

U.S. Export Destination Control Statements Harmonized

By John D. Goodrich

August 2016

In a long awaited rule change, the U.S. Bureau of Industry and Security (BIS) and the Department of State issued dual Federal Register notices on August 17th finalizing a common destination control statement (DCS). When required, the DCS should be included on the exporter's commercial invoice.

The new DCS, which will take effect November 15, 2016 reads:

“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 statement is not required for all export shipments. For example goods designated as EAR 99 or subject to license exceptions BAG and GFT are excepted from the rule. Nothing precludes exporters, however, from erring on the side of caution and including the statement on all export shipments.

Regulations Amended:

[The BIS Federal Register notice](#) amends 15 CFR section 758.6 which now reads in part:

(a) The exporter must incorporate the following information as an integral part of the commercial invoice whenever items on the Commerce Control List are shipped (i.e., exported in tangible form), unless the shipment (i.e., the tangible export) may be made under License Exception BAG or GFT (see part 740 of the EAR) or the item is designated as EAR99:

(1) The following statement: “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” and Show citation box

(2) The ECCN(s) for any 9x515 or “600 series” “items” being shipped (i.e., exported in tangible form).

[The State Department Federal Register notice](#) was lengthier and modified 22 CFR sections 120, 123 through 126. These amendments also require the DCS or a reference thereto to be included within licensing, manufacturing and distribution agreements. Readers are encouraged to read the amendments carefully for full details. Specifically, 22 CFR section 123.9 now reads in part:

* * * * *

(b) * * *

(1) The exporter must incorporate the following information as an integral part of the commercial invoice, whenever defense articles are to be shipped (exported in tangible form), retransferred (in

tangible form), or reexported (in tangible form) 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 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."*

(2) When exporting items subject to the EAR (see §§ 120.5, 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 end-user and consignees with the appropriate EAR classification information for each item. This includes the Export Control Classification Number (ECCN) or EAR99 designation. Show citation box

(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*
- (3) 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.*
