# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Part 758

**[Docket No. 150107020–5160–01]**

**RIN 0694–AG47**

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

**AGENCY:** Bureau of Industry and Security, Department of Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the destination control statement in the Export Administration Regulations (EAR) to harmonize the statement required for the export of items subject to the EAR with the destination control statement in the International Traffic in Arms Regulations (ITAR).

This proposed rule is published in conjunction with the publication of a Department of State, Directorate of Defense Trade Controls proposed rule revising the destination control statement in the ITAR. Both proposed rules being published today by the Departments of Commerce and State are part of the President's Export Control Reform Initiative. This proposed rule is also part of Commerce's retrospective regulatory review plan under Executive Order (E.O.) 13563 (see the **SUPPLEMENTARY INFORMATION** for availability of the plan).

**DATES:** The Bureau of Industry and Security will accept comments on this proposed rule until July 6, 2015.

**ADDRESSES:** You may submit comments by any of the following methods:

- By the Federal eRulemaking Portal: *http://www.regulations.gov.* The identification number for this rulemaking is BIS–2015–0013.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AG47 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AG47.

**FOR FURTHER INFORMATION CONTACT:** For questions about this rule, contact Timothy Mooney, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, at 202–482–2440 or email: *timothy.mooney@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The EAR currently requires exporters to include a destination control statement, specified in § 758.6 (Destination control statement and other information furnished to consignees) of the EAR, on certain export control documents that accompany a shipment for most exports. The purpose of this statement is to alert other parties outside the United States that receive the item that the item is subject to the EAR, the item was exported in accordance with the EAR, and that diversion contrary to U.S. law is prohibited.

The ITAR, under § 123.9(b)(1), also includes the same type of destination control statement requirement, but specific to the ITAR context and with slightly different text than what is used under the EAR, although the purpose of the destination control statement requirements is the same under both sets of export control regulations. As a general principle under the Export Control Reform (ECR) implementation that is currently underway, wherever the ITAR and EAR have provisions that are intended to achieve the same purpose, the U.S. Government is making an effort to harmonize those provisions, except when circumstances exist that require that those provisions remain different. The destination control statement requirements under the ITAR and the EAR are an example of requirements that can and should be harmonized to reduce the burden on exporters, improve compliance, and ensure the regulations are achieving their intended purpose for use under the U.S. export control system, specifically under the transactions ''subject to the ITAR'' and ''subject to the EAR.'' The proposed harmonization changes to be made to the EAR are described below under the heading ''*Harmonization of destination control statement.*''

*Harmonization of Destination Control Statement*

This proposed rule would revise § 758.6 of the EAR to harmonize the destination control statement requirement text with § 123.9(b)(1) of the ITAR. This change would be made to facilitate implementation of the President's Export Control Reform Initiative, which has transferred thousands of formerly ITAR controlled defense article parts and components, along with other items, to the Commerce Control List in the EAR under the jurisdiction of the Department of Commerce.

This change in jurisdiction for many of the parts and components for military systems has increased incidence of exporters' shipping articles subject to both the ITAR and the EAR in the same shipment. Both regulations have a mandatory destination control statement that must be on the export control documents for shipments that include items subject to those regulations. This has caused confusion to exporters as to which statement to include on such mixed shipments, or whether to include both. Harmonizing these statements is intended to ease the regulatory burden on exporters.

This change is also being made to harmonize the two sets of regulations, the EAR and the ITAR, per the President's instructions. While the creation of a single export control list and licensing agency would require legislation, the President has directed BIS and the Directorate of Defense Trade Controls at the Department of State to undertake all available actions to prepare for consolidation as a single agency with a single set of regulations. Harmonization, to the extent possible, is one important step for preparing both regulators and the regulated public.

The harmonization of the destination control statement would include the following proposed changes to the EAR. The heading of § 758.6 of the EAR would remain the same. However, the provisions currently under paragraph (b) would be moved to a new paragraph (a)(2).

Further, regarding proposed new paragraph (a)(2), this paragraph would specify that the ECCN for each 9x515 or ''600 series'' item being exported must be included, which is the same requirement that is currently in paragraph (b), although it would be

slightly shortened because the introductory text of paragraph (a) would specify some of the requirements that previously were included in paragraph (b), specifically the documents for which the 9x515 and ''600 series'' classification must be included on under this section. These documents are the same as those documents that the destination control statement would be included on, so this change would shorten and simplify this section by moving the text of paragraph (b) to paragraph (a)(2). This change would reduce the number of documents that this classification would need to be included on to conform with the destination control statement changes described below.

The proposed new introductory text paragraph (a) would specify that the exporter shall incorporate the information specified under paragraph (a)(1) (destination control statement) and (a)(2) (ECCN for each 9x515 or ''600 series'' item being exported) as an integral part of the commercial invoice and contractual documentation, when such contractual documentation exists. This proposed change would mean this section of the EAR would no longer include a requirement to include the destination control statement on the air waybill, bill of lading or other export control documents, and would instead focus the requirement on the two documents—the commercial invoice and contractual documentation. This rule proposes requiring the destination control statement on the commercial invoice and contractual documentation because these two documents are the most likely to travel with the item from its time of export from the United States to its ultimate destination and ultimate consignee. 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 to be included on such documentation, when it exists, would be more likely to achieve the intended purpose of this provision. At the same time, the requirement would have the added benefit of reducing the number of documents on which exporters would be responsible for entering the destination statement. Consistent with the current destination control statement provisions, this rule would not require an EAR destination control statement for exports of EAR99 items or items exported under License Exception BAG or GFT. Any other export from the United States of any item on the CCL would require the destination statement as specified in paragraph (a)(1) and any export of a 9x515 or ''600 series'' ECCN would also need to be specified on those two documents as specified in paragraph (a)(2), when they exist.

The text of the harmonized destination control statement would be specified under revised paragraph (a)(1) of § 758.6 of the EAR. The new destination control statement would not include EAR-specific language, but rather would adopt language that would be equally applicable under the ITAR as well as the EAR. The first sentence of the statement would specify that ''these items are controlled and authorized by the U.S. Government for export only to the specified country of ultimate destination for use by the end-user herein identified.'' This first sentence is intended to alert the person outside the United States receiving the item that the item is subject to U.S. export laws and regulations and was authorized by the U.S. Government for export. In addition, the first sentence would specify that the U.S. Government only authorized the export to the specified country of ultimate destination and for use by the specified end-user. The new destination control statement would use the term authorized, but in the context of this EAR paragraph ''authorized'' would also include exports that were designated under No License Required (NLR).

The second sentence of the new harmonized destination control statement would focus on alerting the persons receiving the items that 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. Similar to the first sentence, this proposed second sentence adopts common language that can be used under the ITAR and the EAR. The application of this second sentence would be different under the ITAR and the EAR due to the different types of authorizations and other approvals in the respective regulations, as well as other differences, such as the de minimis requirements in the EAR, which is not provided for in the ITAR. But the advantage of the proposed text is that it would adopt a new harmonized destination control statement, while at the same time still being flexible enough to not impact other ITAR or EAR provisions that do warrant differentiation, such as the availability of de minimis provisions, which are available under the EAR, but because of statutory limitations in the Arms Export Control Act are not available under the ITAR.

Adoption of a new harmonized destination control statement would simplify export clearance requirements for exporters because they would not have to decide which destination control statement to include, especially for mixed shipments containing both ITAR and EAR items.

An exporter would still need to go through all of the steps to determine jurisdiction, classification, license requirements, and to obtain and use the proper authorization under the respective regulations, prior to moving on to the respective export clearance requirements under the ITAR or EAR. This is important to remember when evaluating these proposed changes because the regulations need to be reviewed and evaluated in the context in which they are intended to be applied, including the steps for determining the applicable export control requirements under the ITAR and the EAR. For those parties outside the United States that would be receiving items under this new destination control statement, although the new destination control statement is not ITAR or EAR specific, in the case of the USML the classification of the USML items would be required on the documentation. This classification would alert the parties that the items are subject to the ITAR. For military items under the EAR, because of the proposed requirement in paragraph (a)(2)(which is currently required under paragraph (b)) of § 758.6 of the EAR, anyone receiving a ''600 series'' military item or an ECCN 9x515 item would know that specific item was subject to the EAR because the classification information would also need to be included on the same documentation. For other EAR items, there would not be a requirement to include the classification information, although BIS does encourage the inclusion of that information as a good export compliance practice.

*Removal of Paragraph (c)*

BIS proposes removing paragraph (c) of § 758.6 in this rule. Paragraph (c) was added recently (January 23, 2015, 80 FR 3463) and requires a special DCS for items controlled under ECCNs for crime control columns 1 and 3 or regional stability column 2 reasons when those items are destined to India. BIS proposes removing this requirement because the benefit for this requirement in paragraph (c) is outweighed by the added complexity to the EAR of including this country specific requirement. Therefore, consistent with

the purpose of the retrospective regulatory review, BIS proposes removing paragraph (c).

As required by Executive Order (EO) 13563, BIS intends to review this rule's impact on the licensing burden on exporters. Commerce's full retrospective regulatory review plan is available at: *http://open.commerce.gov/news/2011/08/23/plan-retrospective-analysis-existing-rules*. Data are routinely collected on an ongoing basis, including through the comments to be submitted and through new information and results from Automated Export System data. These results and data have formed, and will continue to form, the basis for ongoing reviews of the rule and assessments of various aspects of the rule. As part of its plan for retrospective analysis under E.O. 13563, BIS intends to conduct periodic reviews of this rule and to modify, or repeal, aspects of this rule, as appropriate, and after public notice and comment. With regard to a number of aspects of this rule, assessments and refinements will be made on an ongoing basis. This is particularly the case with regard to possible modifications that will be considered based on public comments described above.

**Export Administration Act**

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

**Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This regulation involves collections previously approved by the OMB under control numbers 0694–0122, ''Licensing Responsibilities and Enforcement.'' This rule does not alter any information collection requirements; therefore, total burden hours associated with the PRA and OMB control number 0694–0122 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities.

*Number of Small Entities*

BIS does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

*Economic Impact*

This proposed rule is part of the Administration's Export Control Reform (ECR) Initiative. The destination control statement is an existing regulatory requirement under the EAR that exporters must use for export clearance purposes for most export transactions that are subject to the EAR.

The improvements to the export control system being implemented under ECR have resulted in reduced burdens on exporters, including small businesses, because the military items moved to the CCL now have the availability of more flexible EAR authorizations and availability of de minimis provisions among other advantages for exporters of items that have moved from the USML to the CCL. However, the existing destination control statement requirements impose an unnecessary burden on exporters of mixed shipments (shipments that include items subject to the EAR and ITAR). The current provisions create ambiguity for exporters on which destination control statement to use for such mixed shipments, which imposes unnecessary administrative costs and burdens on such exporters. The proposed changes in this rule would relieve this burden by adopting a harmonized destination control statement under the EAR. The corresponding Department of State proposed rule would adopt a harmonized destination control statement under the ITAR. This proposed harmonized destination control statement would result in time savings for exporters when they determine their export clearance requirements. These proposed changes would also reduce the economic impact on exporters, including small businesses, because it would make it easier for exporters to comply with this export clearance requirement under the EAR and the ITAR for specific transactions and would also simplify the export control clearance requirements associated with mixed transactions.

In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items. Therefore, this proposed rule would not cause any economic impact and would result in no additional compliance cost. On the contrary, this proposed rule would reduce compliance costs.

*Conclusion*

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by the improvements made to harmonization of the destination control statement under the EAR and the ITAR. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 15 CFR Part 758**

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, Part 758 of the Export Administration Regulations (15 CFR parts 730–774) is proposed to be amended as follows:

## PART 758—[AMENDED]

■ 1. The authority citation for 15 CFR part 758 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 2. Section 758.6 is revised to read as follows:

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

(a) The exporter shall incorporate the following information as an integral part of the commercial invoice and contractual documentation, when such contractual documentation exists, whenever items on the Commerce Control List are exported, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR):

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

(2) The ECCN for each 9x515 or ''600 series'' item being exported.

(b) [Reserved]

Dated: May 13, 2015.

**Kevin J. Wolf,**

*Assistant Secretary of Commerce for Export Administration.*

[FR Doc. 2015–12298 Filed 5–21–15; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Part 758

**[Docket No. 150220163–5163–01]**

**RIN 0694–AG51**

## Additional Improvements and Harmonization of Export Clearance Provisions

**AGENCY:** Bureau of Industry and Security, Department of Commerce.

**ACTION:** Advanced notice of proposed rulemaking.

**SUMMARY:** The Bureau of Industry and Security (BIS) in this advanced notice of proposed rulemaking (ANPR) requests comments for how the export clearance requirements under the Export Administration Regulations (EAR) can be improved, including how the EAR export clearance provisions can be better harmonized with the export clearance requirements under the International Traffic in Arms Regulations (ITAR). This ANPR is part of Commerce's retrospective regulatory review and ongoing harmonization efforts being undertaken by Commerce and State as part of Export Control Reform (ECR) implementation. This ANPR is also part of Commerce's retrospective regulatory review plan under Executive Order (EO) 13563 (see the **SUPPLEMENTARY INFORMATION** for availability of the plan).

**DATES:** The Bureau of Industry and Security will accept comments on this advanced notice of proposed rulemaking until July 6, 2015.

**ADDRESSES:** You may submit comments by any of the following methods:

- By the Federal eRulemaking Portal: *http://www.regulations.gov.* The identification number for this rulemaking is BIS–2015–0012.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AG51 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AG51.

**FOR FURTHER INFORMATION CONTACT:** For questions about this ANPR, contact Timothy Mooney, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, at 202–482–2440 or email: *timothy.mooney@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The Bureau of Industry and Security (BIS) in this advanced notice of proposed rulemaking (ANPR) requests comments for how the requirements under part 758 (Export clearance) of the Export Administration Regulations (EAR) (15 CFR parts 730–774) can be improved, including how the EAR export clearance provisions can be better harmonized with the export clearance requirements under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). This ANPR is part of Commerce's retrospective regulatory review and ongoing harmonization efforts being undertaken by Commerce and State as part of Export Control Reform (ECR) implementation. Commerce's full retrospective regulatory review plan is available at: *http://open.commerce.gov/news/2011/08/23/commerce-plan-analysis-existing-rules.*

*Harmonization of Export Clearance Provisions*

The President's Export Control Reform (ECR) Initiative has transferred thousands of formerly ITAR controlled defense article parts and components, along with other items, to the Commerce Control List in the EAR under the jurisdiction of the Department of Commerce. The EAR includes part 758, which specifies requirements for export clearance under the EAR. As part of ECR implementation, BIS has made certain changes to part 758 to address the addition of the 9x515 and ''600 series'' ECCNs to the CCL (see the EAR final rules published on April 16, 2013 (78 FR 22660), May 13, 2014 (79 FR 27418) and November 12, 2014 (79 FR 67055)), along with other changes to the EAR to account for the 9x515 and ''600 series'' ECCNs being added to the EAR.

As a general principle, under the ECR implementation that is currently underway, wherever the ITAR and EAR have provisions that are intended to achieve the same purpose the U.S. Government is making an effort to harmonize those provisions, except when there is a reason why those provisions should remain different. The export clearance requirements under the