

## RECORD OF PUBLIC COMMENTS

### PROPOSED RULEMAKING: *EXPORT ADMINISTRATION REGULATIONS (EAR): HARMONIZATION OF THE DESTINATION CONTROL STATEMENTS*

Publication in the *Federal Register*: May 22, 2015 (80 FR 29551)  
Comments due July 6, 2015

	<b>SOURCE</b>	<b>SIGNER(S) OF COMMENT</b>	<b>DATE</b>	<b>NUMBER OF PAGES</b>
1.	<b>Vectron International</b>	<b>Ram Arvikar</b>	<b>6/3/15</b>	<b>2</b>
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3.	<b>UPS</b>	<b>Cheryl Hostetler</b>	<b>7/3/15</b>	<b>4</b>
4.	<b>Anonymous</b>	<b>Anonymous</b>	<b>7/6/15</b>	<b>2</b>
5.	<b>General Electric Company</b>	<b>Kathleen L. Palma</b>	<b>7/6/15</b>	<b>4</b>
6.	<b>Federal Express Corporation (FedEx Express)</b>	<b>Courtney E. Felts</b>	<b>7/6/15</b>	<b>4</b>
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9.	<b>American Association of Exporters and Importers</b>	<b>Marianne Rowden</b>	<b>7/6/15</b>	<b>2</b>
10.	<b>Airbus Group N.V.</b>	<b>Pierre Cardin</b>	<b>7/6/15</b>	<b>2</b>
11.	<b>Max-Viz, Inc.</b>	<b>Jacquenette J. McIntire</b>	<b>7/6/15</b>	<b>3</b>
12.	<b>The Chemours Company</b>	<b>Pedro de la Torre</b>	<b>7/6/15</b>	<b>2</b>
13.	<b>National Customs Brokers and Freight Forwarders Association</b>	<b>Geoffrey C. Powell</b>	<b>7/6/15</b>	<b>3</b>
14.	<b>Electronic Design Automation Consortium (EDAC)</b>	<b>Laurence K. Disenhof</b>	<b>7/6/15</b>	<b>3</b>
15.	<b>United Technologies</b>	<b>Christine Lee</b>	<b>7/6/15</b>	<b>3</b>

<b>16.</b>	<b>ASML US, Inc.</b>	<b>Steve Lita</b>	<b>7/6/15</b>	<b>2</b>
<b>17.</b>	<b>Semiconductor Industry Association (SIA)</b>	<b>Cynthia Johnson</b>	<b>7/6/15</b>	<b>3</b>
<b>18.</b>	<b>National Association of Manufacturers (NAM)</b>	<b>Linda Dempsey</b>	<b>7/6/15</b>	<b>3</b>
<b>TOTAL</b>				<b>56</b>

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

Sent: Wednesday, June 03, 2015 8:13 AM

To: PublicComments

Subject:Public Comment 1. R Arvikar. 2015-6-3\_DCS

Comments on the Proposed Rule related to Harmonization of the DCS:

The harmonization of the DCS which will result in the use of the same language for both EAR-controlled and ITAR-controlled exports is a step in the right direction and will minimize confusion as to which DCS must be used depending on the jurisdiction.

The intent of the DCS language is to communicate to the receiving party that the commodities are controlled under U.S. regulations and are intended for use only by the end-user and ultimate destination indicated on the documents. However we believe that there should be some way to ensure that this information is communicated to all parties involved and not just to the first party the items will be exported to. Often the export occurs to a Sales agent/reseller in the foreign country who will first receive the shipment who may not be the actual end-user and may be in a country that is not the ultimate destination. While the STA license exception does ensure that such communication does occur to all consignees involved, simply annotating the DCS on accompanying documentation when the items are exported may fail to communicate the intent of the DCS language to all parties in the transaction. A requirement that the all parties (consignees involved in the transaction between the U.S. exporter and the ultimate end user) should somehow be communicated to about the U.S. regulations restricting further export/transfer to anyone or to any country other than the end-user and ultimate destination should be considered in the final export process.

The proposed rule also implies that the DCS and the ECCN identification (for items in the 600 series or 9X515 items) must be shown on the commercial invoice and contractual documentation, when such contractual documentation exists. Generally the export documentation includes the commercial

invoice and the bill of lading(AWB, packing slip etc.) and may not include the “contractual documentation”. Contractual documentation generally includes the quotation provide to the customer (pricing delivery etc.) and the actual PO received from the customer in response to the quote provided. Such documents (quote or the PO from customers) may not be included in the shipment, so BIS should clarify if the DCS and ECCN identification must be required on the contractual documents in case such documents do not accompany the actual shipment. In our experience notification to the customer that the items are export controlled and their classification information is important to be provided when customers first enquire about a product and indicate their intention to go forward with the procurement. Invoices are usually filed by the Finance function that is responsible for payment and they may not take any action on this information (e.g. restriction on further re-sale/transfer to the end-user); however explicitly stating export restriction on the contractual documents would be a more effective way to communicate the importance of compliance with the U.S. export regulation and use of the items.

Thank you for allowing us the opportunity to provide the feedback.

Ram Arvikar

Dir. Global Quality & Compliance

Vectron International

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

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 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.**

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

**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)*

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

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

**Comments by**

**UPS**

**June 29, 2015**

**BIS ID# BIS-2015-0013  
RIN #0694-AG47**

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):  
HARMONIZATION OF THE DESTINATION  
CONTROL STATEMENT**

**Comments by UPS  
June 29, 2015**

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

UPS is the world's largest package delivery and supply chain services company, offering the most extensive range of options for synchronizing the movement of goods, information and funds. UPS serves more than 220 countries and territories, and employs over 408,000 people worldwide. We deliver approximately 15 million packages and documents each day.

UPS expresses significant concerns below and requests clarification but also wishes to note that in general UPS supports BIS' efforts to harmonize the Destination Control Statements and thereby reduce the burden on exporters, promote consistency, improve compliance, and ensure the regulations are achieving the intended purpose for use under the U.S. Export Control System, specifically under the transactions "subject the ITAR" and "subject to the EAR." UPS recognizes the key role this harmonization will play to further facilitate the implementation of the President's Export Control Reform Initiative.

As has customarily been done for past NPRMs and due to the impact to the entire trade community (exporters, freight forwarders, agents, and carriers), UPS recommends these changes be thoroughly reviewed with the public well in advance of publication of the Final Rule. A public comment period with relevant meetings will provide the necessary fora to engage with the government and discuss mutually-beneficial alternatives to accomplish the government's objectives without putting any sector of the trade at an inappropriate disadvantage. UPS also requests that BIS strongly consider setting the implementation date 180-240 days after publication of the Final Rule to allow sufficient time for all effected parties to make the required changes to system programming, document revision and related procedural tasks.

In consideration of the effects the proposed change may have on the time sensitive nature of our business, UPS respectfully submits the following comments on certain provisions of the proposed change:

**NPRM Page 29551, 15 CFR 758.6**

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

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

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

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

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

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

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

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

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

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

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

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

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

# PUBLIC SUBMISSION

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<b>Tracking No.</b> 1jz-8jts-o0jd
<b>Comments Due:</b> July 06, 2015
<b>Submission Type:</b> Web

**Docket:** BIS-2015-0013

Revisions to the Export Administration Regulations (EAR): Harmonization of the Destination Control Statements

**Comment On:** BIS-2015-0013-0001

Export Administration Regulations: Destination Control Statements; Harmonization

**Document:** BIS-2015-0013-DRAFT-0004

Comment on FR Doc # 2015-12298

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## Submitter Information

**Name:** Anonymous Anonymous

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## General Comment

The first sentence of the proposed destination control statement in 758.6(a)(1) seems to impose an additional requirement to identify the end user(s) on the commercial invoice and, to the extent it exists, the contractual documentation. However, in many instances, the end user(s) normally would not be identified on the commercial invoice or contractual documentation. A requirement to list all of the end users on the commercial invoice or contractual documentation would impose an excessive burden on the exporter, especially in the case of a shipment to a distributor or similar consolidated shipment.

In addition, many exporters of all sizes place the destination control statement on the commercial invoice and other documents for every export shipment, even when it is not required. The main reasons for doing this are: (1) As a trade compliance best practice, exporters wish to alert or remind their customers of the EAR requirements; and (2) To ensure the destination control statement appears on the necessary documents when it is required, it is placed all commercial invoices whether required or not as a precaution to avoid an inadvertent violation. Indeed, many times the exporters business system is programmed to print the destination control statement on the commercial invoice and other documents for exports of all EAR items, including those classified as EAR99. The apparent requirement to list all end user (s) on the commercial invoice or contractual documentation will discourage exporters from continuing or adopting this sensible practice.

With the above in mind, our recommendation is to make the following revision to the first sentence of the proposed destination control statement: Insert ultimate consignee or

immediately before end-user herein identified so the first sentence reads 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 ultimate consignee or end-user herein identified.

Thank you for your consideration.

Submission Type: Web  
Comments Due: July 06, 2015

PUBLIC SUBMISSION

Revisions to the Export Administration Regulations (EAR): Harmonization of the Destination Control Statements  
Document: BIS-2015-0013-0013

Export Administration Regulations: Destination Control Statements: Harmonization  
Comment On: BIS-2015-0013-0013-0001

Document: BIS-2015-0013-DRAFT-0504  
Comment on FR Doc # 2015-15298

### Submitter Information

Name: Anonymous Anonymous

### General Comment

The first sentence of the proposed destination control statement in 758 (a)(1) seems to impose an additional requirement to identify the end user(s) on the commercial invoice and to the extent it exists, the contractual documentation. However, in many instances, the end user(s) normally would not be identified on the commercial invoice or contractual documentation. A requirement to list all of the end users on the commercial invoice or contractual documentation would impose an excessive burden on the exporter, especially in the case of a shipment to a distributor or similar consolidated shipment.

In addition, many exporters of all sizes place the destination control statement on the commercial invoice and other documents for every export shipment, even when it is not required. The main reasons for doing this are: (1) As a trade compliance best practice, exporters wish to alert or remind their customers of the EAR requirements; and (2) To ensure the destination control statement appears on the necessary documents when it is required, it is placed on all commercial invoices whether required or not as a precaution to avoid an inadvertent violation. Indeed, many times the exporters business system is programmed to print the destination control statement on the commercial invoice and other documents for exports of all EAR items, including those classified as EAR99. The apparent requirement to list all end user(s) on the commercial invoice or contractual documentation will discourage exporters from continuing or adopting this sensible practice.

With the above in mind, our recommendation is to make the following revision to the first sentence of the proposed destination control statement: Insert ultimate consignee or



GE

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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

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### 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 where 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](mailto:kathleen.palma@ge.com) or Laura J. Molinari at (202) 637-4401 or by email at: [laura.molinari@ge.com](mailto:laura.molinari@ge.com)

Sincerely,

A handwritten signature in blue ink that reads "Kathleen Lockard Palma". The signature is written in a cursive style.

Kathleen Lockard Palma  
International Trade Compliance



ELECTRONIC SUBMISSION VIA  
WWW.REGULATIONS.GOV

July 6, 2015

Regulatory Policy Division  
Bureau of Industry and Security  
U.S. Department of Commerce  
14<sup>th</sup> Street and Pennsylvania Avenue NW  
Washington, DC 20230

Office of Defense Trade Controls Policy  
Directorate of Defense Trade Controls  
U.S. Department of State  
2401 E Street NW  
Washington, DC 20522-0112

**RE: Notices of Proposed Rulemaking;**  
**RIN 0694-AG47, EAR: Harmonization of the Destination Control Statements**  
**RIN 1400-AC88, ITAR: Amendments to the Destination Control Statement**

Dear Sir or Madam:

Federal Express Corporation (FedEx Express) appreciates the opportunity to submit the following comments in response to the Notices of Proposed Rulemaking (NPRM) of the U.S. Department of Commerce, Bureau of Industry and Security (BIS) and the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) regarding proposed amendments to the Export Administration Regulations (EAR) and the International Traffic at Arms Regulations (ITAR), respectively, to harmonize the regulatory requirements associated with the Destination Control Statement (DCS). FedEx Express supports the efforts of the Administration to refine and simplify the U.S. export control regulatory scheme via the Export Control Reform Initiative. FedEx Express further supports the goals of BIS and DDTC, with the above-referenced NPRMs, to harmonize the EAR and ITAR provisions that are intended to achieve the same purpose. To assist in this process, FedEx Express offers some specific comments below for BIS and DDTC to consider in their respective rulemakings. Given the interrelatedness of these companion rulemakings, FedEx Express has consolidated its comments on both NPRMs into this single submission, which it is filing in both the BIS and DDTC dockets.

#### **I. Company Information**

FedEx Express is the world's largest express transportation company and offers a wide range of express services for the time-definite transportation of documents, packages and freight throughout the world. FedEx Express provides its services to approximately 220 countries and territories. It is the corporate policy of FedEx Express to comply with all applicable laws and regulations that pertain to export controls and related concerns, such as defense trade controls and economic sanctions, while providing expeditious service needed in the time-sensitive global economy and global real-time supply chain logistics.

## **II. Preliminary Statement Regarding “Contractual Documentation”**

BIS states in its NPRM that the “export control documents” referenced in its proposal include the commercial invoice and “contractual documentation.” When BIS refers to “contractual documentation,” it is fairly clear that they mean the contract between an exporter and the consignee rather than the contract between the shipper and the carrier (*i.e.* the carrier’s air waybill). FedEx Express offers its comments to the BIS NPRM under this premise.

FedEx Express also requests that the language in the BIS NPRM be amended to clearly and unmistakably articulate that the air waybill is ***not included*** in the definition and/or meaning of “contractual documentation.” Such clarification would remove any doubt or ambiguity concerning the specific export control documents impacted by the proposals. However, if the air waybill is to be included in the “contractual documentation” definition and/or meaning, then FedEx Express would have many additional comments regarding the operational and financial impact of providing mandatory space for this on the various air waybills used by FedEx Express customers, as well as the other potential changes contained in the BIS NPRM.

## **III. DCS Documentation Requirements -- Further Divergence in EAR and ITAR**

While the regulations proposed by DDTC and BIS would harmonize the DCS language required by ITAR and EAR, the proposals do not harmonize the requirements imposed by the regulations in any other meaningful way. In fact, the impact of the proposed regulations is more likely to lead, in application, to further divergence in the practical documentation requirements depending upon whether a shipment contains an item controlled by ITAR. To this point, FedEx Express echoes a concern of the American Association of Exporters and Importers (AAEI) about the potentially detrimental compliance effects of the BIS and DDTC inconsistencies in the proposed implementation of the DCS changes. (See, AAEI Comments on BIS NPRM, June 30, 2015, at page 2.) FedEx Express would expand that concern as applicable to all parties in a U.S. export shipping transaction, including the transporting carrier.

### **A. EAR Proposed Change; 15 C.F.R. §758.6**

This proposal would require incorporation of the DCS as an integral part of the commercial invoice and contractual documents. However, the BIS NPRM removes the requirement to incorporate the DCS as a part of the air waybill. FedEx Express agrees that such removal is the correct direction. The purpose of the DCS is to alert parties outside of the U.S. who receive an item that the item is subject to U.S. export controls. The contractual documents and commercial invoice are intended to detail the entirety of the transaction between the parties that are engaging in the transfer of the items. Incorporating the DCS into those documents is much more likely to achieve the intended purpose of the DCS than is including that information on the air waybill. Including the DCS as a part of the air waybill will do little, if anything, toward the regulatory goal of the DCS.

The other proposed changes in the BIS NPRM concern revisions to require the following information on export control documents: the Export Control Classification Number(s); the identification of the country of ultimate destination; and the license number or export authorization symbol. FedEx Express has no issues with these revisions *provided that* the air waybill is not included in the definition and/or meaning of “contractual documentation,” (see Section II, supra) and therefore, by extension, export control documents.

B. ITAR Proposed Change; 22 C.F.R. §123.9

This proposal not only does not remove the requirement to incorporate the DCS as an integral part of the air waybill, but it also has additional requirements to incorporate the country of ultimate destination, end-user, and license or other approval number or exemption citation applicable to each item contained in a shipment. This additional information is not required under the rule proposed by BIS.

IV. ITAR Proposed Changes; 22 C.F.R. §126.4

FedEx Express supports the proposed changes in the DDTC NPRM relating to expanding the scope and type of export and temporary import shipments eligible for ITAR licensing exemptions under §126.4. This expanded list now includes: all export shipments and not just temporary export shipments; and export and temporary import shipments made to or on behalf of the U.S. Government or U.S. Government “contractor support personnel.” Nevertheless, these positive, export control reform-progressing steps are substantially undercut by the new certification statement requirement included in the DDTC NPRM.

First, for U.S. export shipments made pursuant to §126.4(a)(1), having the new certification statement required to be printed on the air waybill is simply not necessary. The certification can be made on the Commercial Invoice, which is used for customs clearance at the destination port of entry. Mandating a certification to appear on the air waybill would be extremely burdensome as it will require costly modifications and adjustments to carriers’ software systems, third party shipping software providers, and related automation and reporting elements.

Second, the proposal for this new certification statement to “be presented [in writing] at the time of export to the appropriate Port Directors of U.S. Customs and Border Protection” creates a burdensome and redundant compliance requirement. All §126.4(a)(1) shipments already require an Electronic Export Information filing and the associated mandatory Internal Transaction Number for U.S. export approval. Moreover, in most transactions, the U.S. Principal Party in Interest will be the U.S. Government point of contact. Further, the cost of adding this operational export approval step would be high and could create additional holds at the port(s) of exit.

**V. Air Waybill Space Limitation**

A number of the proposed regulatory changes discussed above involve putting additional information onto an air waybill. However, the space available for such additions to the air waybill is limited. This statement is especially true for the air waybills utilized by express carriers since most of that available space is taken up by information, required by regulation and industry standards, related to the carriage and delivery of the shipment. It can be difficult to fit the DCS alone into the remaining space without resorting to an extremely small font, making the information nearly impossible to read and thereby negating the regulatory intent. The addition of even a single instance of a country of ultimate destination, end-user, and license or other approval number or exemption citation information could be unduly burdensome. If a shipment were to contain multiple items with different countries of ultimate destination, end-user, and license or other approval number or exemption citation information, the task would quickly become unworkable and impossible.

**VI. Conclusion**

FedEx Express reiterates its statement at the outset of these comments that it supports the Administration's efforts with the Export Control Reform Initiative and the specific U.S. export regulatory harmonization efforts of BIS and DDTC with their companion Notices of Proposed Rulemaking. FedEx Express appreciates the opportunity to submit the above comments. Having U.S. international trade stakeholders work together toward a less confusing and less onerous U.S. export control regulatory scheme only serves to promote a shared goal of strengthening export control compliance.

We are happy to discuss our points further as these rulemaking processes continue. Please feel free to contact me or Alan Black, FedEx Express Global Trade Services, U.S. Regulatory Compliance Manager, if you have any questions concerning these comments.

Sincerely,



Courtney E. Felts  
Senior Counsel  
Legal and Regulatory Affairs  
Federal Express Corporation



July 6, 2015

*Sent via email to: [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov) and [DDTCTPublicComments@state.gov](mailto:DDTCTPublicComments@state.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

and

Office of Defense Trade Controls Policy  
Directorate of Defense Trade Controls  
Bureau of Political Military Affairs  
Department of State  
Washington, DC 20522

**Subjects: RIN 0694-AG47 - Export Administration Regulations (EAR): Harmonization of the Destination Control Statements**

**and RIN 1400-AC88 International Traffic in Arms Regulations (ITAR): Revision to the Destination Control Statement**

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 these proposed rules which would revise the destination control statement in the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR) to harmonize the statement required for the export of items subject to both sets of regulations.

The proposed revised EAR/ITAR Destination Control Statement (DCS) is: “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 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”

We note that the proposed DCS includes the phrase: “for use by the end-user herein identified.” Currently, commercial and shipping invoices do not require the identification of an “end-user.” They generally identify intermediate and ultimate consignees, and bill-to parties. In many cases, it may be (i) impractical or impossible to identify all potential end-users or (ii) contrary to existing customer confidentiality agreements. This is particularly true in the case of shipments of spare parts and accessories, which are delivered to warehouses and distribution centers overseas (identified, for example, as the ultimate consignee on an export license) for eventual use by many potential customers (identified as end-users) in a country or region. Also, due to the frequent need to rebalance global stock levels, an item may be further reexported to another country with a completely different set of end-users.

The U.S. Census Bureau recognized these difficulties when it modified the recently added data element “Ultimate Consignee Type” to contain an “Other/unknown” option, in response to industry comments. See 15 C.F.R. 30.6(a)(28).

We would like BIS and DDTC to clarify whether the use of the term “end-user” in the proposed language implies the creation of a new regulatory requirement to identify all potential end-users on all documents for which a DCS is required.

Further, the EAR proposal changes the scope of the documents requiring a DCS under the EAR. Currently, EAR 758.6 includes “the invoice ... bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad.”

The proposed EAR rule would change the DCS requirement to apply to “the commercial invoice and contractual documentation, when such contractual documentation exists, whenever items on the Commerce Control List are exported”, but without any limitation to documents that accompany the goods. CompTIA members are not supportive of the addition of “contractual documentation” which is undefined, requires clarification, and should be limited to documents that accompany the shipment should the Department of Commerce pursue this proposal. One CompTIA member estimates that in its current state the proposed requirement would require amendments to more than 650,000 master agreements, statements of work and purchase orders.

Should the Department of Commerce insist on retaining “contractual documentation” in the final rule, CompTIA proposes that the DCS be included with contractual documentation *when such contractual documentation accompanies an export to the ultimate destination and ultimate consignee*, as follows:

The exporter shall incorporate the following information as an integral part of the commercial invoice ~~when such contractual documentation exists~~ which accompanies a physical shipment from its point of origin in the United States to the ultimate consignee or end-user abroad.

The proposed rulemaking requires a DCS to be included whenever any item on the CCL is exported. Because exports are defined to include both tangible and intangible transfers, this requirement can be construed to require the DCS to be included on both physical shipments as well as intangible transfers (*e.g.*, when software is downloaded). CompTIA proposes that the requirements should be limited to physical (tangible) exports only.

The ITAR’s requirements for documents requiring a DCS, however, would not change, and would continue to apply to the: “bill of lading, air waybill, or other shipping document, and the purchase documentation or invoice whenever defense articles are to be exported, retransferred, or reexported pursuant to a license or other approval under this subchapter.” We suggest that, if harmonization is desired, a consistent and clear description of the documents requiring the DCS be adopted into both sets of regulations, and that the requirement be explicitly limited to such documents as accompany the shipment. The proposed formulations would potentially apply the DCS to various contractual documents that will never accompany the shipment of goods, and where the inclusion of a DCS would be counter-intuitive, confusing, and provide no impact on the risk of diversion.

We also question whether the first line of the proposed DCS would always be factually correct. The proposed DCS states: “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”. It appears the intent is to advise that the items are to be exported from the United States only to the listed country of ultimate destination – *i.e.*, their first export from the United States. But, as reflected by the second sentence, CCL items may be authorized by the U.S. Government for resale, reexport or transfer to many more countries and end users than identified on a commercial invoice or contract. For example, CCL items that are NLR (no license required) items to most destinations, such as items controlled for antiterrorism reasons (AT1) only, are generally able to be exported and reexported without a license or other U.S. authorization to most countries. An estimated 95% of all U.S. exports are EAR99 or AT only controlled, meaning they can be reexported to any destination except a handful NLR.

While we understand the intent of the first sentence of the proposed DCS, and why it makes sense for an ITAR or EAR license-required export, a strict reading suggests that an item is

authorized under the EAR for export to only the specified country set forth on a commercial invoice. This implies that the particular goods are subject to some sort of inherent restriction due to having been exported from the United States. While this makes sense for items that are subject to ITAR licenses; in many cases involving EAR items, this is simply not true and could confuse foreign customers who are not well-versed in U.S. export regulations and the concept of a “reexport.”

The second sentence attempts to address this by including the phrase “or as otherwise authorized by U.S. law and regulations,” but this is more likely to cause confusion than the current DCS with respect to items that can be reexported NLR or under a License Exception, and lead recipients erroneously to believe that all US-origin items require a specific reexport license. Some member companies have tried to use phrases in export control contractual clauses that limit reexports “unless otherwise approved in writing by the U.S. government or authorized by U.S. law or regulation”, and while such phrases are understood by sophisticated reexporters, they inevitably lead to questions about why a reexport license is required, when no export license was required in the first place.

We applaud the U.S. government’s attempt to simplify and improve the export clearance provisions of the EAR and ITAR, but some of the elements proposed for introduction to the EAR are really appropriate only for ITAR or EAR license required/9X515/600 Series shipments. Thus, we see no compelling reason for a change to the current DCS set forth in the EAR and are skeptical that the proposed change would create less uncertainty among U.S. exporters and foreign recipients, nor would it reduce the burden on exporters, improve compliance or ensure the regulations are achieving their intended purpose. For those who find it useful, the current EAR language authorizing exporters to add to the DCS without contradicting the terms is more than sufficient.

Indeed, the proposed change would likely increase the regulatory burden on most U.S. exporters and require expensive structural changes to CompTIA member companies’ enterprise software systems from which commercial invoices are generated, without any apparent enhancement to compliance. These burdens would be particularly acute for companies that do not export 9x515 or “600 series” items, and it is perhaps more appropriate that the proposed DCS, if introduced at all, should be limited to 9X515 and “600 series” items, since they are the most likely EAR items that would be shipped alongside ITAR items. While having a secondary DCS for these items would impose a burden on some exporters, this is not likely to affect the majority of exporters of CCL items, since the vast majority of those are AT-Only items or items that can be shipped NLR or under License Exceptions to most destinations. This appears to be a case of harmonization for the sake of harmonization, and would appear to have the potential to create substantial confusion among recipients, impose significant burdens without a correspondingly significant benefit to the government.

Finally, any final rule setting forth changes to DCS requirements should include an implementation period sufficient to allow exporters sufficient time to modify language on commercial invoices and other documentation. While some exporters include a DCS through automated means, such processes do not currently include pre-printing the DCS on contractual documentation much less on software licenses that accompany downloads. As noted above, the volume of documents that would be required to include the DCS is voluminous. As such, CompTIA suggests an implementation period of at least 180 days should the proposed rulemaking be published as a final rule.

Thank you once again for the opportunity to provide comments on these proposed rules.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ken Montgomery".

Ken Montgomery  
Vice President, International Trade Regulation & Compliance



July 6, 2015

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

**Subject: RIN 0694-AG47, Export Administration Regulations (EAR):  
Harmonization of the Destination Control Statements**

**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 on proposed revisions by the Bureau of Industry and Security (“BIS”) to the Destination Control Statement (“DCS”). We applaud BIS and the Directorate of Defense Trade Controls (“DDTC”) for working together on harmonized DCS text that excludes specific Export Administration Regulations (“EAR”) and International Traffic in Arms (“ITAR”) language. Boeing recommends that the requirements for placement of the DCS be harmonized as well. These two changes, the harmonization of DCS text and associated requirements, have the potential to greatly reduce the regulatory burden on exporters for physical shipments. In addition, we recommend clarification with regard to EAR99 items, intangible exports, and No License Required (“NLR”) shipments, as discussed below.

**1. Destination Control Statement and Associated Requirements**

Boeing welcomes the proposed harmonized DCS text that excludes EAR and ITAR-specific language and can, therefore, be used for shipments containing items that fall under both regulations. However, requirements for placement of the DCS have not been harmonized, and there is language in both proposals that requires clarification.

For example, the BIS proposal uses the term “contractual documents” (a term not found in ITAR Part 123.9) with no reference or definition. One could interpret the term to mean the documents that address the legal obligations between the parties



to the transaction, *i.e.*, the governing contract. However, contracts do not travel with shipments. They may have been in place for years and are usually executed before orders are actually shipped. Amending contracts to include a DCS would be both difficult and would not meet the U.S. Government's stated objective of alerting shipment recipients of classifications and requirements.

Another difference in the DCS requirements is that BIS uses the term "commercial invoice" but DDTC uses the term "invoice". For some exporters, the term "invoice" refers to the final billing document that moves electronically, whereas the commercial invoice moves with the freight.

Shipping is a complex process where, notwithstanding regulatory requirements, documents vary by company and by transport mode (*e.g.*, air, ocean, *etc.*). Exporters generate commercial invoices, but freight forwarders and/or carriers generate bills of lading and air waybills. Imposing requirements on exporters that they must then flow to other parties to a shipping transaction adds complexity and compliance risk. Boeing recommends that the regulations not prescribe the specific document that must include the DCS, but instead require that it appear on one document that accompanies the item to the ultimate destination. Which document will contain the DCS should be determined by the exporter in light of its shipping practices. To ensure harmonization, we have recommended this approach to DDTC as well.

***Recommendation:***

Revise §758.6(a) to simplify the documents required to contain the DCS and to harmonize requirements with the ITAR as follows:

(a) The exporter **must**<sup>1</sup> ~~shall~~ incorporate the following information as an integral part of the **a document that accompanies the shipment to the ultimate destination (the document can be the commercial invoice, packing slip, bill of lading, air waybill, or other shipping or purchase and contractual documentation)**, ~~when such contractual documentation exists~~, whenever items on the Commerce Control List are exported, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR):

**2. EAR99 Items**

In the Supplementary Information, BIS states, "Consistent with the current destination control statement provision, this rule would not require an EAR destination control statement for export of **EAR99** items or items exported under License Exception BAG or GFT (emphasis added)". The current text of §758.6(a) references EAR99 items, specifically: "The DCS is required for all exports from the

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<sup>1</sup> "must" is used to align with ITAR text.



United States of items on the Commerce Control List **that are not classified as EAR99**, unless they may be made under License Exception BAG or GFT (emphasis added)”.

However, the proposed text of §758.6(a) does not mention EAR99 items. Items, “on the Commerce Control List” mean those with a 5-digit ECCN such as 9A991. But, EAR99 is referenced at the end of each entry on the CCL. Therefore, a plain reading could conclude that EAR99 is on the CCL *for this purpose*.

***Recommendation:***

Retain the phrase “excluding EAR99 items” in the text of §758.6 for maximum clarity.

**3. Intangible Exports**

The proposed revision to §758.6 requires a DCS, “whenever items on the Commerce Control List are exported”. “Items”, per EAR Part 772, means, “commodities, technology and software”. The current text of §758.6 requires a DCS for all exports from the United States of items on the CCL but also provides that the DCS must be on documents that accompany, “the shipment”. “Shipment” is not defined in EAR Part 772. The Merriam-Webster online dictionary definition is:

- : A load of goods that are being sent to a customer, store, *etc.*
- : The act of sending something to a customer, store, *etc.*

“Single shipment” is defined in Part 772<sup>2</sup> and refers to movement by carrier. Use of the term “shipment” considered with its definition as applying to goods, can lead to an interpretation that the existing DCS requirement applies to physical shipments only. Since the term “shipment” is now removed, it is unclear whether the new DCS provision captures exports of technology in intangible form. Such exports are often made via electronic transmission, in discussions, presentations, *etc.* and not via physical shipments<sup>3</sup>.

When technology exports require a license, other EAR requirements serve to notify ultimate consignees of classification and requirements such as Letters of Assurance and license conditions. Clarification of this point is important and can be achieved by qualifying the requirement as covering “tangible” items on the CCL.

***Recommendation:***

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<sup>2</sup> *Single shipment.* All items moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier, even if these items will be forwarded to one or more ultimate consignees. Items being transported in this manner shall be treated as a single shipment even if the items represent more than one order or are in separate containers.

<sup>3</sup> Of course export of “technology” on tangible media such as CDs would require the use of a DCS.



Mr. T. Mooney  
Page 4

Revise the text to clarify that only tangible exports are subject to the DCS requirement. Specifically:

(a) The exporter ~~must shall~~ incorporate the following information as an integral part of the a document that accompanies the shipment to the ultimate destination (the document can be the commercial invoice, packing slip, bill of lading, air waybill, or other shipping or purchase and contractual documentation), ~~when such contractual documentation exists,~~ whenever tangible items on the Commerce Control List that are not classified as EAR99 are exported, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR):

#### **4. No License Required Shipments**

In the Supplementary Information, BIS states that, “. . . in the context of this EAR paragraph “authorized” would also include exports that were designated under No License Required (NLR)”. This would be useful information to include in §758.6.

#### ***Recommendation:***

Promulgate that the term “authorized” would also include exports that are designated under No License Required (NLR) in a clarifying note to §758.6.

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](mailto:christopher.e.haave@boeing.com).

Sincerely,

A handwritten signature in cursive script that reads "Christopher Haave".

Christopher Haave  
Director,  
Global Trade Controls



July 6, 2015

Via E-Mail: [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov).

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

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

Dear Sir or Madam:

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

## **I. Introduction**

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

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

## **II. Export Control Reform Initiative**

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

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

### **III. Inconsistencies between ITAR and EAR Destination Control Statements Remain**

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

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

### **IV. Inconsistencies in Implementation Raises Chances of Export Violations**

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

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

### **V. Conclusion**

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

Sincerely,



Marianne Rowden  
President & CEO



## Request for Comments: Harmonization of the Destination Control Statement

RIN 0694-AG47

To the Attention of [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov) RIN 0694-AG47

Airbus Group N.V. offers the following comments in response to RIN 0694-AG47 pertaining to the Harmonization of the Destination Control Statement:

In consideration that sub-categories of a same ECCN may not be subject to the same controls (for instance 9A610.x and 9A610.y1), we suggest that the text be amended to request not only the ECCN, but also the corresponding subcategory.

In addition, there is no requirement to include a Destination Control Statement for end items that include EAR 500/ 600 De Minimis content. This creates a risk related to restrictions on the use of De Minimis for D5 countries.

For example, a non-U.S. prime may receive a system or sub-assembly from an Asian or European supplier for integration into an end-item. That system or sub-assembly may contain EAR 500/600 series De Minimis content from another supplier. The non-U.S. prime may never know about the EAR 500/600 series content since there is no requirement for the re-exporter to disclose this information, which may raise a compliance issue when considering further retransfer to D5 countries.

Proposed language:

758.6

.....

***(2) The ECCN, including subcategory, for each 9x515 or “600 series” items being exported, regardless of whether these items are subject to De Minimis***

***(b) If the 9x515 or 600 series items have been subject to De Minimis, add “This item contains EAR 500/600 series content.”***

In order to align with the European requirements, and facilitate the end-to-end compliance of non-US entities, we would like to propose that BIS considers requesting the ECCN, including subcategory for all CCL items and not only for 9x515 and 600 series items.

In this case, the proposed language would be:

758.6

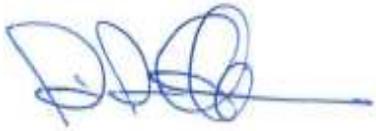
.....

*(2) The ECCN, including subcategory, for each ~~9x515 or "600 series"~~ all items being exported, subject to the EAR.*

*(b) If 9x515 or 600 series items have been subject to De Minimis, add "This item contains EAR 500/600 series content."*

For further information, please contact Corinne Kaplan at 703-466-5741 or [Corinne.Kaplan@eads-na.com](mailto:Corinne.Kaplan@eads-na.com).

Respectfully,



Pierre Cardin

SVP, Group Export Compliance Officer



Alexander Groba

Coordinator U.S. Regulations

## REQUEST FOR COMMENTS

### **REGARDING AMENDMENT TO THE INTERNATIONAL TRAFFIC IN ARMS (ITAR) REGULATIONS: REVISION OF U.S. MUNITIONS LIST CATEGORY XII**

**RIN 1400-AD32**

**TO THE ATTENTION OF E-MAIL: [DDTCPublicComments@state.gov](mailto:DDTCPublicComments@state.gov)**

Max-Viz, Inc. offers the following comments below in response to RIN 1400-AD32, pertaining to changes in the controls on Category XII (fire control, range finder, optical and guidance and control equipment) of the U.S. Munitions List (USML).

### **RE: REVISION TO THE EXPORT ADMINISTRATION REGULATIONS (EAR): 15 CFR PARTS 734, 740, 742,744, 772 AND 774.**

**RIN 0694-AF75**

**TO THE ATTENTION OF E-MAIL: [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov).**

Max-Viz, Inc. offers the following comments below in response to RIN 0694-AF75 pertaining to Revision to the Export Administration Regulations (EAR): Control of Fire Control, Range Finder, Optical, and Guidance and Control Equipment the President Determines No Longer Warrant Control under the United States Munitions List (USML).

#### Comments:

Max-Viz, Inc. is a small Aerospace company focused on providing Enhanced Vision Systems for civil aircraft. We have many concerns regarding the proposed changes to **ITAR 22 CFR §120-130** and **EAR 15 CFR §730-774** and their effects on our ability to remain competitive in the global market; our ability to sell, export and re-export Max-Viz, Inc. Enhanced Vision Systems known in the regulations as Thermal Imaging Cameras.

While we support the **Export Control Reform Initiative (ECRI)**, clarification and a tempered approach to the commercial effects of over regulation is needed to ensure that the proposed rule changes achieve the stated goals of the **ECRI**.

Max-Viz, Inc. cameras are classified by the Department of State via CJ determination as ECCN 6A003 Camera systems. They are designed, developed and manufactured for civil use and are under the Department of Commerce control.

Regarding the proposed regulatory changes for ECCN 6A003 Cameras, and Camera systems:

- We oppose changes to 740.16(a,b) License exception APR that would restrict the use of 6A003 items to and among Country Group A:1 and cooperating countries for products, cameras and camera systems with greater than 111,000 detector elements. Some Max-Viz, Inc. products with ECCN 6A003 currently contain less than 111,000 and some contain more, such as 327,680 detector elements. All are designed for civil use. Restricting use and export would harm our company's ability to stay competitive in the global market place.
- We oppose changes to expand 744.9 end-use and end-user requirement for all of the 6A003 items. This would require a license to export, re-export or transfer (in-country) items. If we cannot determine if our camera sent for a stocking order to an authorized integrator company (aircraft manufacturer) will be incorporated into military aircraft at the time we ship it, a license would be required for all shipments. This change would make our "authorized company" integrator license useless, and result in an increase in Export License applications. Any delays in that process delay shipments, and cause US companies such as Max-Viz, Inc. to become less competitive in the global market place for 6A003 thermal imaging cameras.

- We oppose ECCN 6D003.c. Software that is designed for 6A003 cameras incorporating IRFPA's designated under a worldwide Regional Stability (RS) control is going backwards in time and would require a license to export everywhere including Canada. This would result in huge increase of export license applications, with unnecessary burden on a small company such as Max-Viz, Inc.
- We are very concerned and unclear about new ECCN 6D991 Software controls that are specially designed for "Development", "Production" or "Use" of 6A003 Cameras and Camera systems. We cannot determine if it affects our finished product or refers to the Software contained within our cameras. All of our cameras have internal software but do not require external software for operation. This must be clarified in order to assure we can comply with the regulation, if it is applicable. Imposing a worldwide RS control for the software that is currently EAR99 does not make sense to us and will hurt our ability to remain competitive in the global marketplace of thermal imaging cameras. Eliminating the STA exception: it is unclear why that would be ineligible, and what the rationale for this is? **Because of these concerns, we oppose this as written.**
- We are very concerned and unclear about new ECCN 6D994 Software that is specially designed for "maintenance", "repair" or "overhaul" of 6A003 Cameras and Camera systems. If these controls were put into place and it refers to the software internal to our camera system then we would be unable to perform software bug fixes or software upgrades in the field without an export license. We are unable to determine if this ECCN applies to our Max-Viz, Inc. 6A003 cameras, and how it affects our finished products. This must be clarified in order to assure we can comply with the regulation, if it is applicable. Imposing a worldwide RS control for the software that is currently EAR99 does not make sense to us and will hurt our ability to remain competitive in the global marketplace of thermal imaging cameras. Eliminating the STA exception: it is unclear why that would be ineligible, and what the rationale for this is? **Because of these concerns, we oppose this as written.**
- With respect to ECCN 0A919 for military commodities outside the US that incorporate our Max-Viz, Inc. 6A003 thermal imaging cameras, we disagree with increasing the scope to include Foreign military aircraft commodities.  
We sell thermal imaging cameras to aircraft manufacturers, they incorporating 6A003 cameras into helicopters, jets, fixed wing aircraft for Military or government entity use for transportation, Medical EMS use, and firefighting capabilities. An export license currently allows this. Requiring a license and restricting re-exports of 6A003 cameras installed on aircraft in this scenario, requiring a license worldwide, except Canada is an undue burden for the all parties involved and may not aid in Regional Stability as intended.  
**Because of these concerns, we oppose this change.**

#### **Concerning the use of the phrase "permanent encapsulated sensor assembly" in regards to IRFPA assemblies:**

- It is unclear what the term "permanent" means exactly as it is not a term normally identified with electronics. Therefore a sensor assembly could be deemed to be "not permanent enough" in its encapsulated assembly; the criteria is undefined.
- The term "encapsulated" or "casing" is not clearly defined.
- With many "encapsulated sensor assemblies" on the market, it cannot be determined with certainty if sensors are removed, whether they would become damaged or destroyed, or rendered inoperable.
- Is there a compelling reason to define the IRFPA sensors this way? We don't agree with this method.

- Faulty sensors are returned to the manufacturer for repairs and servicing under warranty. We think this definition, and further this approach to IR sensors is misguided and unnecessary.

**Because of these concerns, we oppose this new term as written.**

**Concerning the proposed new license requirements for the Export to Canada of our camera systems:**

- We support the current export availability of 6A003 cameras to Canada.
- Increasing restrictions to require all exports obtain an export license will cause an undue burden on small companies such as Max-Viz, Inc., and will not ensure Regional Stability will benefit from this regulatory change.
- We export our ECCN 6A003 cameras to Canada for civil use and for use in Fire suppression, which may or may not be civil use contractors. We oppose the Regional Stability designation on items that today and for many years past, have not required an export license to Canada. The economic impact of this change alone would be greatly felt by a small company such as Max-Viz, Inc. It will drive Canadian companies to purchase 6A003 cameras with IRFPA's from other foreign competitors that are less regulated than the US.
- For all small companies, such as Max-Viz, Inc., the additional work added to obtain export licenses for Canada will make us less competitive in the foreign market place. Why buy American when they can go to other nations and obtain products with little to no restrictions on export to Canada? We don't believe it is the goal of ECRI to make us less competitive globally.

**Summary:**

We cannot emphasize enough that as a small company, Max-Viz Inc. strives to remain competitive in the Global marketplace of thermal imaging cameras. The Foreign availability for the same thermal imaging camera products is pervasive. If these restrictions are implemented as is, the regulations will severely place Max-Viz, Inc., and all other US companies, at a significant disadvantage to foreign competitors, without adding true regional stability worldwide.

The loss of revenue due to unnecessary regulatory restrictions may be substantial to Max-Viz, Inc. As all 6A003 cameras become more restricted to export, re-export and transfer under the proposed changes, will the United States truly become more secure? We think not.

We believe each of our comments will help government agencies reform the regulations more consistently and with more clarity, without increasing national security risks for the United States and without sacrificing Regional Stability worldwide.

Thank you for considering our comments.



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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  
14<sup>th</sup> Street and Pennsylvania Avenue NW  
Washington, D.C. 20230

***Re: Comments on BIS Proposed Rule: Harmonization of Destination Control Statement; RIN 0694-AG47***

To whom it may concern:

The Chemours Company appreciates the opportunity to submit comments regarding the Proposed Rule published in the May 22, 2015, Federal Register. The proposed rule would revise §758.6 of the EAR to harmonize the text with §123.9(b)(1) of the ITAR. While Chemours supports efforts to harmonize export control requirements under the EAR and ITAR, we caution that the proposed rule would simply create a different inconsistency for exporters.

Section 758.6 of the EAR states, "The Destination Control Statement (DCS) must be entered on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad." References to "export control documents" are clarified as those "that accompany[y] the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad." The intent of including detailed U.S. export control information on export control documents is, of course, to prevent diversion. To do so, the export control documents should accompany the items being shipped. Examples of "export control documents" would be a bill of lading or an air waybill.

Section 758.6 of the EAR further states that, "The DCS is required for all exports from the United States of items on the Commerce Control List that are not classified as EAR99, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR)." Unless the item is being shipped NLR, an export license has been obtained by the exporter, who is required to inform all parties on the license of the license conditions. All export licenses forbid resale, re-export, or transfer of items by parties on the license to other parties without U.S. government authorization. Informing the parties on the license of the license conditions is the primary way to prevent diversion. The DCS is a reminder to all parties in the shipping chain that the items may not be diverted from the intended recipient.

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. A contract does not accompany any shipment.

Moreover, commercial invoices do not accompany items during shipment. In today's business processes, invoices are sent either electronically (the preferred method) or in hard copy directly to the buyer's accounts payable department. The invoice is not sent to those who might divert the items. In compliance with the EAR, the DCS is currently printed on the invoice, but doing so arguably does not serve the purpose BIS intends.

In conclusion, we suggest that BIS apply the new wording of the DCS to "the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad." Applying the DCS to the invoice should be reconsidered, since it does not serve the intended purpose. Additionally, the DCS should not be applied to "contractual agreements" for the reasons stated above.

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 &  
Global Compliance Officer  
The Chemours Company

**Comments in response to the**

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

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

The National Customs Brokers and Freight Forwarders Association of America Inc. (“NCBFAA”) submits these comments in response to the Department of Commerce Bureau of Industry and Security (“BIS”) and State Department Notices of Proposed Rulemaking (“NPRM”) published in the Federal Register on May 22, 2015 regarding the harmonization of the Destination Control Statement. By way of background, and as relevant here, the NCBFAA, together with its regional affiliated associations, represents the interests of the nation’s freight forwarders, non-vessel operating common carriers, and indirect air carriers and is accordingly familiar with the various export control regulations. The Association regularly meets with BIS and the other regulatory agencies that promote and enforce United States commercial, political and security interests and provides information to its members to support these regulatory goals.

NCBFAA comments are limited to the language and use of the Destination Control Statement (DCS).

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

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

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

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

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

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

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

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



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

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

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

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

Sincerely,



Geoffrey C. Powell  
NCBFAA President





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, DC 20230

**Subject: RIN 0694-AG47 - Export Administration Regulations (EAR): Harmonization of the Destination Control Statements**

**and RIN 1400-AC88 International Traffic in Arms Regulations (ITAR): Revision to the Destination Control Statement**

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

Dear Sir or Madam:

The Electronic Design Automation Consortium (EDAC) is the international association of companies developing EDA tools and services that enable engineers to create the world's electronic products. The EDA Industry provides the critical technology and infrastructure to design electronics that enable the Information Age, including communications, computers, space technology, medical and industrial equipment, and consumer electronics. EDAC's Export Committee comprises compliance professionals dedicated to providing guidance concerning regulations affecting our industry.

Thank you for the opportunity to provide comments on these proposed rules which would revise the destination control statement (DCS) in the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR) to harmonize the statement required for the export of items subject to the both sets of regulations.

We applaud the U.S. government's attempt to simplify and improve the export clearance process; however, you are proposing changes that will require every organization that exports products from the U.S. to revise their systems, when the need is appropriate only for ITAR or EAR license-required 9X515 and 600-series shipments. The proposed changes will impose a regulatory burden on all U.S. exporters without any apparent enhancement to compliance; and as we will explain below, increase the uncertainty among foreign recipients.

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main 408-287-EDAC (3322) · fax 408-317-EDAC (3322)

The proposed revised EAR/ITAR DCS is: *“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 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”*

EDA companies provide goods and services that in the majority are classified 3D991, 3B991, 3E991 or EAR99. The first sentence in the proposed DCS *“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”* would be factually incorrect for the majority of our shipments, which are controlled solely for AT1 purposes, and for which NLR applies to exports and re-exports to destinations and end-users not specifically subject to sanctions, embargoes or prohibitions.

Secondly, the sentence, *“They may not be resold, transferred, or otherwise disposed of, [] without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations,”* will cause confusion and doubt on behalf of the recipients, who in the majority are not subject-matter experts, will not understand *“or as otherwise authorized”* and will assume they must obtain U.S. licensing for the re-export or re-use of our AT1 or EAR99 products.

Third, today Commercial Invoices and Bills of Lading are not required to show end-users; they identify consignees and bill-to parties. In many situations (e.g., shipments to distributors or spares warehouses) it will be impossible to know the end-users at the time of shipment, which is what the proposed DCS requires. We would like BIS and DDTC to clarify whether the use of the term “end-user” in the proposed language implies the creation of a new regulatory requirement to identify all potential end-users on documents for which a DCS is required.

Fourth, the EAR proposal changes the scope of the documents requiring a DCS under the EAR. Currently, EAR 758.6 includes *“the invoice ... bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad.”*

The proposed EAR rule would change the DCS requirement to apply to *“the commercial invoice and contractual documentation, when such contractual documentation exists, whenever items on the Commerce Control List are exported.”* In the proposed rule, BIS comments that *“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.”*

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The scope of “contractual documents” is undefined and would potentially apply the DCS to many contractual documents that will never accompany the shipment of goods. The term “contractual documents” should be clarified, and in any event should be limited only to documents that accompany the shipment.

Fifth, large and small exporters will incur costs that are dependent on size, but significant in any case. Large exporters will have to retool their ERP systems to collect information they are not presently collecting (e.g., end-user) and insert it into documents they don't currently generate with a DCS. Every contract with every distributor will need to be renegotiated to comply. Even small companies that fill out pre-printed forms with ball point pens will have to dispose of their old forms and have new ones printed with the new DCS.

In summary, except for shipments related to ITAR, 9X515 or 600-series items we see no compelling reason for a change to the current DCS set forth in the EAR. Instead of improving compliance, we feel these changes might generate unintended violations due solely to misinterpretation of these requirements. The change will impose a burden on all exporters without apparent enhancement to security, rather it will create an unnecessary distraction from compliance with the intended purpose of export regulations.

Again, on behalf of EDAC's Export Committee, I thank you for the opportunity to provide comments on these proposed rules.



Laurence K. Disenhof  
Chair, EDAC Export Committee  
Group Director Export Compliance, Cadence Design Systems, Inc.

Douge Martin  
Export/Import Administrator, Global Trade Compliance, Mentor Graphics Corporation

Jim Stulhberg  
Director, Operations, Synopsys, Inc.

**Where Electronics Begins™**

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**Submitted Via Email**

July 6, 2015

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

Attn: RIN 0694-AG47

Re: Proposed Rule; Export Administration Regulations (EAR): Harmonization of the Destination Control Statements (80 Fed. Reg. 29551, May 22, 2015)

Dear Mr. Mooney:

United Technologies Corporation (“UTC”)<sup>1</sup> appreciates the opportunity to submit these comments to the Bureau of Industry and Security (“BIS”) on the proposed revisions to the Destination Control Statement (“DCS”) in the EAR to harmonize the statement required for the export of items with the DCS in the International Traffic in Arms (“ITAR”). UTC supports the harmonization of the DCS language in the EAR and the ITAR and encourages further efforts to align other aspects of the regulations’ respective export clearance requirements. We believe one standard requirement under both regulations best supports Export Control Reform harmonization efforts.

**I. DCS Language**

On May 22, BIS and the Directorate of Defense Trade Controls (“DDTC”) concurrently published proposed rules to amend the DCS in EAR § 758.6 and ITAR § 123.9(b)(1), respectively.<sup>2</sup> UTC supports harmonization of the DCS language between the two regulations because it eliminates confusion as to which statement to use for shipments that include both

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<sup>1</sup> 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.

<sup>2</sup> 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).

items subject to the ITAR and items subject to the EAR. It also makes automation easier because the same DCS will be used for EAR and ITAR shipments.

UTC notes that the proposed DCS language published by BIS and DDTC had minor inconsistencies – DDTC added “be” before “disposed of” and BIS included the word “specified” before “country of ultimate destination.” UTC recommends deletion of these extra words. Also, given the use of the words “may not” in the second sentence of the DCS, it would be clearer to use the word “unless” rather than “or as” before “otherwise authorized by U.S. law and regulations.” UTC recommends that the DCS language in EAR § 758.6(a)(1) be modified to read as follows:

These items are controlled and authorized by the U.S. Government for export only to the country of ultimate destination for use by the end-user herein identified. They may not be resold, transferred, or otherwise 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 unless otherwise authorized by U.S. law and regulations.

## **II. Contractual Documentation**

According to the preamble, BIS has determined that the commercial invoice and “contractual documentation” are “most likely to travel with the item” from export from the United States until it reaches its ultimate destination/consignee. UTC applauds BIS’ decision to reduce the number of documents requiring DCS to the two documents it determined are most likely to accompany an export. We agree that this change is consistent with the objective to ensure that the DCS is received by the ultimate consignee and appreciate the effort to reduce the burden on the exporter.

In our experience, the following documents typically accompany an export: packing list, commercial invoice, and bill of lading. Some shipments also include a Shipper’s Letter of Instruction and perhaps additional paperwork that is specific to the item being exported (*e.g.*, technical data, reports, certificates of conformance). UTC agrees that the commercial invoice is typically included in the export, but we would not consider any of the remaining types of documents we identified to be “contractual documentation.” Further, we note that “contractual documentation” is not a defined term in the EAR and there was no proposed definition for this term. Therefore, UTC recommends that BIS specify the precise document(s) in Part 758.6(a) that it considers contractual documentation to ensure consistent interpretation and implementation of this requirement by exporters.

RIN 0694-AG47

July 6, 2015

Page 3

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

Sincerely,

A handwritten signature in green ink, appearing to be 'Christine Lee', written over a horizontal line.

Christine Lee  
Director, Compliance  
International Trade Counsel



ASML US, Inc.

2650 W. Geronimo Place  
Chandler, AZ 85224  
U.S.A.

[www.asml.com](http://www.asml.com)

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

Via Email: [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov)

Date July 6, 2015  
Reference RIN 0694-AG47  
Subject Harmonization of the Destination Control Statements

Ladies and Gentlemen,

ASML US, Inc. ("ASML US") is pleased to respond to the Bureau of Industry and Security ("BIS") request for comments concerning the proposed rule to harmonize the destination control statement ("DCS") required for the export of items subject to the Export Administration Regulations ("EAR") with the DCS in the International Traffic in Arms Regulations ("ITAR").

ASML US, headquartered in Chandler, AZ, is a subsidiary of ASML Netherlands, B.V., the world's leading provider of lithography systems to the semiconductor manufacturing industry. ASML US is the parent of Cymer LLC, headquartered in San Diego, CA, the leader in developing light sources used by chipmakers worldwide to pattern advanced semiconductor chips, and is pioneering development of next generation sources.

ASML US has several concerns and reservations related to changes in the proposed rule. First, ASML US notes that the proposed DCS includes the phrase: "for use by the end-user herein identified." A very large portion of ASML US exports consist of spare components, assemblies and accessories, which are delivered to ASML warehouses and distribution centers overseas for eventual use by many potential customers in a country or region. As a result, it would be impractical – and in some cases impossible – to identify all potential and eventual end-users on a commercial invoice.

Second, commercial and shipping invoices do not require an exporter to identify an end-user; instead, such invoices generally identify intermediate and ultimate consignees and bill-to parties. ASML US would like BIS to clarify if the proposed language is intended to create a new regulatory requirement to identify all potential end-users on all documents for which a DCS is required. ASML US finds this potential new requirement particularly worrisome as it would require that expensive structural changes be made to its enterprise application software systems from which commercial invoices are generated worldwide.

Third, ASML US respectfully requests that BIS identify and/or provide examples of the type of contractual documents to which the proposed rule would apply. ASML US finds this requirement confusing, as contrary to BIS's background statement that it is requiring a 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," ASML US has not previously had a need or reason to include a contractual document with an item at the time of export. ASML US, therefore, requests that BIS provide (i) a consistent and clear description of what specific contractual documents require a DCS

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and (ii) that the requirements be explicitly limited to documents that actually accompany a shipment to the ultimate destination and ultimate consignee.

Fourth, ASML US questions whether the first line of the proposed DCS would always be correct. The proposed DCS language states: "These items are controlled and authorized by the U.S. Government for export only to the specified country of ultimate destination...." Items may be authorized by the U.S. government for export to many more countries and end-users than identified on a commercial invoice or contract. For example, an NLR (no license required) item – particularly an item controlled for antiterrorism reasons only – is generally authorized for export to most countries without a license or license exception. A strict and plain reading of the first sentence could lead one to mistakenly infer that an item is authorized by the U.S. government for export to only the specified country identified on a commercial invoice. For the vast majority of NLR exports made by ASML US, this is simply not true. ASML US is concerned that this inaccurate phrasing could confuse foreign customers and suppliers who are not experts in the nuances of U.S. reexport regulations.

ASML US welcomes and supports the U.S. government's stated attempt to simplify and improve the export clearance provisions of the EAR and ITAR. However, ASML US sees no pressing need for a change to the current DCS set forth in the EAR and is skeptical that the proposed rule would have the desired effect of reducing the burden on exporters, improving compliance or ensuring the regulations are achieving their intended purpose.

ASML US therefore strongly recommends that BIS make no changes to the current DCS set forth in the EAR. If the continued use of the current DCS is not possible, in the alternative, ASML US recommends that BIS make the inclusion of the proposed DCS limited to only exports of ECCN 9x515 or "600 series" items or of mixed shipments of items subject to the EAR and ITAR. The creation of a second DCS for use in these limited situations would prevent the vast majority of U.S. exporters, who export items that can be shipped NLR or under a license exception, from being unnecessarily burdened for the convenience of those companies that export 9x515 or "600 series" items or mixed EAR/ITAR shipments.

Finally, any final rule requiring changes to the current DCS requirements should include an implementation period sufficient to allow U.S. companies time to make necessary updates to enterprise software systems, manual commercial invoices, contractual documentation and related processes and procedures.

Sincerely,



Steve Lita  
Manager, Export Compliance

Cc: Office of Defense Trade Controls Policy

July 6, 2015

Ms. Hillary Hess  
Director  
Regulatory Policy Division  
Room 2099B  
Bureau of Industry and Security  
U.S. Department of Commerce  
14th Street & Pennsylvania Ave., N.W.  
Washington, D.C. 20230

Re: Export Administration Regulations (EAR): Harmonization of the  
Destination Control Statements (*Federal Register* Notice of May 22,  
2015; RIN 0694-AG47)

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Dear Ms. Hess:

The Semiconductor Industry Association (“SIA”) is the premier trade association representing the U.S. semiconductor industry. Founded in 1977 by five microelectronics pioneers, SIA unites over 60 companies that account for nearly 90 percent of American semiconductor production and the semiconductor industry accounts for a sizeable portion of U.S. exports.

SIA is pleased to submit the following public comments in response to the request for public comments issued by the Commerce Department’s Bureau of Industry and Security (“BIS”) on proposed revisions to the Destination Control Statements in the Export Administration Regulations (“EAR”).<sup>1</sup>

#### **I. Destination Control Statement on “Contractual Documentation”**

BIS proposes to revise EAR § 758.6(a) to include a requirement that the Destination Control Statement (“DCS”) appear on “the commercial invoice and contractual documentation, when such contractual documentation exists.”<sup>2</sup> In support of this proposed revision, BIS notes that “these two documents are the most likely to travel with the item from its time of export from the United States” and “the requirement would have the added benefit of reducing the number of documents on which exporters would be responsible for entering the destination statement.”<sup>3</sup> Neither of these statements is necessarily correct.

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<sup>1</sup> Export Administration Regulations (EAR): Harmonization of the Destination Control Statements, 80 Fed. Reg. 29,551 (May 22, 2015) (“Proposed DCS Revision”).

<sup>2</sup> Proposed DCS Revision at 29,554.

<sup>3</sup> Id. at 29,552.

The term “contractual documentation” may cover a wide variety of documents, many of which generally do not travel with the item from its time of export from the United States. For example, master agreements, statements of work and memoranda of understanding generally do not travel with the item from its time of export from the United States. If such documents, and others like them, fall within the understood definition of “contractual documentation,” then the proposed requirement certainly would not reduce the number of documents on which exporters would be responsible for entering the destination statement, and would substantially and unnecessarily increase the burden of complying with EAR § 758.6(a).

Currently, EAR § 758.6(a) requires that the DCS appear on the commercial invoice, and on the bill of lading, air waybill “or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end user abroad.”<sup>4</sup> This requirement may be overly burdensome, but at least is limited to documents that “accompany {y} the shipment from its point of origin in the United States to the ultimate consignee or end user abroad.” There is no justification for broadening the requirement to cover documents that generally do not accompany export shipment from their point of origin in the United States to the ultimate consignee.

In addition, requiring inclusion of the DCS on contractual documentation necessarily would require foreign counterparties to agree that the export items are subject to U.S. government export controls and fall within certain designated Export Control Classification Numbers (“ECCNs”). Foreign parties often may balk at agreeing to the extraterritorial application of U.S. law and may not be willing to formally agree that the exported items are subject to the U.S. government jurisdiction and fall within certain U.S. government-determined ECCNs. Accordingly, this new requirement would create commercial complications and hinder the completion of export contracts.

BIS should retain the requirement that the DCS appear on the commercial invoice and on “other export control document {ation} that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end user abroad,” and should not require that the DCS appear on “contractual documentation.”

## **II. Clarification of “Country of Ultimate Destination” For Exports Via Intermediary Countries**

Many exporters transact with unaffiliated distributors or other intermediaries located overseas. In such situations, the exporter may have knowledge of the ultimate destination at which ownership of the exported item will transfer to the unaffiliated intermediary, but the exporter generally will not have knowledge of the ultimate destination of the exported item after title passes to the unaffiliated intermediary. BIS should clearly state that in such cases the “ultimate destination” associated with the DCS is the destination at which title passes from the exporter to an unaffiliated importer, and the

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<sup>4</sup> EAR § 758.6(a) .

“end user” associated with the DCS is the unaffiliated intermediary. An exporter should not be required to know and represent information that is beyond its control and unknown at the time of export.

### **III. Destination Control Statement on Documentation Associated with NLR Exports**

BIS notes that the new DCS would be required on documentation associated with exports for which no export license is required (“NLR Exports”).<sup>5</sup> There is no justification for requiring the inclusion of the new DCS on documentation associated with NLR Exports, as such exports require no authorization from the U.S. government. Such a requirement would be unnecessarily burdensome and should be eliminated.

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SIA appreciates the opportunity to comment on the Proposed Revisions and looks forward to continuing its cooperation with the U.S. Government on export control reform. Please feel free to contact the undersigned or Joe Pasetti, Director of Government Affairs at SIA, if you have questions regarding these comments.



Cynthia Johnson  
Co-Chair, SIA Export Control Committee



Mario R. Palacios  
Co-Chair, SIA Export Control Committee

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<sup>5</sup> Proposed DCS Revision at 29,552.

Linda Dempsey

Vice President

International Economic Affairs

July 6, 2015

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

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

Via e-mail: [PublicComments@bis.doc.gov](mailto:PublicComments@bis.doc.gov)

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

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

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

### **Harmonizing State and Commerce Department Proposed DCS**

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

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

### **Documentation Type Requiring Display of DCS**

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

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

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

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

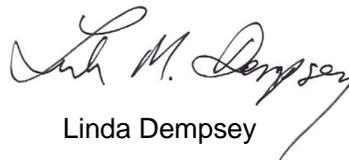
The suggested change would clarify that the contract itself need not contain each "600 series" or 9x515 ECCN if subsequent contract implementing documentation will be the vehicle by which actual commitments for shipment of such items are made.

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

**Conclusion**

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

Thank you,

A handwritten signature in black ink, appearing to read "Linda M. Dempsey". The signature is fluid and cursive, with a long, sweeping tail that extends downwards and to the right.

Linda Dempsey

LMD/la