

November 15, 2016 Implementation Date for BIS and DDTC Harmonized Destination Control Statements

As part of the President's Export Control Reform (ECR) initiative, the Department of Commerce, Bureau of Industry and Security (BIS) and the Department of State, Directorate of Defense Trade Controls (DDTC) issued a final rule on August 17, 2016 harmonizing the Destination Control Statement (DCS) required by both the EAR and ITAR. The new rules combine the requirements of the previous BIS and DDTC requirements into one DCS which amends the original language requirements to be equally applicable under the ITAR and EAR. The new DCS must be used for all shipments regardless if shipments consist of only ITAR, only EAR or a mix of both items. The purpose of the new rule is to ensure that all responsible parties understand the BIS and ITAR authorizations required for export, retransfer and reexport of commodities and that the proper parties are receiving this information. The new rules became effective November 15, 2016 with the harmonized statement as follows:

These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(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.

This final rule requires that all EAR and ITAR controlled shipments, with the exception of EAR99 and BAG and GFT license exceptions, list the revised DCS on the commercial invoice. The DCS will no longer be required to be placed on other shipping documents such as the bill of lading or air way bill. EAR 9x515 or "600 series" shipments exported in tangible form will require the ECCN to be included on the commercial invoice. Although the DCS is not required for EAR99 and intangible exports, BIS recommends as a matter of best practice to include the DCS, all ECCN's and other relevant export control information on the commercial invoice for any and all shipments.

In addition to the DCS on the commercial invoice for ITAR shipments, the DCS or reference to the statement must be contained in the ITAR licensing, manufacturing and distribution agreements. The ITAR commercial invoice is also required to contain the following:

- Country of ultimate destination
- Name of end-user
- License or approval # or applicable license exception.

RECOMMENDATION:

It is recommended that companies proceed with the necessary modifications to their export compliance programs and procedures and notify 3rd party providers of the new requirements that may affect their export documentation. For more information, please contact Susanne Cook at scook@cohenlaw.com or 412-297-4741, Bruce Chiu at bchiu@cohenlaw.com or 412-297-4933, or Megan Finkelstein at mfinkelstein@cohenlaw.com or 412-297-4846. To receive future news alerts, please send an e-mail to bulletins@cohenlaw.com.

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