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New Rules Streamline Export Requirements

As part of the U.S. export control reform process, the Department of Commerce's Bureau of Industry and Security (BIS) and the Department of State's Directorate of Defense Trade Controls (DDTC) recently issued final rules to harmonize the destination control statement (DCS) for items subject to the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR). The new rules take effect November 15, 2016, and are designed to streamline export clearance requirements, most notably for shipments containing both EAR and ITAR items.

Generally, destination control statements are used to alert parties outside the United States that the items are subject to U.S. export control measures. While previous DCS requirements varied between BIS and DDTC, the new harmonized language implements a standard DCS statement for all shipments, whether they contain items under the EAR, ITAR or both. The harmonized DCS states:

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.

The new rules require that the statement be included only on the commercial invoice. In the past, the DCS was required on the commercial invoice, bill of lading, air waybill or other shipping documents.

Additional ITAR and EAR Requirements

In addition to new harmonized legal language, the final rules reflected in the ITAR at 22 C.F.R. § 123.9 impose the following requirements:

The DCS must appear on the commercial invoice for exports, re-exports and retransfers of all ITAR-controlled tangible items.

The commercial invoice must also specify (1) the country of ultimate destination, (2) the end-user's name, and (3) the license or approval number or applicable license exception.

If the shipment includes an item subject to the EAR, the exporter must provide the EAR export classification to the end-user, i.e., the Export Control Classification Number (ECCN) or EAR99.

The final rules reflected in the EAR at 15 C.F.R. § 758.6 impose these additional requirements:

The DCS is required only on shipments of tangible items subject to the EAR, including exports authorized under NLR (no license required).

A DCS is not required for exports of EAR99 items or items exported under License Exception BAG or GFT.

For shipments of 9x515 or "600 series" items exported in tangible form, the ECCN of each item must be included on the commercial invoice.

For intangible exports, BIS does not require, but instead recommends as a good compliance measure, the inclusion of a DCS on any commercial invoice, all ECCNs and other relevant export control information.

What This Means to You

Harmonization of the ITAR and EAR DCS language will assist exporters with mixed shipments of ITAR and EAR items as it alleviates confusion about which statement to apply and allows for the statement to be included only on the commercial invoice. While these changes should streamline the export clearance process, some exporters may need to focus on recoding their software for enterprise resource planning (ERP) systems to reflect the new statement. Exporters have until November 15, 2016, to implement these changes but should make arrangements now to avoid unnecessary delays with shipments this fall.

Contact Us

For more information on how DCS harmonization may affect your business, please contact Cortney Morgan, Linda Tiller, Grant Leach or another member of Husch Blackwell's Export Controls & Economic Sanctions team.