proposed by BIS in its DCS rule and would obviate the benefit to the exporter conveyed by BIS in that proposed rule.

UTC notes that these potential changes are similar to changes to Section 123.9(b)(1) of the International Traffic in Arms Regulations proposed by DDTC.[4] Under those revisions, DDTC would require the country of ultimate destination and license or exemption to be incorporated on the bill of lading, air waybill, or other shipping document, and the purchase documentation or invoice. UTC submitted comments to DDTC on this proposed revision. The bill of lading and air waybill – both export control documents - do not ordinarily identify the ECCN or license/authorization information. Country of ultimate destination may be identified to the extent that the items are in fact being shipped to the ultimate destination but the field may not necessarily be identified as "country of ultimate destination" on those forms. Inclusion of the data elements would have to be done manually on these types of export control documents, a

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[2] Export Administration Regulations (EAR): Harmonization of the Destination Control Statements. 80 Fed. Reg. 29551 (May 22, 2015).

[3] UTC submitted comments to the DCS proposed rule with respect to the use of the term "contractual documentation" to recommend that BIS specify the precise documents in Part 758.6(a) that it considers to be "contractual documentation."

[4] Amendment to the International Traffic in Arms Regulations: Exports and Temporary Imports Made to 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; Revisions to the Destination Control Statement; and Other Changes. 80 Fed. Reg. 29565 (May 22, 2015).

process that would be time-intensive. More importantly, the information would be relegated to whatever limited space existed on those documents, which would reduce its visibility and minimize any benefit gained from including the information.

The commercial invoice, on the other hand, may already contain the country of ultimate destination, the end-user and the license/exemption information. The commercial invoice is generated by the exporter and can be configured more readily to include these data elements. Further, that invoice would tie back to the shipping documents based on the shipment reference number. Therefore, consistent with our comments to DDTC, UTC recommends that inclusion of the data elements be limited to the commercial invoice.

II. AES Filings for Exports to Canada

BIS also seeks comments on changes to require AES filings for all exports to Canada of items controlled for national security ("NS"), missile technology ("MT"), nuclear nonproliferation ("NP") and chemical and biological weapons ("CB") reasons regardless of the license requirements. It is unclear whether this potential change would also require AES filings for such items even when the value is under $2,500. Regardless, this is a significant change to the AES filings requirements for Canada and UTC does not support this change due to the negative impact to exporters. Based on our volume over the past 12 months, UTC estimates that over 1,000 shipments to Canada would be impacted by this requirement.

UTC companies make AES filings directly and through authorized agents. Depending on the contractual arrangement with the agent, AES filings can cost a company upwards of $15 - $35 per filing. When filing directly, some UTC companies have automated software solutions in place that tie to AESDirect, but we also do manual filings in many cases. Regardless of whether the submissions are automated or manual, UTC would need to contact the forwarder to generate and receive the departure information which may take several minutes if by telephone or perhaps several hours if the exchange is by email. To the extent an automated software solution exists and the platform can be reconfigured, UTC estimates that each additional AES filing that is needed due to this requirement would take approximately two minutes to complete once all departure details are received from the freight forwarder, but wait time for a response in AESDirect could be up to 10 minutes depending on how many filers are in AESDirect across the country and at Census. Our experience is that wait times increase at the end of the week, month, quarter and year and around a holiday. To the extent that such filings must be manually entered, completion of each additional AES filing needed as a result of this requirement is expected to take approximately 20 minutes once all departure details are received from the freight forwarder, because each filing needs to be separately reviewed for accuracy to ensure the data elements are correct upon filing.

Under the Foreign Trade Regulations ("FTR"), filers are required to ensure that the Electronic Export Information ("EEI") is accurate as known at the time of filing and to transmit any changes to the EEI as soon as they are known. *See* 15 C.F.R. § 30.9(a). Once an AES filing is made prior to export,[5] carriers must have a process to notify the filer of changes to the

[5] AES Option 4 post-departure filing is only available to approved exporters. Only one UTC company is eligible to make post-departure filings. New approvals for Option 4 exporters have been suspended for years so many exporters are required to make AES files *pre*-departure.

transportation data and the filer must then update the EEI so it remains accurate. *See* 15 C.F.R. § 30.3(c)(3)(iv). This includes any changes to the date of export and the port of export. For UTC, many of our exports to Canada occur over a land border. This means that date of export and port of export frequently change due to traffic patterns and carriers make these determinations in real time for efficiency, because their objective is to move the cargo from point A to point B as quickly and cheaply as possible. An increase in AES filings for Canada translates to an increase in required time and resources for (a) the carriers who need to monitor the dates and ports of exports for all these shipments so filers can be notified of changes and (b) the filers who have obligations to ensure the AES records remain accurate. This cannot be automated and will need to be done manually.

UTC understands that BIS would like visibility into these shipments to Canada and has compliance-related objectives to ensure that exports to all destinations comply with the EAR. However, UTC submits that the significant detriment to industry that would be impacted by increased costs, time and resource requirements to make these AES filings, plus the likely compliance challenges to ensure that all these AES filings for Canada remain accurate as required by the FTR, far outweigh the benefit to BIS of obtaining this information through AES.

To meet BIS' stated desire for transparency into such shipments, UTC proposes an amendment to EAR § 743 to include a semi-annual reporting requirement for all exports to Canada of items controlled for NS, MT, NP and CB reasons regardless of the license requirements. BIS should define the information required to be provided and the format of the report to ensure uniform reporting. Semi-annual reporting by exporters would provide BIS the information it seeks on exports to Canada but with a lesser burden on exporters.

III. Other Improvements

UTC recommends removal of EAR § 758.1 and 758.3(c) and (d). These sections simply restate requirements that are set forth in the FTR, which is implemented by the Census Bureau. As such, these requirements are duplicative and only serve to create overlapping jurisdiction by two bureaus – both of which are within the Commerce Department – with no net benefit. Currently, a violation of the AES requirements relating to items subject to the EAR is violation of both the EAR and the FTR. In order to receive the mitigating benefit of disclosure, exporters must file a disclosure with both agencies for what is essentially the same issue. However, Census and BIS have different disclosure requirements (*e.g.,* timeframe to file a final voluntary disclosure to Census is 60 days versus 180 days; Census does not grant mitigation unless you correct all the AES entries at issue even if you file a voluntary disclosure, etc.) and different compliance objectives. UTC also notes that BIS has a long-standing policy not to proceed with enforcement actions solely for AES violations and, in our experience, the Office of Export Enforcement has deferred to Census on disclosures of AES violations.

Therefore, removing the AES requirements from the EAR would mean that an AES violation would only be a violation of the FTR. It would establish one agency – Census – as the single interface for voluntary disclosures and have a single set of disclosure requirements and mitigating factors. It would remove duplicative requirements in the EAR, which simply restate the same requirements from the FTR but the FTR are more comprehensive because they relate to all AES filings and not just filings for EAR items. Importantly, removing the AES requirements

from the EAR would *not* change (a) any of the requirements to file EEI, (b) BIS' ability to access or use AES data, or (c) the Office of Export Enforcement's ability to enforce AES violations, which is set forth in FTR § 30.73.

While UTC believes it would be optimal for BIS and Census to align on a single definition for routed export transactions because this has historically been different and has caused confusion within the exporting community, UTC is aware that the objective with respect to the responsibilities of the parties in routed transactions differs as between BIS and Census. The changes we recommend herein have no impact on and do not alter the different positions on routed transactions.

* * *

For additional information, please contact the undersigned at (202) 336-7458 or christine.lee@utc.com.

Sincerely,

Christine Lee
Director, Compliance
International Trade Counsel

July 6, 2015

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

ATTN: RIN 0694-AG51

Subject: ACC comments on BIS "Additional Improvements and Harmonization of Export Clearance Provisions; Advanced Notice of Proposed Rulemaking;" Docket No. 150220163-5163-01

Dear Mr. Mooney:

The American Chemistry Council (ACC)[1] appreciates the opportunity to submit comments concerning the Department of Commerce, Bureau of Industry and Security (BIS) May 22, 2015 Advanced Notice of Proposed Rulemaking (ANPR) regarding "Additional Improvements and Harmonization of Export Clearance Provisions." ACC and its member companies greatly appreciate BIS's efforts to improve and streamline the Export Administration Regulations (EAR). ACC has concerns regarding the proposed suggestions for harmonizing the EAR and the International Traffic in Arms Regulations (ITAR). While the EAR and ITAR have similar purposes, the proposed suggestions for harmonization would be a significant resource and financial burden on industry and would ultimately create inconsistencies for exporters.

A. Require ECCNs on export control documents.

According to the ANPR, the changes proposed would amend 15 CFR Part 758, which deals with the Electronic Export Information (EEI) filing to the Automated Export System (AES). As Paragraph A states, the proposed regulation would require that export control documents list the Export Control Classification Number (ECCN) for all items on the Commerce Control List, other than those designated EAR99. As stated in the ANPR, it is not clear to ACC what the purpose would be served by including the ECCN on export documentation. Additionally, the specific change in Paragraph A is vague. The following questions need to be asked in order to clarify the detail of BIS's proposed change:

[1] The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is an $800 billion enterprise and a key element of the U.S. economy. It is one of the nation's largest exporters, accounting for ten cents out of every dollar in U.S. exports.

1. Is it the intention of BIS in Paragraph A to amend §758.1(b)(5) to eliminate the value threshold for commodities and mass market software, thus requiring EEI information be filed for all commodities and mass market software subject to the EAR, except as exempted by the Foreign Trade Regulations in 15 CFR Part 30?

2. Is it the intention of BIS to change the reporting of ECCN as specified in §758.1(g)(3) so that all ECCN are reported for No License Required (NLR) shipments, except EAR99? (The current wording exempts all EAR99 items plus those ECCN controlled only for AT.)

It is unclear what proposed benefit would be derived from either or both of these proposed changes compared to the added cost and complexity necessary to comply.

If the BIS proposal includes modification of 15 CFR §758.1(b)(5) to remove the $2,500 value threshold, then EEI would be required for **ALL** exports of commodities and mass market software subject to the EAR. The impact to multi-national corporations who export equipment, instrumentation and materials supporting Manufacturing and Research & Development would be very significant.

If the suggested changes to 15 CFR §758.1 were implemented the cost impact for one ACC member company alone is estimated to be "at least $50,000 annually" to determine ECCN and HTS classifications and prepare the necessary forms for EEI filing. Since many affected exports are various small quantities of materials and equipment to support consumer product R&D programs, these incremental costs would be incurred on a frequent basis, and are not simply one-time costs which might be expected for a repetitive export.

Furthermore, some exporters do not manufacture both EAR and ITAR materials and therefore only have IT systems setup to comply with one regulation. Modifications to in-house IT programs to harmonize the requirements and then produce the necessary information would impose significant amount of time, personnel, and financial resource constraints on companies. For example, one ACC member company spent approximately $100,000 to modify their IT system in order to classify customers and add the Ultimate Consignee classification to AES filing. Modifying IT systems to harmonize the EAR and ITAR would be significantly more expensive.

Modifying the regulations to require companies to report all ECCN, except EAR99, for low-value commodities exporting under a No Licensed Required (NLR) designation is burdensome for companies with a heavy volume of exports of equipment, instrumentation, and materials. For example: A company wishes to export a bearing or bearing system from a plant in the United States to another of its plants in Germany. A first tier review of the technical specifications of the bearing or bearing system rules out classification under ECCN 2A001 or 2A101. The remaining possibilities for ECCN classification are 2A991 and EAR99. If the proposed change from BIS removes the current exemption for reporting ECCN for classifications controlled for AT only, the exporter must perform an additional review to distinguish between 2A991 and EAR99 and report the ECCN if the bearing or bearing system is classified 2A991. Reporting License Code 33 and License Exemption Code NLR should be sufficient for EEI filing in this

case since those codes communicate control under AT only or lower. Reporting ECCN 2A991 in this case adds complexity and cost with no obvious benefit in terms of the control purposes of the regulations.

Part 758 of the EAR, as currently written, requires EEI filing and detailed information for goods exporting to Group E countries, goods exporting under license or license exception, or for those items formerly regulated under ITAR which have been moved over to the Commerce Control List (9x515 or "600 series"), regardless of value. These EEI filing requirements along with the other current filing requirements for exports of high-value commodities, exports to Validated End-Users, and exports to those on the Unverified List ensure effective export control, promote security in the U.S., and assure continued U.S. leadership in technology development. In addition, BIS already has access to all of this information via the EEI.

The requirement to provide ECCN for all items on the CCL exceeds the requirements of ITAR, which does not require the USML category. Thus, this proposal creates an inconsistency that does not currently exist. Implementation of either or both of the potential proposed changes listed above does not appear to further the security interests of the United States. The implementation of these changes, as proposed, would place an extra burden of reporting on industry, clutter the landscape of export declaration information, and increase error rates in EEI reporting - potentially masking issues that warrant further investigation and diminishing the accuracy of export data, all for no obvious benefit.

B. Require identification of country of ultimate destination on export control documents.

It is ACC's understanding that at least one purpose of the proposal to include the country of ultimate destination on export control documents is to achieve consistency with the ITAR requirement in §123.9. However, the existing difference between the ITAR and the EAR is justified and should not be changed.

Most defense exports are either direct to the ultimate consignee or for incorporation within another foreign-made military item. Since all ITAR exports require a State Department license, defense exporters know the country of ultimate destination. This is not true for many dual-use exporters, who often sell to distributors. Additionally, if the distributor is located in a country for which no export license is required, this requirement will impose an additional burden on exporters to ascertain the county of ultimate destination.

As an example, a U.S. exporter ships items classified under 1C008 to a distributor in Canada. At the time of export, it is unlikely that the U.S. seller knows the identity or location of all the distributor's customers. Even the Canadian distributor may not know this at the time the shipment leaves the U.S. Multiple items may end up in different countries. In addition, many distributors are reluctant to identify their customers, for fear the U.S. exporter will sell directly to the customers.

Similar to the proposed ECCN requirement, this change will require time and money to change export systems and processes. The country of ultimate destination is usually already included in

shipping documents. Requiring exporters to use a two letter country code on export control documents would require many exporters to reprogram their IT systems. We believe that the existing Destination Control Statement (DCS)[2] and "know your customer" requirements are adequate to prevent diversion, assuming this is a goal of the proposal. As with the ECCN, the country of ultimate destination "as known to the USPPI at the time of export" (§30.6(a)(5) is available to BIS via the EEI filing.

C. Require license number or export authorization symbol on export control documents.

Similar to the reasons noted above in Section B requiring the license number or export authorization symbol on export control documents would require reprograming IT systems, which will take time and financial resources. ACC does not believe the cost to exporters to reprogram systems or otherwise change current export processes to provide information that justifies a change that does little to assist customers or prevent diversion that is already available to BIS.

D. Require AES filing for exports to Canada for items controlled for NS, MT, NP, and CB.

ACC and its member companies strongly oppose requiring AES filing for exports to Canada for items controlled for National Security (NS), Missile Technology (MT), Nuclear Nonproliferation (NP), and Chemical & Biological Weapons (CB). Given that Canada is one of our largest trading partners with quick road and rail deliveries, requiring AES filing for such exports would add an unnecessary administrative burden to exporters. Many exporters are able to use the Canadian exemption (15 CFR 30.36) for items not on the ITAR or EAR and therefore their Electronic Data Interchange (EDI) systems are not set up to notify their freight forwarder.

Similar to Paragraphs B and C, such a requirement would require exporters to reprogram IT systems in order to send information to freight forwarders and an added freight forwarder cost for each of these shipments.

E. Other suggestions for improving and harmonizing export clearance requirements.

In order to improve the current EAR export clearance requirements, ACC recommends BIS expand the general license authority for chemicals that are freely available outside of the Australia Group (AG). Products and technologies that are freely available outside control regimes should be eligible for a license exception to a limited and specific positive list of non-regime countries. Alternatively, BIS could re-instate Country Group CB3 for this same list of chemicals which fulfilled that same role until eliminated in 2005.

In ACC's view, all 1C350 chemicals are fungible, and marketplace circumstances mean that competitive advantage derives from prompt, reliable delivery and safe handling.

[2] Department of Commerce, Export Clearance Requirements §758.1, https://www.bis.doc.gov/index.php/forms-documents/doc_view/426-part-758-export-clearance-requirements

The Proposed License Exception CBX would apply to a list of trusted countries outside the AG regime. STA has the list of 6 countries for NS controls, so CBX would be similar to STA, but for a subset of freely-available CB controlled chemicals.

Proposed Solution: Revitalize EAR Chemicals & Biological Controls designations for "CB Column3"

BIS can use the existing structure of the EAR Commerce Control List found at Supplement No. 1 to Part 738 ("Country Chart") and the EAR Commerce Control List found at Supplement No. 1 to Part 774 ("CCL") to more efficaciously authorize the export of certain chemicals and chemical processing equipment to countries with, as the terms of the AG Guidelines for Transfers of Sensitive Chemical or Biological Items ("AG Guidelines") provide for, "consistently excellent non-proliferation credentials."[3]

This proposal requires two steps:

A. Step One - Create a Positive Country List

The first step is to identify countries that meet the AG Guidelines' standard of "consistently excellent non-proliferation credentials" ("CENPC List"). The U.S. has discretion under the AG Guidelines to apply expedited licensing measures to such countries. ACC proposes that BIS begin with the 125 countries it originally proposed as being suitable for Strategic Trade Authorization ("STA") for "transactions subject to national security controls of lesser sensitivity". ACC believes that beginning the development of the CENPC List in this manner is appropriate because BIS has already determined that these "destinations pose little risk of unauthorized uses" and that "U.S. national security and foreign policy justify authorizing transactions [to these countries] without the delay and expense of obtaining an export license."[4]

BIS could modify the STA list by adding or removing particular countries that may or may not meet the same AG Guidelines in the following fashion:

1) Remove any of the 32 countries currently subject to CB Column 3 controls, the most relevant CB controls for this exercise - e.g., Bahrain, Georgia, Jordan, Kazakhstan, Qatar, Saudi Arabia, and Taiwan;
2) Remove any countries designated as controlled for National Security purposes and so listed under Country Group D:1 at Supplement No. 1 to Part 740 of the EAR - e.g., Cambodia and Laos;
3) Remove any countries not a party to the Chemical Weapons Conventions (CWC) or the Biological Weapons Conventions (BWC) – Andorra, Chad, Comoros, Djibouti, Guinea, Kiribati, Marshall Islands, Mauritania, Micronesia, Namibia, Nauru, Samoa and Tuvalu;
4) Add Cyprus to the draft CENPC List because it is a current AG Partner and signatory to both the CWC and the BWC.

[3] Australia Group Guideline No 2 available at http://www.australiagroup.net/en/guidelines.html.
[4] Export Control Modernization: Strategic Trade Authorization License Exception, 75 Fed. Reg. 76654 (proposed December 9, 2010).

The result is a draft CENPC List of 104 countries, all of whom are participants in the AG, the CWC and/or the BWC, not under current CB Column 3 restriction, and determined by BIS to pose little risk of unauthorized uses. Authorizing license exception qualified exports to these destinations ***for items with wide global availability outside the AG*** is clearly consistent with the AG guidelines. Again, AG Guideline No. 2 explicitly states that "it is a matter for the Government's discretion to determine whether and to what extent to apply expedited licensing measures in the case of transfers to destinations to destinations it judges possess consistent excellent non-proliferation credentials."

B. Step Two – Create a Widely-Available Chemical and Chemical Equipment List

The second step is to create a list of widely-available chemicals and chemical equipment that would qualify for a lesser level of control than currently captured under CB2, that of CB3. This would require revising the CCL to utilize the EAR Chemicals and Biological Controls on the Country Chart (CB Column 3) designations that were removed from various ECCNs.

In 2005, BIS revised the EAR to expand controls on chemicals to make the EAR licensing requirements "consistent with the AG guidelines."[5] In doing so, BIS kept the CB Column List designations in the Country Charts for many countries that would not meet this standard, but removed the specific CB Column 3 designation from relevant ECCNs. In effect, BIS did not fully exercise its authority to determine which countries could qualify for an expedited form of licensing and simply required Individual Validated Licenses for all AG-controlled chemicals exported to non-AG countries. The expanded controls since 2005 have made it more difficult for the U.S. chemical and chemical equipment industries to compete in the global market. The controls also create a significant and unnecessary administrative, license-processing burden for BIS, U.S. businesses and the global customer base. U.S. businesses and trade associations would respond positively to a BIS Federal Register Request for Information or Notice of Inquiry to assist BIS in creating the appropriate list of widely available chemicals and chemical equipment

ACC is therefore requesting to amend the CCL to indicate CB Column 3 rather than CB Column 2 as a reason for control of the final list of ECCNs. Concurrently, BIS would amend the Country Chart to include a CB Column 3 mark for every country ***not*** found to have consistently excellent non-proliferation credentials – i.e., those countries excluded from the CENPC List. Thus, chemicals and processing equipment that are widely available outside of the AG Partner States would fall from CB Column 2 to CB Column 3 and could be exported without license to the CENPC countries because of their significantly lesser proliferation and re-export risk.

If BIS were to settle on a list of countries and ECCNs for chemicals and processing equipment widely available outside for the AG Partner States, then implementing a revised Column 3 to control exports outside the CENPC List of countries would be a dramatic step towards the type of export control the Administration seeks.

[5] Expansion of the Country Scope of the License Requirements that Apply to Chemical/Biological (CB) Equipment and Related Technology; Amendments to CB-Related End-User/End-Use and U.S. Person Controls, 70 Fed Reg 19688 (April 14, 2005)

Conclusion

ACC greatly appreciates BIS' efforts to improve and harmonize the export clearance requirements and the opportunity to provide comments on the proposals to do so. While the proposals in the ANPR are a good start, we believe the current proposals would ultimately be counterproductive create additional burdens and discrepancies between the various export clearance requirements. As a suggestion, ACC recommends BIS pursue the two-step process suggested above to reform the CB3 level of export control for chemicals and chemical equipment that are widely available outside the Australia Group when exported to destinations that pose a lesser risk of unauthorized uses or transfers.

We look forward to working with you on this issue, and we would welcome the opportunity to discuss alternative approaches. Should you have any questions or require any additional information, please feel free to contact me (alexa_burr@americanchemistry.com or 202-249-6425).

Sincerely,

Alexa Burr
Manager, Regulatory & Technical Affairs

GE

Kathleen L. Palma
Senior Executive
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Regulation Id: BIS-2015-0013 and BIS-2015-0012

July 6, 2015

Subject: **Comments on Proposed Rule regarding Harmonization of the Destination Control Statements and Advance Notice of Proposed Rulemaking regarding Improvements and Harmonization of Export Clearances**

RIN 0694-AG47 and RIN 0694-AG51

Dear Mr. Mooney

The General Electric Company submits the following comments for the referenced proposed rule and advance notice of proposed rulemaking. GE appreciates the Administration's proactive efforts to harmonize the export clearance process, but GE has concerns about the proposed changes, which do not appear to provide any benefits to industry and in fact will create more requirements. These changes will be more burdensome to business units not currently exporting items that have been impacted by export control reform.

SPECIFIC COMMENTS

Proposed Changes to § 758.6 Destination control statement and other information furnished to consignees.

GE believes that the proposed Destination Control Statement (DCS) language focuses too much on harmonizing the EAR's language with the ITAR's DCS. While this is a potentially positive outcome for companies involved in defense trade, this approach does not take into account non-military exporters and the nature of commercial transactions.

First, the proposed language uses the terms "ultimate destination" and "ultimate end-user." While in the export of military items, the US exporter is expected to know that information beforehand, commercial exporters often will not know that information. Therefore, GE recommends the deletion of the word "ultimate" to the terms ultimate destination and ultimate end-user, to read instead destination and ultimate consignee.

Second, the imposition of a DCS requirement in contracts will be extremely burdensome to companies. It assumes that the US-company has prior knowledge during negotiations that the item(s) subject to the contract will actually be exported. There will be scenarios were that will not be apparent until point of shipment or servicing stage, which may be several years after the contracts negotiation. It is important to highlight that most contracts clauses require redrafting as the customers do not usually accept the compliance clauses "as-is". In addition, to the extent this would be a requirement for certain goods and not others (EAR99 exempt, for example), what would happen if the understood classification of the goods changed? Would the exporter need to renegotiate the contract prior to shipping or else face an export violation? GE recommends keeping the DCS requirements to shipping documentation only (e.g. commercial invoice, packing slip).

Third, the 600-series ECCN requirement as part of the DCS would require, in the context of contracts, for companies to know all the potential items being exported at the time of negotiating a contract, in order to assess which items are -600 series and which ones are not. This is not feasible most of the time.

> For example, at the time of contract negotiations, a company may be negotiating the servicing of a military or -600 series engine, but it won't be until the point of export that it will know which specific parts and/or components being repaired or replaced are -600 series items. A requirement to provide the -600 series items in the contract's DCS would require a company to "explode" an item's bill of material to assess which potential items are -600 series, which may or may not be exported in the future.

Please also note in your consideration of changing the DCS:

First, changes to the DCS can be costly because it requires recoding the logic for each ERP system printing the DCS in the export control documentation. Companies may have different ERPs. GE currently has dozens of ERPs that would require modification.

Second, based on several industry meetings, GE believes that as currently proposed, the destination control statement language may be misconstrued to mean that the actual technical data being exported (tangibly or intangibly) needs to be marked. This misconception would create a great burden to industry because most technical legends are added to documents upon creation rather than export. The re-markings of old technical documents would require a lot of time and would be very costly to implement.

Harmonization of Export Clearance Provisions:

A. Require ECCNs on export control documents:

- The requirement to provide ECCNs in the actual technical data being exported, particularly if exported intangibly, will be extremely burdensome to industry. It would not only require establishing a process for all new documents to include the ECCNs, but also going back and remarking every piece of existing technical information. This effort would be greater and more costly than export control reform reclassification efforts. Instead, GE recommends clarifying the requirement as limited to commercial invoices or shipping slips pertaining to tangible exports.

B. Require identification of country of ultimate destination on export control documents.

- As mentioned in the DCS section above, most commercial exporters do not know the country of ultimate destination of its item. If the intent is really to understand the country the export is destined to, GE recommends removing the term "ultimate" from the requirement.

C. Require license number or export authorization symbol on export control documents.

- In addition to the burden identified in paragraph A, the same piece of technical data may be exported in different years and, therefore, may be authorized under different export licenses. Requiring an export license number in the actual technical data would require companies to continuously remark its technical documents to reflect most current information, which will be extremely costly. Instead, GE recommends clarifying the requirement as limited to commercial invoices or shipping slips pertaining to tangible exports.

D. Require AES filing for exports to Canada for items controlled for NS, MT, NP and CB

- This requirement will be extremely burdensome and costly to industry. In addition to adding time to the processing of the export transaction, it would require companies to hire more resources to do these filings or pay additional fees to freight forwarders for the work. GE believes that the detriment to industry outweighs the statistical benefits BIS may receive from this.

E. Other suggestions for improving and harmonizing export clearance requirements

- GE would like to take this opportunity to suggest harmonization on license lodging and value tracking. While GE recognizes this is a BIS ANPR request, GE believes the agencies need to harmonize when a hardware license is ready for use. GE believes that lodging requirement for DSP-5s and DSP-73s should be eliminated. In addition, GE believes that exporters should be notified when a license is reaching ten percent of its remaining value.
- In February 2015, the Customs Operations Advisory Committee (COAC) made recommendations to Customs regarding the need for additional interagency cooperation and instituting certain efficiency-related improvements in the processes for exporting licensed commodities. GE encourages BIS to review those recommendations as it considers the comments in the current ANPR. The COAC recommendations are available at this link:

http://www.cbp.gov/sites/default/files/documents/Export%20Subcommittee%20Draft%20Recommendations%20and%20Commodity%20License%20Working%20Group%20Report.pdf

We appreciate the opportunity to provide comments on this Proposed Rule and Advance Notice of Proposed Rulemaking. If you have any questions or require additional information concerning this submission, please contact the undersigned at (202) 637-4206 or by email at: kathleen.palma@ge.com or Laura J. Molinari at (202) 637-4401 or by email at: laura.molinari@ge.com

Sincerely,

Kathleen Lockard Palma
International Trade Compliance

Introduction:
The proposed harmonization of export clearance requirements between the EAR and ITAR provisions, in conjunction with Export Control Reform (ECR) are designed with the intent to reduce the burden on Exporters and improve compliance with export clearance requirements.

Overview and Impact
The improvements and harmonization provisions proposed in the RIN 0694-AG47 *Additional Improvements and Harmonization of Export Clearance Provisions* in actuality, will result in an increased burden on the private sector and generate additional confusion for correct export reporting. The revisions would create additional complexity in the export clearance system and result in additional cost to private industry infrastructure to support these changes, as well as risk to violations where none existed previously, with limited national security benefits.

A) Proposal to Require ECCNS on export control documents.
BIS is considering requiring the ECCN for all items on the Commerce Control List to be identified on all export control documents (i.e. commercial invoice and contractual documents). This would not include EAR99 items.

The generation of export control documentation is a heavily automated process. Very few items exported as part of our business process have an ECCN other than those at an AT level. Those items with a higher than AT level of control are reported in AES utilizing necessary licenses or license exceptions if required.

It is unclear if the intent of this requirement is to place the consignee on notice of the ECCN of the item, or to alert US Customs as to the ECCN of an item. In either event, foreign customers would be alerted by the destination control statement as required under 15CFR 758.6. To require the unique ECCN to be reproduced on commercial invoices for every AT level item would require significant reprogramming to the invoice generation systems and create additional monetary costs associated with them, which is contrary to the intent of the export reform initiative. If the intent is to provide US Customs enforcement visibility, then the information would be available to them via ACE/AES interface for items at higher than AT level.

In addition, what is the expectation of enforcement for this requirement? Barring any failure for proper use of a license or license exception, what would the liabilities be for error to place (for example) an AT level ECCN on a document? How would this be enforced practically by BIS?

B) Require identification of country of ultimate destination on export control documents
BIS is considering requiring the country of ultimate destination to appear on the export control documents.

The commercial invoices currently generated displayed on our commercial invoices have the ultimate consignee address, which includes the ultimate country of destination for each item. When BIS states that they believe the export control documents already identify the country of ultimate destination, we presume this is the information they are referring to.

The proposal does not specify if a separate line item stating the country of ultimate destination is required. If a separate line item is required to be added then additional programming costs would be

necessary to create a line item which duplicates already available information. If the format of the ultimate consignee address is acceptable we do not have any concerns with this proposal.

C) Require license export authorization symbol on export control documents.

BIS is considering requiring the license number for export control documents be identified on export control documents.

The requirement of placement of the license number on the commercial documents is an acceptable additional requirement given the sensitivity of licensed shipments. The addition of the license exception and the NLR statements, as stated above with the ECCN requirements, would require additional IT reprogramming along with associated costs in order to appear on the commercial invoices.

D) Require AES filing for exports to Canada for items controlled for NS, MY. NP and CB

BIS proposes requiring EEI filings for exports to Canada for all items controlled under NS, MT, NP or CB items.

Generally, under our current business model, very few if the items controlled under these categories are shipped by our organization to end users in Canada, but we do have a very significant amount of trade volume that crosses the U.S.-Canadian border every day.

The proposal to require filing AES filings to Canada for these items does pose a potential complication of the supply chain for goods and JIT (just in time) logistics. Our logistics personnel and any Forwarders we use will have to train their staffs at the individual item level of control when an AES filing is required for shipments to Canada, to which previously no filings were required, unless a license was required or in certain unique situations.

For example, previous requirements have fallen into certain categories such as “used” vehicles, which are easier to identify for reporting purposes, and this is unique amongst other AES filing requirements. The proposal is more complex than this requirement as it stretches across multiple categories of goods.

In addition, our systems that generate paperwork for the forwarders will only have knowledge of potentially an ECCN and would not have detailed categorical reason of levels for the controls, leaving a question as to how to relay this information between the USPPI and the freight forwarder to identify which items to report and which items not to. A unique set of programming for Canadian shipments would need to be created to identify these items.

An additional concern is if Canadian goods would still benefit from the 30.37(a) exclusion of goods valued under $2500 per schedule B (and no license required) to maintain consistency with other AES filing requirements as there are shipments to other countries under a NLR scenario where an AES filing may not be required. Not allowing for this provision would even further complicate the AES reporting requirements. In addition, this will not cover issues such as technology transfers, which do not require an AES filing regardless if NLR.

If BIS wishes to gain greater visibility a solution may be to require reporting on a semi –annual basis of exports that fall into this category, similar to what is currently completed under some sections of license exception ENC. This would take the burden off the freight forwarders and limit the complexity of reporting to AES, as well as requiring any redesign to the AES system.

Conclusion

We appreciate the opportunity to comment on these proposals by BIS. In short, the attempt at harmonization between the ITAR and EAR will create additional burdens to those exporters who have traditionally fallen under the EAR exporting requirements. These burdens are both financial costs for reprogramming as well as operational costs by creating additional risks for error, while providing little additional national security protection. For those exporters already familiar with EAR and ITAR requirements, the differences are minimal enough to keep each process in place without major redesign or confusion.