

Export Documentation Requirements Change Following EAR/ITAR Amendments

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Export control documentation requirements are changing effective **November 15, 2016**. Specifically, the Department of Commerce's Bureau of Industry and Security, and the Department of State's Directorate of Defense Trade Controls, amended the requirements for where the Destination Control Statement ("DCS") must appear and its contents. Each agency published its Final Rule with respect to these amendments in the Federal Register on August 17, 2016 (81 FR 54721, 54732). The paperwork and processes used by exporters, carriers, and forwarders engaged in the export trade are affected by these changes.

Commerce and State examined the mandatory DCS requirements under both the Export Administration Regulations ("EAR") and the International Traffic in Arms Regulations ("ITAR") as part of the President's Export Control Reform initiative. Whether under EAR or ITAR, the DCS shares the common purpose of alerting parties outside the United States that shipments exported from the U.S. are subject to U.S. export controls and the reexport, diversion, or in-country transfer may be prohibited by U.S. law. The agencies sought to simplify the DCS requirements and harmonize mandatory language as set forth in 15 CFR 758.6 and 22 CFR 123.9. As a result, the DCS may now appear solely on the commercial invoice and the specific language is identical regardless of the agency with jurisdiction.

DCS No Longer Required For Transportation Documents

The regulatory compliance burden on carriers, forwarders, and exporters is lessened by the DCS amendments. Transportation documents, such as the bills of lading and international air waybills issued by carriers and forwarders, are no longer required to carry the DCS as of November 15. Historically, the DCS requirement was applied broadly and imposed on these transportation documents. However, transportation documents face formatting constraints and often do not reach the consignee or end-user to whom they are intended to provide notice.

As part of the amendments, Commerce and State agree to remove the requirement that the DCS appear on transportation documents by requiring, instead, that it appear only on the commercial invoice. Each agency now observes that the practical intent behind the DCS, which is to provide appropriate notice at destination, is best achieved by placing the DCS on the commercial invoice alone as it is most likely to reach the consignee or end-user. Commerce also confirmed that any condition on a license issued prior to August 17, 2016, that requires placing the DCS on documents other than the commercial invoice, including transportation documents, are no longer applicable as of November 15, 2016.

DCS Now Contains New Harmonized Language

The DCS language required to appear on commercial invoices by 15 CFR 758.6 and 22 CFR 123.9 is now identical, stating 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.” Additional commercial invoice disclosure requirements are provided in the respective regulations.

The net effect of these changes is a clearer and less complicated approach to the DGS requirement. The overall compliance burden is decreased while the likelihood of successful, error-free, regulatory compliance is increased. However, all exporters, carriers, and forwarders are well advised to take this opportunity to carefully examine their paperwork and processes in response to these amendments.

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