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July 6, 2015

Mr. C Edward Peartree
Director, Office of Defense Trade Controls Policy
US Department of State

Re: Comments Related to Revision of 22 CFR Parts 120, 123, 124, 125, and 126

Dear Mr. Peartree:

Rockwell Collins appreciates the opportunity to provide comments on the proposed Amendment to the International Traffic in Arms Regulations: Revision of 22 CFR Parts 120, 123, 124, 125, and 126 (RIN 1400-AC88), published in the Federal Registrar on May 22, 2015.

Rockwell Collins, Inc. is an industry recognized leader in the design, production and support of communications and aviation electronics for commercial and military customers worldwide. While our products and systems are primarily focused on aviation applications, our Government Systems business also offers products and systems for ground and shipboard applications. The integrated system solutions and products we provide to our served markets are oriented around a set of core competencies: communications, navigation, automated flight control, displays/surveillance, simulation and training, integrated electronics and information management systems. We also provide a wide range of services and support to our customers through a worldwide network of service centers, including equipment repair and overhaul, service parts, field service engineering, training, technical information services and aftermarket used equipment sales. We are headquartered at 400 Collins RD NE, Cedar Rapids, Iowa 52498 and employ approximately 20,000 individuals worldwide.

Regarding the proposed changes to the International Traffic in Arms Regulations: Revision of 22 CFR Parts 120, 123, 124, 125, and 126: 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; Revision to the Destination Control Statement; and Other Changes; Rockwell Collins submits the following comments:

1) § 120.5 Relation to regulations of other agencies; export of items subject to the EAR.

(b) It appears that the exemptions at part 123 of the ITAR have been inadvertently left out of the following sentence:

Items subject to the EAR may be exported pursuant to an exemption (see parts 124, 125, and 126 of this subchapter), provided the items subject to the EAR are for use in or with defense articles authorized under a license or other approval.

It is suggested that this be corrected by adding "123" such that the sentence reads as follows:

Items subject to the EAR may be exported pursuant to an exemption (see parts 123, 124, 125, and 126 of this subchapter), provided the items subject to the EAR are for use in or with defense articles authorized under a license or other approval.

2) § 123.9 Country of ultimate destination and approval of reexports or retransfers.

The new § 123.9(d)(3) states "All requirements of paragraph (c) of this section are satisfied for the item subject to the EAR, as well as for the associated defense article."

For clarity it is suggested that § 123.9(c)(1) and § 123.9(c)(2) be rewritten as they currently only refer to defense articles. It is proposed that the following be added: "(or commerce article under a license or other approval - see 120.20)" after the word "defense article" for 123.9(c)(1) and 123.9(c)(2).

- *123.9(c)(1) would read as follows: "The license number, written authorization, or exemption under which the defense article (or commerce article under a license or other approval - see 120.20) or defense service was previously authorized for export from the United States." ;*
- *123.9(c)(2) would read as follows: "A precise description, quantity, and value of the defense article (or commerce article under a license or other approval - see 120.20) or defense service;"*

3) § 126.4 Exports and temporary imports made to or on behalf of a department or agency of the U.S. government.

- *It is believed that (2)(i) should be (a)(2).*
- *In what is written as (2)(i)(B), the word "directs" is not clear. For clarity it is suggested that it be rewritten as follows.*
 - *(B) The United States government performs or directs **industry to perform** all aspects of the transaction (export, carriage, and delivery abroad) or the export is covered by a U.S. government Bill of Lading.*

Sincerely,



Perry Smith
Director, Export & Import Compliance
Rockwell Collins, Inc.



July 6, 2015

U.S. Department of State
Bureau of Political-Military Affairs
Directorate of Defense Trade Controls
2401 E. St, NW
12th Floor, SA-1
Washington, DC 25022

ATTN: Ed Peartree, Director, Office of Defense Trade Controls Policy, U.S. Department of State

SUBJECT: RIN 1400-AC88

Dear Mr. Peartree

AIA applauds the efforts of the Department of State, Directorate of Defense Trade Controls (DDTC) in making strides towards harmonizing the ITAR with the EAR under Export Control Reform (ECR). The following comments are provided in response to DDTC's Federal Register Notice Vol. 80, No. 99, May 22, 2015 (29565-29569).

I. Exemption Usage for EAR-Controlled Items

Industry appreciates the clarification on ITAR exemption usage for EAR-controlled items provided in the revised language of § 120.5(b). This explanation confirms industry's interpretation of how to handle the transition of items from the USML to the CCL while still able to maintain one export authorization. In our review of the proposed revised language, it would appear that DDTC has included language that would overly restrict industry's exemption options. As interpreted, DDTC is restricting the coverage of all ITAR exemptions for EAR-controlled items to situations only when related USG authorization exists for the end item as illustrated in the language below.

...provided the items subject to the EAR are for use in or with defense articles authorized under a license or other approval.

There are several exemptions in the ITAR that do not tie its eligibility and usage to related license approvals. Including an all-encompassing restriction to only use license exemptions for EAR-controlled items when it is tied directly to a related approval will limit industries' ability to operate as it had prior to ECR. AIA believes the controlling language found in individual exemptions clearly addresses when

related approval is tied to the eligibility of that exemption. For illustrative purposes, below are two examples of ITAR technical data exemptions; one with the tying language and one without.

125.4 (b)(3) Technical data, including classified information, in furtherance of a contract between the exporter and an agency of the U.S. Government, if the contract provides for the export of the data and such data does not disclose the details of design, development, production, or manufacture of any defense article;

125.4(b)(5) Technical data, including classified information, in the form of basic operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export to the same recipient. Intermediate or depot-level repair and maintenance information may be exported only under a license or agreement approved specifically for that purpose;

Having language in § 120.5(b) that restricts eligibility for EAR-controlled items would make some exemptions unnecessarily ineligible. AIA requests the removal of this language from § 120.5(b) as AIA member companies firmly believe that the criterion of each individual exemption already adequately addresses when related authorizations are required.

...provided the items subject to the EAR are for use in or with defense articles ~~authorized under a license or other approval.~~

Additionally, AIA would like DDTC to provide clarification and guidance in their final ruling on the proper classification to be entered into the AES system for EAR-controlled items shipped under an ITAR exemption (e.g. VIII(x), ECCN). The proposed edits to § 123.9(b)(2) do not address AES filings.

II. Destination Control Statement

The AIA membership is very supportive of DDTC's efforts to harmonize the Destination Control Statement (DCS) with the Department of Commerce. However, the proposed revisions to the DCS are seen as quite lengthy and will cause a problem when applying all required elements to an airway bill or bill of lading. Additionally, even though the language may be harmonized with the EAR, the implementation of the DCS between the two agencies remains inconsistent. This is discussed further below.

As to the length of the DCS, there simply is not enough room available for industry to apply all of these requirements to an airway bill or bill of lading. Industry is struggling with placement of the current DCS version at § 123.9 on many carriers' forms. The field length available is too restrictive and results in extreme secondary measures by industry to secure required markings on the airway bill or bill of lading. The government may only see that industry is using different methods to apply the DCS; however, the reality is that industry is struggling to find easy solutions to comply. These alternative methods are not by choice and are viewed by industry as cumbersome, time consuming and costly. AIA is concerned that DDTC is over simplifying efforts industry takes in order to apply these markings. In many instances, exporters are delaying, and in some instances halting, shipments or are expending moneys modifying order processing systems in order to apply ITAR required markings to an airway bills or bills of lading. The recent changes under ECR have generated industry's awareness to this problem.

AIA asks DDTC to reconsider placement of the DCS on the airway bill or bill of lading for four reasons.

- (1) The airway bill or bill of lading documents do not have enough room available for industry to comply as outlined above.
- (2) The airway bill or bill of lading documents act as receipts for goods being transported and constitute agreements between shipper and carrier on the terms of their transport¹. AIA offers that the utility of having a DCS on the airway bill or bill of lading serves little purpose of notifying the recipient of the U.S. export controls. Most airway bills or bills of lading do not make it into the hands of the person who has oversight of the disposition of the goods being received.
- (3) The proposed changes to the EAR do not require it. The revised DCS language evens the playing field for notifying the foreign recipient of the controls over products by simply stating they all have some level of controls by U.S. government regulators. How that language makes its way to the foreign recipient should also be the same. Requiring two separate methods of implementing the same language between EAR and ITAR shipments will cause problems for companies, particularly those with electronically generated shipment documents. Industry may be subjected to additional costs to update their electronic systems to allow for flexibility in applying the DCS. Additionally, instituting two separate methods will inevitably cause administrative violations of the ITAR if the DCS is left off an airway bill or bill of lading.
- (4) Lastly, it was opined by a DDTC representative during the BIS weekly Wednesday teleconference on June 3 that by having the DCS language on the airway bill or bill of lading this will notify all those handling the package that the goods inside are defense articles and are to be handled accordingly. AIA would like to posit a different point of view in that by singling out defense articles with this marking, it highlights which packages contain defense related equipment and will make them more susceptible to diversion or theft. AIA suggests DDTC consider the position that if all the packages look the same, then it would be harder for nefarious individuals to target defense articles for diversion while en route to their final destination.

In addition to removing the DCS from the airway bill or bill of lading, AIA suggests removal of the requirement to have on "purchase documentation or invoice". AIA would like clarification on the usage of the terms "purchase documentation or invoice" included in the proposed § 123.9(b)(1); particularly, how do these terms relate to the "contractual documentation" term used in the proposed EAR rule. AIA believes that these terms are unnecessarily vague and adds unnecessary burden to industry to comply. Often a company will not know the export license number or exemption number at time of purchase to be able to apply to a purchase order. Furthermore, many items are purchased years in advance of actual shipment. By the time the goods ship, the product could be reclassified and the shipping documentation would be inconsistent with the purchasing documentation. Lastly, a sizable portion of the defense articles exported from the United States are destined to U.S. government entities overseas or to foreign recipients under Foreign Military Sales efforts where the purchasing documentation is between a U.S. company and the U.S. government. AIA cannot find any utility in requiring industry to include this language in such purchasing documentation under this type of relationship.

If DDTC is using these terms to refer to the commercial invoice, AIA suggests DDTC utilize this more commonly known term in place of purchase documentation or invoice. Additionally, it is suggested that

¹ 15 CFR Part 30 defines bill of lading as "A document that establishes the terms of a contract between a shipper and a transportation company under which freight is to be moved between specified points for a specified charge. Usually prepared by the authorized agent on forms issued by the carrier, it serves as a document of title, a contract of carriage, and a receipt for goods."

DDTC refrain from using the term *shipping documents*², as this captures more than the necessary documents the DCS should be applied.

AIA believes that the DCS which acts as notification of U.S. export controls to the foreign recipient is best applied on the commercial invoice which is also in line with the proposed changes to the EAR § 758.6³. Therefore, AIA recommends the following edits to § 123.9(b)(1):

- (1) The exporter shall incorporate the following information as an integral part of the commercial invoice whenever defense articles are to be exported, retransferred, or reexported pursuant to a license or other approval under this subchapter:

If DDTC agrees with only requiring the commercial invoice to contain the DCS, the length issue outlined above is more tenable as industry has more control over the formatting of the commercial invoice. No changes will be required to the length of the DCS.

III. § 126.4

The proposed changes to § 126.4 provide for both positive changes and areas that may require additional updates. Specifically, there exists inconsistencies with the EAR license exception GOV (15 CFR Part 740.11) that reconciling may benefit industry and allow for easier implementation of § 126.4. AIA offers the following comments:

§ 126.4 (a)(1) proposed language positively establishes a broader opportunity for industry to utilize the exemption than is currently available and these edits are viewed as a positive step. AIA however notes that Note 1 to Paragraph (a) limits contractor support to U.S. persons. AIA submits that government installations exist that utilize non-U.S. persons and local contractors to handle their mail room or are identified as recipients of hardware shipments. Those persons are typically under the direct supervision of U.S. military personnel. AIA feels that this restriction may hamper its members' ability to meet heightened demands from U.S. agencies located at such installations. AIA proposes that this restriction is unnecessary and requests removing references to U.S. persons from Note 1.

§ 126.4(c) requires a separate written statement be provided to the Port Director at time of export acknowledging that the exporter meets the requirements of the exemption. AIA requests that this requirement be removed as duplicative to the requirements of the Foreign Trade Regulations (FTR) filing of an EEI. An exporter is already certifying under the FTR that their filing is accurate and complete (see 15 CFR 30.71). Producing a separate written statement identifying the same is duplicative and an unnecessary burden.

§ 126.4(c) also requires a certification be added to the airway bill or bill of lading when shipments support § 126.4(a)(1) criterion. AIA requests this requirement be altered and provides the below discussion to support this request.

AIA respectfully points out that DDTC's certification language is not harmonized with the certification language required as part of utilizing the GOV exception under the EAR (see § 740.11(b)(2)(iii)(E)(3)). In addition to the dissimilar certification language, AIA believes that circumstances surrounding when the

² 15 CFR Part 30 defines shipping documents as "Documents that include but are not limited to commercial invoices, export shipping instructions, packing lists, bill of lading and air waybills."

³ Federal Register Proposed Rule, Vol. 80, No. 99 on May 22, 2015.

certification is required is also inconsistent. Under the EAR, the GOV certification is only required when dealing with Government Furnished Equipment (GFE). AIA offers that not all goods exported to support § 126.4(a)(1) activity will be GFE as defined by the Federal Acquisition Regulations (FAR). AIA requests that the certification language at § 126.4(c) be rewritten to be consistent with Part 740.11 and furthermore be limited to GFE shipments in order to harmonize with the GOV exception. It is our assertion that the more consistent shipment markings can be between the two agencies, the more industry will be able to control the markings and ensure they are accurate. Differing markings for the same type of end user can be confusing and may result in many administrative violations.

Lastly, this section requires placement of said certification on the airway bill or bill of lading. AIA requests the removal of the requirement for the certification to be placed on the airway bill or bill of lading due to reasons fully explained above. If DDTC disagrees with industries' request, it should be known that there isn't enough room for both the DCS and this certification to be placed on the airway bill or bill of lading. In line with what was mentioned above, administrative non-compliance violations may result. AIA suggests DDTC require the certification be supplied either on the commercial invoice or separately and supplied with the rest of the shipping documentation.

IV. Conclusion

In conclusion, AIA again emphasizes its support for DDTC's efforts under ECR to harmonize with the EAR. As DDTC progresses with its efforts, AIA asks that the regulators be aware that divergences between the two regulations in administrative implementation requirements may lead to confusion and ultimate non-compliance. When exporters are faced with dealing with the same foreign customers for the same program and the only difference is the USML Category or ECCN of the product, having to implement two different administrative procedures for a shipment becomes problematic and potentially costly for industry. The more closely implementation of the regulations can be structured; the more likely industry will be able to comply more fully.

Best Regards,

A handwritten signature in black ink, appearing to read 'Remy Nathan', with a long horizontal line extending to the right.

Remy Nathan
Vice President – International Affairs
Aerospace Industries Association

PUBLIC SUBMISSION

As of: 7/7/15 3:54 PM
Received: May 26, 2015
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Submission Type: Web

Docket: DOS-2015-0029

International Traffic in Arms: Exports and Temporary Imports Made to or on Behalf of a Department or Agency of the U.S. Government; etc.

Comment On: DOS-2015-0029-0001

International Traffic in Arms: Exports and Temporary Imports Made to or on Behalf of a Department or Agency of the U.S. Government; etc.

Document: DOS-2015-0029-0007

Comment on DOS_FRDOC_0001-3245

Submitter Information

Name: Anonymous Anonymous

General Comment

In regards to the new diversion statement, I agree/applaud the effort to harmonize with the EAR, however the proposed one is exceedingly lengthy - exporters, carriers genuinely would face a challenge from a space standpoint to get this on invoices/BLs etc. Please simplify it.

Please also consider these points when revising the statement:

- 1) "controlled" - implies all items are on CCL or USML - please use a different word that encompasses EAR99 items. May companies hard code this statement so it prints on everything, even transactions where no license/authorization is required,, so it needs to make sense in that context as well.
- 2) "end user herein identified" - in typical EAR shipping documents, the end user is not identified. The bill to and ship to party are (consignee), but the end user may be different and is not normally identified on the documents, like they are on the DDTC side where they have to be on the license.
- 3) "authorized end user/consignee" - again, there is no such list in an EAR, No License Required scenario, so this statement would not make sense in that context.

PUBLIC SUBMISSION

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Docket: DOS-2015-0029

International Traffic in Arms: Exports and Temporary Imports Made to or on Behalf of a Department or Agency of the U.S. Government; etc.

Comment On: DOS-2015-0029-0001

International Traffic in Arms: Exports and Temporary Imports Made to or on Behalf of a Department or Agency of the U.S. Government; etc.

Document: DOS-2015-0029-0005

Comment on DOS_FRDOC_0001-3245

Submitter Information

Name: Anonymous Anonymous

General Comment

To use exemption 126.4(a)(1), does the end user have to be a U.S. Government agency or can the end user be contractor support personnel (U.S. Person) under contract with a U.S. Government agency?



ASML US, Inc.

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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

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

Date
Reference

July 6, 2015
RIN 0694-AG47

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

Mr. C. Edward Peartree, Director
Office of Defense Trade Controls Policy
Directorate of Defense Trade Controls
Department of State
SA-1, 12th Floor
Washington, DC 20522-0112.

Subject: RIN 1400-AC88; 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; Revision to the Destination Control Statement; and Other Changes

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

Dear Mr. Peartree,

The Boeing Company (“Boeing”) appreciates the opportunity to provide comments on proposed revisions by the Directorate of Defense Trade Controls (“DDTC”) regarding items exported to or on behalf of U.S. Government agencies, exporting items subject to the Export Administration Regulations (“EAR”) on DDTC licenses, and the Destination Control Statement (“DCS”). We applaud DDTC and the Bureau of Industry and Security (“BIS”) for working together on harmonized DCS text that excludes International Traffic in Arms (“ITAR”) or EAR-specific language. Boeing proposes 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.

1. **Helpful Clarifications**

Boeing welcomes the removal of references to now unnecessary submission requirements (*e.g.*, seven paper copies of license applications). While administrative in nature, such regulatory “clean-ups” help keep the ITAR up to date and mitigate confusion in industry with respect to license submission requirements.

The clarification provided with respect to applicability of ITAR exemptions for items subject to the EAR when exported with ITAR-controlled items for use “in



or with” that defense article is also appreciated. This has been a point of confusion, and the added clarity is helpful.

2. 123.9 Destination Control Statement and Associated Requirements

Boeing applauds the proposed harmonized DCS text that excludes ITAR or EAR 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 further clarity.

For example, the DDTC proposal states that, “the bill of lading, air waybill, or other shipping document **and** the purchase documentation or invoice (emphasis added)” must incorporate the DCS. The implication is that the DCS must be on two documents, but the commercial invoice could satisfy both the “other shipping document” and the “invoice” requirements. Another difference in the DCS requirements is that DDTC uses the term “invoice” while BIS uses the term “commercial 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 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 BIS as well.

Recommendation:

Revise 123.9(b)(1) to simplify the documents required to contain the DCS and to harmonize requirements with the EAR as follows:

- (1) The exporter must 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 document and the or purchase documentation) or invoice whenever defense articles are to be exported, retransferred, or reexported pursuant to a license or other approval under this subchapter:

3. Exports and Temporary Imports Made to or on Behalf of the U.S. Government



Mr. C. Edward Peartree
Page 3

This exemption has been significantly streamlined and updated to reflect DDTC intent and existing practice. Boeing appreciates the revisions, which simplify the use of the exemption. We note that section 126.4(c) has been revised to add a statement that must be included in shipping documents when an export is made pursuant to 126.4(a)(1). We recommend that clarification be provided as to whether this statement is required in addition to the DCS. Or, is it included *in lieu* of the standard DCS for shipments being made pursuant to 126.4(a)(1)? We also recommend that in the clarification you confirm whether the requirement for this statement applies only to physical shipments.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Christopher Haave".

Christopher Haave
Director,
Global Trade Controls



July 2, 2015

U.S. Department of State
Bureau of Political – Military Affairs
Directorate of Defense Trade Controls
2401 E. St, NW
12th Floor, SA-1
Washington, D.C. 25022

Attn: ITAR Amendment- To or on behalf of

Harris Corporation is pleased to comment on the proposed revisions to the destination control statement in ITAR §123.9. Harris appreciates the work that went into crafting the revisions and is encouraged with the continued progress on the Export Control Reform Initiative.

While the proposed revisions largely succeed in harmonizing the language of the ITAR destination control statement with the EAR, further, minor revisions would be helpful to improve consistency and clarity, as follows:

§123.9 Country of ultimate destination and approval of reexports or retransfers.

(b)(1) The exporter must incorporate the following information as an integral part of 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:

- (i) The country of ultimate destination;*
- (ii) The end-user;*
- (iii) The license or other approval number or exemption citation; and*
- (iv) The following statement: “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 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.”*

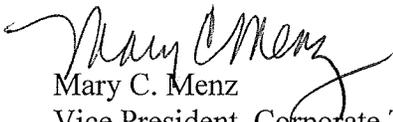
Exelis suggests the removal of “purchase documentation” from the paragraph. Purchase documentation (e.g. contract, purchase order) is not provided along with shipping documents such as an invoice, Shipper’s Letter of instruction or air waybill. It is unclear how the inclusion adds anything to the paragraph considering the phrase, “or other shipping document” sufficient to require inclusion of the destination control statement on the requisite documents.

(b)(2) When exporting items subject to the EAR (see Sec. Sec. 120.42 and 123.1(b) of this subchapter) pursuant to a Department of State license or other approval, the U.S.

exporter must also provide the enduser and consignees with the appropriate EAR classification information for each item exported pursuant to a U.S. Munitions List ``x)'' paragraph. This includes the Export Control Classification Number (ECCN) or EAR99 designation.

The Department of Commerce (DOC)'s proposed EAR §758.6(a)(2) requires that ECCN's be provided only for each 9x515 or "600 series" item being exported. While this opportunity has been seized to harmonize the destination control statement itself between the two regulations, it seems reasonable to also harmonize the requirements for providing ECCN's to consignees by requiring the provision of ECCN details in the proposed ITAR§123.9(b)(2) only for those items for which an ECCN is required under EAR §758.6(a)(2).

Sincerely,



Mary C. Menz
Vice President, Corporate Trade Compliance
Harris Corporation

cc: Ron Roos
Deputy General Counsel
International Trade and Compliance

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 DDTC should come to a similar conclusion and agree that the entire process should be harmonized. In other words, DDTC 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 DDTC 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





Request for Comments:

Public Notice 9139

RIN-1400-AC88

To the Attention of Regulatory Change, ITAR Amendment

Email to DDTCpubliccomments@state.gov

Airbus Group N.V. offers the following comments in response to Public Notice 9139 pertaining to 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; Revision to the Destination Control Statement; and Other Changes.

123.9 b) 1)

The language in the Destination Control Statement requires the exporter to identify the ECCN of the items exported as “.x” under an ITAR license, but does not require identifying the ITAR Category of the other items.

To be consistent with the Commerce requirements, and to facilitate the end-to-end compliance of foreign recipients, we suggest that the ITAR Category of the items being exported be also required

Proposed language:

123.9 b) 1) <i>(iii) The license or other approval number or exemption citation; and USML Category of each item</i> <i>(iv) The following statement: “....</i>

Or

123.9 b) 1) <i>(iii) The license or other approval number or exemption citation;</i>
--

(iv) The following statement: “....

b) (2) The USML Category of each USML item

b) (3) When exporting items subject to the EAR (see §§ 120.42 and 123.1(b) of.....

123.9 d) Retransfer of items subject to the EAR:

123.9 d) states:

(d) The Directorate of Defense Trade Controls may authorize reexport or retransfer of an item subject to the EAR provided that:

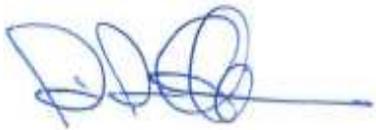
(1) The item was initially exported, reexported or transferred pursuant to a Department of State license or other approval;

(2) The item is for end-use in or with a defense article; and,

Though we do not think that a change of text is necessary, we would like to seek clarification that 123.9 d) 2) covers both end-use in or with US-origin and foreign-origin defense articles.

For further information, please contact Corinne Kaplan at 703-466-5741 or Corinne.Kaplan@eads-na.com.

Respectfully,



Pierre Cardin

SVP, Group Export Compliance Officer



Alexander Groba

Coordinator U.S. Regulations



*ELECTRONIC SUBMISSION VIA
WWW.REGULATIONS.GOV*

July 6, 2015

Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
14th 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 1, 2015

Department of State
Bureau of Political-Military Affairs
Department of Defense Trade Controls
2401 E Street, N.W.
12th Floor, SA-1
Washington, D.C. 20522

ATTN: Mr. C. Edward Peartree
Director, Defense Trade Controls Policy

SUBJECT: ITAR Amendment – To or on behalf of (RIN 1400-AC88 [Public Notice 9139])

Dear Mr. Peartree:

Northrop Grumman Corporation (NGC) wishes to thank the Department of State for the opportunity to submit comments in review of the above proposed rules as we support the Department's implementation of Export Control Reform. In response, NGC provides the following recommendations:

§ 120.5 – Relation to Regulations of Other Agencies; Export of Items Subject to the EAR

- 1) **§ 120.5(b)** – While we concur with expanding the authorization to export “Items subject to the EAR” pursuant to an exemption in addition to licenses, the current proposed language does not specify that “Items subject to the EAR” exported under an exemption must be exported with the specific defense article as is required for licenses. As written [Items subject to the EAR may be exported pursuant to an exemption (see parts 124, 125, and 126 of this subchapter), provided the items subject to the EAR are for use in or with defense articles authorized under a license or other approval.], an applicant could choose to export EAR parts and components individually at any time under an ITAR exemption so long as the defense article was previously authorized under a license or exemption. Recommend clarifying that this is the intent of the modification. If not, recommend revising portion of 120.5(b) language to read “Items subject to the EAR may be exported pursuant to an exemption (see parts 124, 125, and 126 of this subchapter), provided the items subject to the EAR are for use in or with defense articles authorized and being exported under the same exemption and export transaction”

§ 123.9 – Country of Ultimate Destination and Approval of Reexports or Retransfers

- 1) **§ 123.9(b)(1)** – It is rare that purchase documentation will contain the elements in (b)(1)(iii) [i.e. a license or other approval number or exemption citation] or (b)(1)(iv) [i.e. the destination control statement] because the purchase documentation is the precursor to obtaining the authorization. As such, we would propose removing “purchase documentation” and revising to read “...and

commercial invoice whenever..." in (b)(1).

- 2) **§ 123.9(b)(1)(iv)** – We welcome this change to a harmonized destination control statement across the ITAR and EAR and appreciate the reduced complexity a single statement affords.

§ 124.16 – Special retransfer authorizations for unclassified defense articles and defense services to member states of NATO and the European Union, Australia, Japan, New Zealand, and Switzerland.

- 1) **§ 124.16(a)(1)** – The use of the qualifier “bona fide” for regular employee is confusing given that Regular Employee is already defined in § 120.39. We recommend that 124.16(a)(1) be revised to delete “bona fide” and read “The transfer is to dual nationals or third country nationals who are regular employees (see § 120.39 of this subchapter) of the foreign signatory or approved sub-licensees;”.
- 2) **§ 124.16(a)(1)-(4)** – While the breakout of 124.16 into additional subparagraphs does help highlight the requirements for use, the revised paragraph still fails to specifically state that the employer could be a government of or company registered to do business in and physically located within NATO, the European Union, Australia, Japan, New Zealand, and Switzerland.

In addition, the requirement as stated under 124.16(a)(4) that “retransfer takes place completely within the physical territory of the countries listed...” places an undue burden on industry when the TAA/MLA territory supports activities in non-NATO/EU, etc. countries. For example, if a US applicant enters into an agreement with “Singapore Company A” and “Australian Company B,” and the Australian company employs dual nationals from the United Kingdom and Germany, transfers could occur under 124.16 within the Australian company in Australia. However, if those same dual nationals attended a meeting in Singapore with “Singapore Company A” and the US applicant, those employees would not be authorized to participate based solely on location. Therefore, we recommend 124.16(a)(1)-(4) be revised as follows:

- (1) The transfer is to dual nationals or third country nationals who are regular employees (see § 120.39 of this subchapter) of the foreign signatory or approved sub-licensees;
- (2) The individuals are exclusively of countries that are members of NATO, the European Union, Australia, Japan, New Zealand, and Switzerland;
- (3) Their employer is the government of, or a company registered to do business in and physically located in a country listed in paragraph (a)(2), and is a signatory to the agreement or has executed a Non-Disclosure Agreement; and
- (4) The retransfer takes place completely within the approved territories identified within the specific TAA/MLA or the United States.

§ 126.4 – Exports and Temporary Imports Made to or on Behalf of a Department or Agency of the U.S. Government

- 1) **§ 126.4(a)(1)** – For formatting and clarity purposes, we recommend that § 126.4(a)(1) be revised as follows:

“(1) To a department or agency of the U.S. government for official use. Defense articles exported or temporarily imported under this provision may only be provided to a regular employee or “**U.S.**” contractor support personnel of the U.S. government; **OR**”

- 2) **§ 126.4(a)(2)(i)(A)** – the exclusion of all “Items subject to the EAR and controlled for missile technology (MT) reasons” conflicts with the broader authority granted under §126.4(a)(2)(i) as written. Currently, there is nothing to preclude the U.S. government agency from authorizing the export of defense articles subject to the ITAR and controlled for Missile Technology reasons, yet this subparagraph prohibits the export of those articles of subject elsewhere in the regulations to lesser control. Recommend deletion of § 126.4(a)(2)(i)(A) for consistency.

- 3) **§ 126.4(c)** – We recommend removing “and a written statement by the exporter certifying that these requirements have been met”. Meeting all requirements of an ITAR exemption is already understood as a pre-condition to utilization. Further, the user is certifying to same with the submission of the EEI noting/claiming the exemption.

Should clarification or subsequent technical discussions be necessary, please contact either Patrick Bennett at patrick.bennett@ngc.com, (703-280-4076), or myself at thomas.p.donovan@ngc.com, (703-280-4045).

Sincerely,

Thomas P. Donovan
Director, Export Management
Global Trade Management



6 July 2015

Via Email

Mr. C. Edward Peartree
Director
Office of Defense Trade Controls Policy
Directorate of Defense Trade Controls
U.S. Department of State
2401 E Street, NW
SA-1, 12th Floor
Washington, DC 20037

Email: DDTCTPublicComments@state.gov

Reference: RIN 1400-AC88

Subject: 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

Dear Mr. Peartree:

Goforth Trade Advisors LLC (GTA) respectfully submits the following comments on various proposed revisions to the International Traffic in Arms Regulations (ITAR) in response to the *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. 99 (May 22, 2015). We greatly appreciate the Directorate of Defense Trade Controls' (DDTC) efforts in continuing to move forward with the changes envisioned by Export Control Reform. Based upon our previous government service and recent experience in assisting industry with the implementation of Export Control Reform, we would like to draw the attention of DDTC to certain issues and concerns with the proposed revisions to the ITAR.

Please see our detailed comments below.

ITAR § 123.9(b)(1) – The proposed revision excludes key piece of information

One commenting party expressed concern that the proposed revisions to ITAR § 123.9(b)(1) excludes a key piece of information for recipients of ITAR-controlled items. The commenting party recommended adding “USML Category and Subcategory” to the list of information to be provided.

The proposed revision to ITAR § 123.9(b)(1) excludes a key piece of information for recipients of ITAR-controlled items by not requiring the identification of the related USML Category and Subcategory. Providing this information ensures non-U.S. recipients understand the jurisdiction and classification of the items they are receiving thereby ensuring appropriate compliance and handling. This information will also assist recipients in tracking any future regulatory changes due to the routine review of the U.S. Munitions List and in the submission of any re-export or retransfer request required by ITAR § 123.9(c).

It is noted that the Department of Commerce’s companion proposed rule indicates that DDTC is requiring the identification of the USML Category and Subcategory in the subject proposed rule. Additionally this should not be an administrative burden as it is an industry practice to provide this information.

To address these concerns, GTA recommends adding a new (iv), and re-designating the current (iv) as (v), as follows:

“(iv) USML Category and Subcategory; and”

ITAR § 123.9(b)(2) – The current text contains extraneous word

One commenting party expressed concern that the current text of ITAR § 123.9(b)(2) limits the requirement for identification of EAR classification information to initial exports and does not include re-exports and retransfer approvals. The commenting party recommended deleting “U.S.” from before “exporter” in the text.

The language of ITAR § 123.9(b) was previously amended to identify both U.S. and non-U.S. exporters/re-exporters as being subject to the destination control statement requirement. This “flow-down” of the destination control statement was a critical element to the first implementation rule of Export Control Reform. The proposed revision to ITAR § 123.9(b)(1) removes this distinction and leaves the requirement as “exporter” which implies any exporter, U.S. and non-U.S. GTA recommends a similar edit to ITAR § 123.9(b)(2) by deleting “U.S.” from before “exporter” in the first sentence as the requirement to provide the EAR classification information is equally applicable to re-export and retransfer approvals granted to non-U.S. parties.

To address these concerns, GTA recommends revising ITAR § 123.9(b)(2) as follows:

“(2) When exporting items subject to the EAR (see §§ 120.42 and 123.1(b) of this subchapter) pursuant to a Department of State license or other approval, the

exporter must also provide the end-user and consignees with the appropriate EAR classification information for each item exported pursuant to a U.S. Munitions List “(x)” paragraph. This includes the Export Control Classification Number (ECCN) or EAR99 designation.”

ITAR § 123.9(d) – The proposed revision inconsistent with regulatory practice

One commenting party expressed concern that the proposed revisions to ITAR § 123.9(d) is inconsistent with regulatory practice. The commenting party recommended re-designating the proposed revision as ITAR § 123.9(f).

The proposed revision to ITAR § 123.9(d) is inconsistent with regulatory practice. GTA understands it is the practice of the U.S. Government to not add new language to a [Reserved] entry which previously contained language for compliance reasons. ITAR § 123.9(d) previously contained the destination control statement applicable to ITAR exemption use. This paragraph was identified as [Reserved] when ITAR §123.9 was revised pursuant to the Defense Trade Cooperation Treaty with the United Kingdom. As such, there are active records which corresponds to the previous requirement under ITAR § 123.9(d). This revision will cause confusion for compliance and audit purposes.

To address these concerns, GTA recommends re-designating the proposed ITAR § 123.9(d) as a new paragraph (f).

ITAR § 126.4(a) – The proposed revision excludes technical data

One commenting party expressed concern that the proposed revisions to ITAR § 126.4(a) excludes technical data from the exemption. The commenting party recommended putting “technical data” back into the exemption.

The proposed revision to ITAR § 126.4(a) would limit the exemption to the export or temporary import of a defense article or the provision of a defense service. Technical data, which is currently included within the scope of ITAR § 126.4(a), appears to have been excluded, whether inadvertently or intentionally. If the exemption can be utilized for defense services, it must also include technical data which in many cases needs to be provided in the course of performing defense services.

GTA understands that technical data is included in the definition of a defense article at ITAR § 120.6 and DDTC’s intention may be to capture technical data within the reference to defense article. However, that intention is not clear and the removal of technical data without explanation in the preamble language is confusing.

To address these concerns, GTA recommends the following revision to ITAR § 126.4(a):

“A license is not required for the export or temporary import of a defense article, the permanent export of technical data, or the performance of a defense service, when made:”

Thank you for the opportunity to present GTA’s views concerning the proposed revisions to the ITAR.

If you have any questions concerning this submission, please contact the undersigned at (703) 722-8116 ext 101 or by e-mail at candace@goforthandexport.com.

Sincerely,

A handwritten signature in blue ink that reads "Candace M. J. Goforth". The signature is written in a cursive, flowing style.

Candace M. J. Goforth
Managing Director

July 7, 2015

Via Email

Mr. C. Edward Peartree
Director
Office of Defense Trade Controls Policy
Directorate of Defense Trade Controls
U.S. Department of State
2401 E Street, NW
SA-1, 12th Floor
Washington, DC 20037

Email: DDTCPublicComments@state.gov

Reference: RIN 1400-AC88

Subject: ITAR Amendment to Section 126.4(a)

Dear Mr. Peartree:

Raytheon Company (“Raytheon”) respectfully submits the following comments on the Directorate of Defense Trade Control’s (“DDTC”) proposed revisions to International Traffic in Arms Regulations (“ITAR”) Section 126.4 in response to the *Amendment to the International Traffic in Arms Regulations: Exports and Temporary Imports Made to or on Behalf of the U.S. Government*, 80 Fed. Reg. 29565 (May 22, 2015). We applaud your Office’s tireless efforts in bringing Export Control Reform to fruition. Based upon our extensive experience in supporting the U.S. government internationally, we would like to draw your attention to certain aspects of the proposed rule that would limit its usefulness.

ITAR § 126.4(a) – The proposed revisions would significantly reduce the exemption

Raytheon is concerned that the proposed revisions to ITAR § 126.4(a) would eliminate the ability of U.S. government contractors to use the exemption in areas historically permitted by the Department. Raytheon notes that, if enacted, it would jeopardize a number of ongoing programs.

The proposed ITAR § 126.4(a) revisions would effectively eliminate the ability of U.S. government contractors under contract with the U.S. Government to carry out foreign assistance or cooperative projects to utilize the exemption, which historically has been permitted by DDTC under the existing ITAR § 126.4(a). If the exemption cannot be utilized, contractors will be required to obtain licenses which will potentially jeopardize ability to perform under very tight delivery schedules required by these types of foreign assistance and cooperative projects in order to achieve U.S. national security objectives.

Mr. Mr. C. Edward Peartree

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The proposed revisions also fail to clarify several of the inconsistencies in the current ITAR § 126.4(a) and create additional ambiguity as follows:

ITAR § 126.4(a) – The proposed revision excludes technical data

Raytheon is concerned that the proposed revisions to ITAR § 126.4(a) excludes technical data from the exemption. We recommend putting “technical data” back into the exemption.

The proposed revision to ITAR § 126.4(a) would limit the exemption to the export or temporary import of a defense article or the provision of a defense service. Technical data, which is currently included within the scope of ITAR § 126.4(a), appears to have been excluded, whether inadvertently or intentionally. If the exemption can be utilized for defense services, it must also include technical data which in most cases needs to be provided in the course of performing defense services.

To address these concerns, Raytheon recommends the following revision to ITAR § 126.4(a):

“A license is not required for the temporary or permanent export of defense articles, the temporary import of defense articles, the permanent export of technical data, or the performance of defense services to any foreign person or U.S. person located outside the United States, when made:”

Note 1 to ITAR § 126.4(a) – Clarify the scope of contractors

Raytheon requests clarification as to the scope of Note 1 to proposed ITAR § 126.4(a). In particular, it is not clear whether Note 1 applies to only science, engineering and technical assistance contractors, or also other contractors.

The proposed Note 1 to paragraph (a) is not clear as to whether it only applies to Science Engineering and Technical Assistance contractors, or would also apply to other contractors such as Systems Integration contractors and approved subcontractors who are also providing managerial, scientific or technical support under a U.S. Government contract. It also appears to limit the applicability to contract personnel working in a U.S. Government facility or under the direct control and supervision of a U.S. government official for their day to day activity.

To address this concern, Raytheon recommends the following revision of the first sentence of Note 1 to paragraph (a):

“Contractor support personnel means employees of an entity under contract with the U.S. government agency or department to provide administrative, systems integration, managerial, engineering or technical assistance (a prime contractor), as well employees of any subcontractors to the prime contractor authorized by the U.S. government agency or department.”

ITAR § 126.4(a)(1) and (2) – Clarify whether the conditions are disjunctive or conjunctive

Raytheon requests clarification as to whether the conditions within ITAR § 126.4(a)(1) and ITAR § 126.4(a)(2) are disjunctive or conjunctive. The Department should expressly clarify this in the regulations. We recommend that these conditions be disjunctive.

The proposed ITAR § 126.4(a) is also not clear as to whether the conditions in ITAR § 126.4(a)(1) and ITAR § 126.4(a)(2) both must be met in order for the exemption to apply, or whether only ITAR § 126.4(a)(1) or ITAR § 126.4(a)(2)(i) must be met.

To address this concern, Raytheon recommends adding the word “or” at the end of ITAR § 126.4(a)(1) as follows:

“To a department or agency of the U.S. government for official use. Defense articles exported or temporarily imported under this provision may only be provided to a regular employee or contractor support personnel of the U.S. Government; or”

ITAR § 126.4(a)(2)(i) – Still not clear the meaning of “by or on behalf of”

Raytheon notes that it was still not clear what is meant by “by or on behalf of” within proposed ITAR § 126.4(a)(2)(i). We recommend suggested language to eliminate any ambiguity or differing interpretations.

The proposed ITAR § 126.4(a)(2)(i) still does not clarify what is meant “by or on behalf of, of a department or agency of the U.S. government” which is one of the primary issues with the current regulatory language.

Raytheon recommends the following revision to ITAR § 126.4(a)(2)(i) to eliminate any ambiguity and differing interpretations:

“By a department or agency of the U.S. Government, or by Contractor support personnel of a department or agency of the U.S. Government performing within the scope of the applicable contract to any foreign person authorized by the U.S. government department or agency provided that it is for the purpose of carrying out any foreign assistance, cooperative project or sales program authorized by law and subject to the control by the President by other means.”

ITAR § 126.4(a)(2)(i)(B) – Key proposed elements are still not clear

Raytheon is concerned that proposed ITAR § 126.4(a)(2)(i)(B) is still not clear as to what is meant by “the United States Government....directs all aspects of the transaction (export, carriage and delivery abroad) or the export is covered by a U.S. government Bill of Lading” in the context of defense services and technical data.

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Raytheon notes that defense services and technical data are not covered by a U.S. Government Bill of Lading. We recommend suggested language to clarify the practical operation of this requirement.

The proposed ITAR § 126.4(a)(2)(i)(B) is still ambiguous with respect to what is meant by “the United States Government...directs all aspects of the transaction (export, carriage and delivery abroad)or the export is covered by a U.S. government Bill of Lading” in the context of defense services and technical data. For example, defense services and technical data would not be covered by a U.S. Government Bill of Lading. If the defense services being performed by Contractor personnel are within the scope of the contractor’s contract with the U.S. Government agency or department does that satisfy the requirement for the U.S. government to direct all aspects of the transaction.

Raytheon believes that perhaps this requirement is intended to be limited to defense articles, and therefore recommends the following revision:

“With respect to exports or temporary imports of defense articles, the U.S. government performs or directs all aspects of the transaction or serves as the exporter or importer of record.”

ITAR § 126.4(c) – This section could not be applied to defense services or technical data

Raytheon notes that proposed ITAR § 126.4(c) could not be applied to the provision of defense services or export of technical data. We recommend adding “[f]or exports of defense articles” to the beginning of the first sentence to proposed ITAR § 126.4(c).

The proposed ITAR § 126.4(c) could not be applied to the provision of defense services or export of technical data, particularly by electronic means.

Raytheon recommends revision of this section to add the following to the beginning of first sentence:

“For exports of defense articles...”

Thank you for the opportunity to present Raytheon’s views concerning the proposed revisions to ITAR § 126.4.

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If you have any questions concerning this submission, please contact Karl Abendschein, Senior Manager, Global Trade Compliance, at karl.abendschein@raytheon.com or (703) 284-4275 or the undersigned at julia.court.ryan@raytheon.com.

Sincerely,



Julia Court Ryan
Senior Counsel
Global Trade Compliance, Governance

Karl Abendschein
Senior Manager
Global Trade Compliance, Governance



Before the
Department of State
Washington, D.C. 20037

In the Matter of)
Amendment to the) Public Notice 9139
International Traffic in Arms Regulations)

**COMMENTS BY CAMBRIDGE INTERNATIONAL SYSTEMS INC
RELATED TO AMENDMENTS TO THE
INTERNATIONAL TRAFFIC IN ARMS REGULATIONS
NOTICE OF PROPOSED RULEMAKING**

To Whom It May Concern,

Cambridge International Systems, Inc. (Cambridge) is pleased to voice its comments in response to the proposed amendments to the International Traffic in Arms Regulations (ITAR), and specifically exports and temporary imports made to or on behalf of a Department or Agency of the U.S. Government. We encourage the Department of State to consider all comments submitted in response to the Notice of Proposed Rulemaking (NPRM) as discussed in Public Notice 9139.

*Exports and temporary imports made to or on behalf of a
Department or Agency of the U.S. Government
Reference 126.4*

The proposed section 126.4(a) limits exemption use for permanent exports or temporary imports of defense articles, or the performance of defense services. It does not address the export of technical data. Cambridge recommends revising section 126.4(a) as follows: “A license is not required for the export or temporary import of a defense article, **permanent export of unclassified or classified technical data**, or the performance of a defense service, when made:”.

The proposed section 126.4(a)(2) does not clarify the “by or on behalf of” debate. Cambridge recommends revising section 126.4(a)(2) by adding subsection 126.4(a)(2)(C) as follows: **“Contractor support personnel of a Department or Agency of the U.S. Government are eligible for this authorization when in the performance of their duties pursuant to an applicable contract or other official duties.”**

The proposed section 126.4(c) is logistically unclear. Cambridge questions how the Department of State envisions certification statements are presented to U.S. Customs and Border Protection or Department of Defense transmittal authority when Electronic Export Information



(EEI) filings are transmitted electronically via the Automated Export System (AES). Additionally, as proposed, the certification statement is limiting to official use by a U.S. Government Department or Agency and does not appear to consider official use by a foreign end-user. Cambridge recommends **removing the requirement to present the statement to the appropriate Port Director of U.S. Customs and Border Protection or Department of Defense transmittal authority** as the AES is not equipped to accept documents. Further, Cambridge recommends revising the certification statement as follows: “For official use by [insert U.S. Government Department or Agency, **or foreign end-user when carrying out any foreign assistance, cooperative project, or sales program authorized by law and subject to control by the President by other means**]. Property will not enter the trade of the country to which it is shipped. No export license required per CFR Title 22, section 126.4. U.S. Government point of contact: [insert name and telephone number].”

Cambridge International Systems, Inc. has no further comments and compliments the Department of State’s attempts at clarifying certain sections of the ITAR. Please feel free to contact me at kim.harokopus@cbridgeinc.com or 571-319-8916 with any questions.

Very Respectfully,

A handwritten signature in black ink, appearing to read "Kimberly A. Harokopus".

Kimberly A. Harokopus
Chief Executive Officer
Cambridge International Systems, Inc.

Linda Dempsey

Vice President

International Economic Affairs

July 6, 2015

Mr. Edward Peartree
Director, Office of Defense Trade Controls Policy
U.S. Department of State
Washington, DC 20520

Re: ITAR Amendment – To or on behalf of (RIN 1400-AC88)

Via e-mail: DDTCResponseTeam@state.gov

Dear Mr. Peartree:

The National Association of Manufacturers (NAM) welcomes the opportunity to comment on the proposed rule issued by the U.S. Department of State (80 Fed Reg. 99) to amend the International Traffic in Arms Regulations (ITAR) regarding “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; Revision to the Destination Control Statement; and Other Changes.”

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 provides welcome clarification concerning applicability of ITAR exemptions to items subject to the Export Administration Regulations (EAR) and the harmonization of the EAR/ITAR Destination Control Statement (DCS). The NAM recommends several changes to the proposed DCS, including technical edits to mirror the DCS proposed by the Department of Commerce under 15 CFR 758.6(a)(1); limitations on documentation requiring the DCS and related information; additional modifications to ITAR Sec. 124.9, a related provision to Sec. 123.9 that is the principal subject of the proposed rule; and removal of the requirement to list the U.S. Government point of contact and telephone number for use of the revised 126.4 exemption.

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 Department of Commerce in response to a proposed rule (RIN 0694-AG47.)

Documentation Type Requiring Display of 22 CFR 123.9(b)(1) DCS and Related Information

The proposed rule would continue to require the DCS be included on multiple shipping and purchase/invoice documents. There is limited value, though, in including the DCS and related information on the shipping documentation (e.g., air waybill) that may only be seen by the parties involved in the shipping and receiving process, as opposed to the responsible business points of contact.

As noted in the Commerce Department's companion proposed rule, there is no longer a need for the DCS to be added to "the air waybill, bill of lading or other export control documents." Instead, the DCS would be required for 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" (80 Fed. Reg. 99 at 29552). We concur. In the interest of harmonizing the ITAR and EAR requirements to prevent differing compliance requirements for USML and CCL exports, we recommend an edit to Sec. 123.9(b)(1) to delete reference to "bill of lading, air waybill, or other shipping document" and to delete the inclusion of items that are "retransferred, or reexported."

The objective of displaying the DCS is to ensure responsible parties understand the U.S. Government authorizations required for export/retransfer/reexport of commodities. A responsible party is unlikely to view or retain shipping documentation. Rather, a responsible party would be more likely to examine, understand and retain documents related to the sale, purchase and invoicing of the shipped items, which typically describe and itemize such items and typically are scrutinized for accuracy prior to release of payment to the seller.

The burden of including the DCS and related information on each type of shipping documentation, particularly when shipping systems presently do not have dedicated fields or formatting for the related information (i.e., country of ultimate destination, end-user, license/other approval number or exemption citation), outweighs the benefit of capturing redundant DCS-related information. Accordingly, we recommend a final rule clarify that the purchase/invoice information, not the shipping documentation, should contain the DCS and related information.

Finally, the application of the DCS to "retransfers" and "reexports" is problematic. The June 3, 2015, proposed rule to harmonize ITAR and BIS definitions (See 80 Fed. Reg. 106) defines "retransfer" and "reexport" distinctly from an "export" originating from the United States. This proposed edit would remove any suggestion that a U.S. exporter must prepare the DCS and associated documentation on behalf of foreign parties conducting authorized reexport (between foreign countries) or retransfer (within a foreign country), in accordance with the defined terms.

Proposed Revision to DCS Statement found at ITAR Sec. 124.9

The DCS contained in Sec. 123.9(b)(1)(iv) is not the only DCS statement required in the ITAR. In particular, Sec. 124.9(a)(6) requires incorporation of a different DCS statement for Manufacturing License Agreements (MLAs). Although the DCS mandated by Sec. 123.9(b)(1)(iv) and Sec. 124.9(a)(6) are intended for different purposes, we recommend updating the statements for commonality and consistency with ITAR definitions by deleting the term "for export" and by deleting the modifier "through an intermediate process."

The suggested edits more closely aligns with the language in the Proposed Rule under 123.9(b)(1)(iv) – specifically the phrase “controlled and authorized” and the phrase “or as otherwise authorized by U.S. law and regulations.” This new language would also change the first sentence in Sec. 124.9(a)(6) to state “for retransfer/ reexport” instead of export. Under an MLA, items produced and sold under the authority provided are not exported as defined in the ITAR, but rather retransferred or reexported since the point of origin for the transaction for the controlled item is outside the United States. Finally, in an effort to enhance the clarity of the DCS, we suggest that the phrase “through an intermediate process” be removed when describing the restriction on items being incorporated into other end-items beyond the scope of the authorization. If the meaning of “incorporation” is ambiguous, the term should be defined.

Removal of requirement to list U.S. Government Point of Contact/Telephone

The proposed revisions to Sec. 126.4 are welcome. However, the new requirement for a statement on shipment documents (bill of lading, airway bill, or other transportation documents) that includes a U.S. Government point of contact and telephone number presents a new burden for both exporters and the government. We recommend excising the requirement in Sec. 126.4(c) to include in the shipment documents (bill of lading, airway bill, or other transportation documents) the statement, “For official use by [insert U.S. government department or agency]. Property will not enter the trade of the country to which it is shipped. No export license required per CFR Title 22, section 126.4. U.S. government point of contact: [insert name and telephone number].”

The new requirement would impose an additional administrative burden on exporters to modify shipping documents to display a statement that has previously not been required. We see no compelling reason why this information is now necessary.

Moreover, it is reasonable to expect that if a government contracting officer, for example, is listed as the appropriate point of contact, he/she should first be contacted. To make contact and obtain concurrence prior to each such export could require several communications in a chain of logistics, export control and contracting personnel with responses dependent upon the schedules of multiple individuals. While contracting officers have knowledge of contracts, personnel change frequently and do not necessarily have knowledge of the potentially hundreds of shipments made against a particular contract. If a government contracting officer were to be contacted, he/she may not be able to offer any information other than a recommendation to contact the exporter to confirm the export is being made against the appropriate exemption. The exporter, by using the exemption in the first place, has already established that. We believe the proposed change is both potentially cumbersome and redundant.

Conclusion

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

Thank you,



Linda Dempsey

**BEFORE THE
U.S. DEPARTMENT OF STATE
DIRECTORATE OF DEFENSE TRADE CONTROLS**

**PROPOSED RULE:
INTERNATIONAL TRAFFIC IN ARMS REGULATIONS
(ITAR):
HARMONIZATION OF THE DESTINATION
CONTROL STATEMENT**

Comments by

UPS

June 29, 2015

RIN #1400-AC88

Communication with respect to this document should be addressed to:

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**BEFORE THE
U.S. DEPARTMENT OF STATE
DIRECTORATE OF DEFENSE TRADE CONTROLS**

**PROPOSED RULE:
INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR):
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 State, Directorate of Defense Trade Control proposal to revise the destination control statement in the International Traffic in Arms Regulations (ITAR) to harmonize the statement required for the export of items subject to the ITAR with the destination control statement in the Export Administration Regulations (EAR). This proposed change was published in the Federal Register May 22, 2015 (Volume 80, Number 99), pages 29565-29569.

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 DDTC's 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 DDTC 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 29565, 22 CFR 123.9

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

This proposed change would harmonize the language between the ITAR and EAR 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 ITAR as well as the EAR.

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.

UPS expresses a significant concern that although this proposed change aligns the ITAR Destination Control Statement text with the EAR Destination Control Statement text, the DDTC/ITAR's reference and requirement to also note the text on the bill of lading and air waybill (which in certain instances is a label appended to the outside of a package), in addition to other shipping documents, and the purchaser documents, would likely have the unintended effect of signaling package contents to third parties, which is a security concern.

The proposal also conflicts with the intent of the change. This additional requirement is in conflict with the proposed regulation as published by the Bureau of Industry and Security, which notes, "the intent of the Destination Control Statement requirement is to ensure that the statement reaches the ultimate destination and ultimate consignee of the item, so requiring the destination control statement specifically on those documents (Commercial Invoice and Contractual Documents (when exists))" between the Shipper/USPPI and Consignee/Buyer, "would be more likely to achieve the intended purpose of this provision."

The primary objective, focus and purpose of the regulation is to alert the receiver of information needed to ensure their compliance with both the ITAR and EAR. Requiring this

statement on the bill of lading and air waybill does not serve this purpose because in most if not all cases, these carrier export control documents are less likely to travel with the shipment to its ultimate destination. As a result, these additional requirements merely impose real cost for system changes and potentially paper and label printing costs, without providing any clear benefit.

As noted on both the EAR and ITAR proposed changes, harmonization, to the extent possible, is an important step in preparing regulators and the regulated public towards a single set of regulations. In addition, failure to completely harmonize these proposed changes increases the overall burden on participants of both the public and trade to manage and account for multiple regulatory requirements. As a result, UPS can see no benefit and accordingly does not support any proposal to require the Destination Control Statement on transportation documents such as the bill of lading, air waybill, or any such contract of carriage as such a requirement would not lessen the burden on the trade and public.

NPRM Page 29567, 22 CFR 123.9

The exporter must incorporate the following information as an integral part of 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:

- (i) The country of ultimate destination;*
- (ii) The end-user;*
- (iii) The license or other approval number or exemption citation;*

This proposed change is being made to facilitate the President's Export Control Reform initiative, which has transferred thousands of formerly ITAR-controlled defense articles parts and components, along with other items, to the Commerce Control List in the EAR under the jurisdiction of the Department of Commerce.

UPS does not agree with or support this 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.

United Technologies Corporation
1101 Pennsylvania Avenue, N.W.
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Washington, D.C. 20004-2545



Submitted Via Email

July 6, 2015

Mr. C. Edward Peartree
Director, Office of Defense Trade Controls Policy
Directorate of Defense Trade Controls
PM/DDTC, SA-1, 12th Floor
Bureau of Political Military Affairs
U.S. Department of State
Washington, D.C. 20522-0112

Attn: ITAR Amendment – To or on behalf of

Re: Proposed Rule; Comments on 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 State; and Other Changes (80 Fed. Reg. 29565, May 22, 2015)

Dear Mr. Peartree:

United Technologies Corporation (“UTC”)¹ appreciates the opportunity to submit these comments to the Directorate of Defense Trade Controls (“DDTC”) on the proposed amendments to the International Traffic in Arms (“ITAR”) regarding exports to or on behalf of the government, procedures for obtaining ITAR authorization to export items subject to the Export Administration Regulations (“EAR”), and revisions to the Destination Control Statement (“DCS”). UTC supports the continuing efforts to harmonize the EAR and the ITAR.

I. Revisions to Section 123.9(b)(1)

On May 22, DDTC and the Bureau of Industry and Security (“BIS”) concurrently published proposed rules to amend the DCS in ITAR § 123.9(b)(1) and EAR § 758.6, respectively.² UTC supports the harmonization of the DCS language in the EAR and the ITAR and encourages continuing efforts to align *all* aspects of the export clearance requirements, to include the types of documents requiring DCS. We believe one standard requirement under both

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

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

regulations would best support Export Control Reform harmonization efforts. For the reasons described more fully below, UTC recommends that ITAR § 123.9(b)(1) be modified to read as follows:

- (1) The exporter must incorporate the following information as an integral part of the purchase documentation or commercial invoice whenever defense articles are exported pursuant to a license or other approval under this subchapter:
 - (i) The country of ultimate destination;
 - (ii) The end-user;
 - (iii) The license or other approval number or exemption citation; and
 - (iv) The following statement: “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.

A. Transactions Requiring DCS

ITAR § 123.9(b)(1) currently states that the “exporter, U.S. or foreign” must incorporate the DCS on the identified documents when defense articles are “exported, retransferred, or reexported.” UTC interprets this requirement to mean (a) a U.S. exporter must include DCS on shipments from the United States and (b) a foreign reexporter or retransferor must include DCS on shipments to a third country and in-country retransfers to a different entity. The proposed rule eliminates the phrase “U.S. or foreign” but retains the language regarding reexports and retransfers, which is inconsistent with a requirement that applies to an exporter who is not a reexporter/retransferor. Further, the DCS language itself states: “These items are controlled and authorized by the U.S. government for *export* only to the country of ultimate destination[.]” (Emphasis added.)

Therefore, UTC recommends that transactions requiring DCS be limited to exports (*i.e.*, shipments from the United States). This revision: (1) is consistent with the removal of “U.S. or foreign” from the description of “exporter” in paragraph (b)(1); (2) is consistent with the language of the DCS itself; (3) is consistent with the proposed revisions to the definitions of “export” and “reexport” being proposed in a separate rulemaking notice;³ and (4) aligns with EAR § 758.6(a), which is limited to exports, thereby maximizing harmonization between the two regulations.

³ International Traffic in Arms: Revisions to Definitions of Defense Services, Technical Data, and Public Domain; Definition of Product of Fundamental Research; Electronic Transmission and Storage of Technical Data; and Related Definitions. 80 Fed. Reg. 31525 (June 3, 2015).

B. Documents Requiring DCS

The DCS puts the recipient on notice that U.S. export control regulations apply to the item being exported and that additional U.S. government authorization may be required to resell, transfer or dispose of the items to another country, end-user and/or consignee. Therefore, the DCS is most effective when placed on documents that are received by the entity that has authority and ability to determine whether that item is resold, transferred or otherwise disposed of. UTC submits that printing DCS on the majority of the documents currently identified in ITAR § 123.9(b)(1), such as the bill of lading, air waybill, and other shipping documents, does not achieve this objective. These documents are transport documents used by forwarding agents, carriers or other personnel to move the item from point A to point B without regard for the actual contents of the shipment. Moreover, entities using these transport documents have no authority or responsibility to make determinations regarding whether the defense article is resold, transferred, or otherwise disposed of by someone other than the authorized recipient. Therefore, there is limited value in putting them on notice of the U.S. export requirements relating to the defense article.

BIS has analyzed its DCS requirements and its proposed rule reduced the number of documents requiring DCS to the two documents that BIS determined are most likely to accompany the export of the item from the United States to the ultimate destination and consignee so the DCS statement itself actually reaches the intended recipient. UTC submitted comments to BIS seeking clarification of the term “contractual documentation” but we support this change overall because it minimizes the burden to the exporter and is targeted to achieve the intended objective of the requirement. We encourage DDTC to consider a similar change and narrow the requirement to incorporate DCS on purchase documentation or commercial invoices.

C. DCS Language

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’s proposed change is set out above.

D. Additional Data Elements

The current DCS requires that exporters incorporate the country of ultimate destination, the end-user and the license or other approval number or exemption citation within the DCS directly. With the harmonization of the DCS language, DDTC has removed the requirement that these data points be in the DCS itself, but has maintained the requirement that each of these data points appear on each of the following documents: bill of lading, air waybill, or other shipping documents, and the purchase documentation or invoice. The bill of lading, air waybill or other shipping documents do not ordinarily identify the license or authorization information. Country of ultimate destination and end-user may be identified to the extent that the items are in fact being shipped to the ultimate destination and end-user but these fields would not necessarily be identified as “country of ultimate destination” or “end-user.” Therefore, inclusion of these data

elements would need to be done manually, which would be time-intensive. More importantly, the information would be relegated to whatever limited open text space existed on those transport documents, which would reduce its visibility and compete with the DCS. UTC does not believe that this is consistent with DDTC's objectives.

However, in many instances, the commercial invoice may already contain the country of ultimate destination, the end-user and the license/exemption information. The commercial invoice is generated by the exporter and can be configured more readily to include these data elements. Further, that invoice would tie back to the transport documents based on the shipment reference number. Therefore, the change UTC recommends for ITAR §123.9(b)(1) retains inclusion of these additional data elements and limits it to the purchase documentation or commercial invoice, which we believe minimizes the burden on the exporter and still achieves DDTC's objective.

II. New Section 123.9(d)

DDTC incorporated a new paragraph (d) to clarify requirements for retransferring items subject to the EAR pursuant to a General Correspondence letter. Proposed subparagraph (d)(3) states that all requirements for ITAR § 123.9(c) must be "satisfied" for the EAR item and the associated defense article. We believe that the requirement is that the General Correspondence letter requesting authorization to reexport/retransfer the EAR item must include the information required by ITAR § 123.9(c) and recommend that subparagraph (d)(3) clearly state the requirement. Therefore, UTC recommends the following revision to ITAR § 123.9(d)(3) so that it reads as follows: "The information required in § 123.9(c) is provided for the item subject to the EAR, as well as for the associated defense article."

III. Revisions to Section 126.4

UTC supports the proposed clarification and revision of section 126.4 to exempt permanent exports to or on behalf of an agency of the U.S. government from export licensing requirements, and to allow for shipments to contractor support personnel. The proposed language eliminates ambiguity regarding use of the exemption in certain circumstances and reduces the compliance burden by allowing for exemption of certain permanent exports. Some ambiguity remains regarding the meaning of the phrase "for official use." The phrase is not defined in the ITAR, but has been defined in an Executive Order to mean "use by an employee, agent, or designated representative of the Federal Government or one of its contractors in the course of his employment, agency, or representation."⁴ UTC therefore recommends that the Department include the following note in section 126.4(a):

Note 2 to paragraph (a): "Official use" is defined as use by an employee, agent, or designated representative of the U.S. Government or one of its contractors in the course of his employment, agency, or representation.

⁴ See Exec. Order 11644, Sec. 2(4) (Feb. 8, 1972), as codified in 42 U.S.C. sec. 4321.

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Sincerely,



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