small, were able to express their views on this issue.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Almond Quality and Food Safety Committee met on April 5, 2016, and discussed this issue in detail. That meeting was also a public meeting, and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the quality control requirements currently prescribed under the order. Any comments timely received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes the current rules and regulations; (2) this rule should be in place in time for the beginning of the crop year on August 1; (3) the Board unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 981.442(a)(4)(i) is revised to read as follows:

§ 981.442 Quality Control.

(a) * * *

(4) *Disposition obligation.* (i) Beginning August 1, 2016, the weight of inedible kernels in excess of 2 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. For any almonds sold inshell, the weight may be reported to the Board and the disposition obligation for that variety reduced proportionately.

* * * * *

Dated: August 12, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–19625 Filed 8–16–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2013–BT–TP–0050]

RIN 1904–AD10

Energy Conservation Program: Test Procedures for Ceiling Fans; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; technical correction.

SUMMARY: On July 25, 2016, the U.S. Department of Energy published a final rule amending test procedures for ceiling fans. 81 FR 48619. This correction addresses an amendatory term error in that final rule.

DATES: The correction is effective August 24, 2016.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–1604. Email: *ceiling_fans@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–7796. Email: *elizabeth.kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) published a final rule in the **Federal Register** on July 25, 2016 (''the July 2016 final rule'') amending test procedures for ceiling fans. 81 FR 48619. This correction addresses an amendatory term error in that final rule. Specifically, the instructions amending appendix U to subpart B of part 430—Uniform Test Method for Measuring the Energy Consumption of Ceiling Fans, stated that appendix U is ''added''. Since 10 CFR part 430 already includes appendix U, the instruction amending appendix U should use the amendatory term ''revised.'' This document corrects appendix U instructions to use the correct amendatory term ''revised.''

Correction

■ In FR Doc. 2016–17139, appearing on page 48640, in the issue of Monday, July 25, 2016, amendatory instruction 7. is corrected to read as follows:

Appendix U to Subpart B of Part 430 [Corrected]

■ 7. Appendix U to subpart B of part 430 is revised to read as follows:

* * * * *

Issued in Washington, DC on August 11, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–19621 Filed 8–16–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 758

[Docket No. 150107020–6464–02]

RIN 0694–AG47

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

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

ACTION: Final rule.

SUMMARY: This final rule implements changes that were proposed on May 22, 2015, in a proposed rule entitled *Revisions to the Export Administration Regulations (EAR): Harmonization of the Destination Control Statements.* This final rule revises the destination control statement in § 758.6 of 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 § 123.9(b)(1) of the International Traffic in Arms Regulations (ITAR).

DATES: This rule is effective November 15, 2016.

ADDRESSES: Commerce's full retrospective regulatory review plan can be accessed at: *http://open.commerce.gov/news/2015/03/20/commerce-plan-retrospective-analysis-existing-rules-0.*

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: This final rule is published in conjunction with the publication elsewhere in this issue of the **Federal Register** of a Department of State, Directorate of Defense Trade Controls final rule revising § 123.9(b)(1) of the ITAR. Both final rules are part of the President's Export Control Reform Initiative. This final rule is also part of Commerce's retrospective regulatory review plan under Executive Order (E.O.) 13563 (see below for availability of the plan).

Background

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

Prior to the effective date of the State final rule, the ITAR, under § 123.9(b)(1), included the same type of DCS requirement, but with slightly different text than that which was required by the EAR. The purpose of the DCS requirements was the same under both sets of export control regulations. As a general principle of the Export Control Reform (ECR) effort, wherever the ITAR and EAR have provisions that are intended to achieve the same purpose, the U.S. Government will harmonize the corresponding provisions.

As was stated in the Commerce and State proposed rules, the DCS under the ITAR and the EAR were an example of requirements that could and should be harmonized to reduce the burden on exporters, improve compliance, and ensure that 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.'' This final rule is revising § 758.6 of the EAR to harmonize the DCS requirement text with § 123.9(b)(1) of the ITAR.

Under the existing provisions, both regulations have a mandatory DCS that must be on the export control documents for shipments that include items subject to those regulations. This had caused confusion to exporters as to which statement to include on such mixed shipments, or whether to include both. The harmonization of these statements in this final rule will ease the regulatory burden on exporters, which, based on the public comments described below and the additional changes made in the Commerce and State final rules in response to those comments, will further the objectives of the DCS requirements.

The change is also being made in this final rule 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, of the existing export control regulations is one important step for preparing both regulators and the regulated public for the work that will be needed to create such regulations.

Public Comments and BIS Responses

The public comment period on the May 22, 2015, proposed rule (80 FR 29551) closed on July 6, 2015. BIS received 17 public comments on the EAR proposed rule. Most of the commenters sent the same comments to Commerce and State expressing their support or concerns regarding the DCS related provisions included in the Commerce and State proposed rules. There were slightly different points of emphasis that were specific to the Commerce and State proposed rules, but substantively the comments were not different in any meaningful way in what the commenters thought needed to be changed in order to achieve the stated objectives in the Commerce and State proposed rules. The following describes the public comments and BIS's responses. After making changes to what was proposed to address the public comments and better achieve the stated objectives, Commerce and State are concurrently publishing final rules to harmonize the DCS provisions under the EAR and ITAR. Commerce and State agree with the public commenters that, as proposed, the harmonization did not go far enough and in order to have true harmonization and achieve the stated objectives that additional harmonization was needed. In addition, certain clarifications and refinements of what was originally proposed were needed in order to clarify and alleviate perceived concerns, in particular for exporters of non-600 series and non-9x515 items under the EAR. Where BIS has made regulatory changes to address the public comments, a description of those changes is included beneath the respective public comments and BIS responses. BIS has made these regulatory changes to § 758.6 to address the public comments and to better achieve the stated objectives of the rule. The public comment process was helpful in identifying areas where changes needed to be made to fully achieve the intended objectives for the DCS for use under the EAR and the ITAR. The following are the BIS responses to the comments:

Supportive

Comment 1: Several commenters were supportive of the plan to harmonize the DCS and noted the proposed changes: (1) Will minimize confusion as to which DCS must be used depending on the jurisdiction of item, (2) will exclude EAR and ITAR-specific text—meaning it can be used under both sets of regulations; and (3) will help to achieve the stated intent of the ECR initiative principles, which includes elimination of unnecessary export compliance burdens.

BIS response: BIS agrees. These commenters support that the key objectives of the rule have been met.

Not Supportive

Comment 2: Expresses significant concern and requests clarification, but also wishes to note that in general supports BIS's efforts to harmonize the DCS and thereby reduce the burden on exporters, promote consistency, improve compliance, and ensure the regulations are achieving the intended purpose for use under the U.S. export control system.

BIS response: BIS was encouraged that even for the commenters that raised significant concerns about certain aspects of the proposed rule that most of these same commenters still

supported the general objective of harmonization of the DCS under the EAR and ITAR. Once BIS made changes to address their concerns on certain aspects of the proposed rule, these commenters would likely fully support the final rule because they viewed harmonization of the DCS as a positive step and their support was only qualified because of certain aspects of the proposed rule, which BIS has addressed in this final rule, as described further below.

Comment 3: Proposed DCS language focuses too much on harmonizing the EAR's language with the ITAR's DCS. While this is a potentially positive outcome for companies involved in defense trade, this approach does not take into account non-military exporters and the nature of commercial transactions.

BIS response: BIS is addressing these concerns by defining some of the key terms used in the DCS as they are interpreted in the EAR context, including providing some specific application examples in this final rule. These changes will address the various concerns in this area that were raised by various commenters as it related to NLR shipments or multi-step transactions that consist of discrete controlled events (*e.g.*, ''exported'' to a distributor as one discrete controlled event, and then a subsequent ''reexport'' as another discrete controlled event under the EAR). The proposed rule did not change any of the obligations of the parties to the transaction in these situations under the EAR, but the text of the DCS made some people worry how the DCS text would be applied in the EAR context, which BIS is addressing with some clarifying examples and defining how some of these key terms used in the DCS text is interpreted in the EAR context in this final rule. This final rule makes the following regulatory changes to address this public comment:

In § 758.6, addition of Note 1 to paragraph (a). This final rule adds Note 1 to paragraph (a) to clarify the term ''authorized'' includes exports, reexports and transfers (in-country) designated under No License Required (NLR), which was explained in the preamble of the proposed rule, but one commenter requested this be added to the regulatory text. In addition, several other commenters did not understand that in the context of paragraph (a) the term ''authorized'' also includes NLR. BIS agrees that specifying this for purposes of this section is helpful and therefore this final rule is adding the new Note to paragraph (a). Because NLR is specific to the EAR, no changes are being made to the ITAR's DCS to address this comment. Similarly, the Note 2 to paragraph (a) described in the next paragraph is specific to the application under the EAR, so no changes are being made in the ITAR rule to add similar clarifying notes.

In § 758.6, addition of Note 2 to paragraph (a). This final rule adds Note 2 to paragraph (a) to specify the phrase 'country of ultimate destination' means the country specified on the commercial invoice where the ultimate consignee or end user will receive the items as an ''export.'' The term ''export'' is a long established and well understood term under the EAR, so the use of this term in Note 2 will assist exporters' understanding of the use of the phrase 'country of ultimate destination'' in the DCS requirements in the context of the EAR. This final rule provides two examples here for using Note 2 to paragraph (a) to determine the 'country of ultimate destination.' Example 1: If the exporter is ''exporting'' directly to an end user, such as generally permitted pursuant to § 750.7(c)(1)(ix) under a BIS license, the commercial invoice must be provided to the end user, which in this scenario is in the 'country of ultimate destination.' Example 2: If the exporter is exporting to an ultimate consignee, such as a distributor, the 'country of ultimate destination' in these exports is the destination of the ultimate consignee. This was a major concern that several commenters raised on the proposed rule, in particular for exporters of non-600 series and non-9x515 items. The addition of Note 2 addresses those comments and will improve understanding of the DCS in the EAR.

Comment 4: We applaud the U.S. government's attempt to simplify and improve the export clearance process (export clearance process refers to the regulatory requirements that need to be followed under the EAR and ITAR at the time of export to clear the final steps in exporting an item, *e.g.*, filing Electronic Export Information (EEI)); however, you are proposing changes that will require every organization that exports products from the U.S. to revise their systems, when the need is appropriate only for ITAR or EAR license-required 9x515 and 600-series shipments. The proposed changes will impose a regulatory burden on all U.S. exporters without any apparent enhancement to compliance; and increase the uncertainty among foreign recipients.

BIS response: BIS does not agree. There are benefits that this harmonization will bring for exporters of ''600 series'' (what the commenters refers to as defense exporters) and 9x515 items. However, all exporters will benefit from a reduction in the number of documents that the DCS needs to be placed on under the EAR and the ITAR. In addition, as was noted in the support for not requiring the DCS on transportation documents (such as the air waybill), the existing DCS provisions imposed a requirement on many transportation related documents that in many cases were not reaching the consignees for which the statement was intended. The EAR were imposing a requirement to place the DCS on transportation documents that, although important to a transaction, do not in most cases reach the ultimate consignee or end-user(s). Requirements that do not achieve their objectives should be revised or removed. The objectives of the DCS are to ensure that the statement reaches the ultimate destination and ultimate consignee and/or end-user(s) of the item. The DCS helps such parties understand that the items were exported under the U.S. export control system, so they will understand their responsibilities under the U.S. export control system. Ensuring that the DCS is placed on the document that has the greatest likelihood of reaching the parties that will ultimately receive and use the item is the best way to protect the interest of *all* parties that participate in exports that are subject to the EAR and ITAR. This includes exporters of non-600 series and non-9x515 items under the EAR. An effective DCS is important for protecting U.S. national security and foreign policy interests. Parties outside the United States that will receive and use an item that is ''subject to the EAR'' or ''subject to the ITAR'' must be aware that the item was exported to them under the U.S. export control system in order to be able to comply with the EAR or the ITAR.

Objectives Achieved

Comment 5: Several commenters indicated the objectives of the proposed rule were achieved because of the following reasons: (1) Will eliminate confusion regarding which statement to use for shipments that include both items subject to the ITAR and items subject to the EAR, (2) incorporating the DCS into the commercial invoice will be much more likely to achieve the intended purpose of the DCS; and (3) having common text for the DCS will significantly simplify the export process.

BIS response: BIS agrees.

Objectives Partially Achieved

Comment 6: Better to create a second DCS for use with ITAR and ''600 series'' and mixed shipments.

BIS response: BIS disagrees. This suggestion would create unneeded complexity. The concerns raised by exporters of non-600 series and non-9x515 items can be addressed without creating separate forms for different types of items.

Comment 7: Harmonized text right step. But DCS requirements need to be identical to achieve the intended objective.

BIS response: BIS agrees. The intent was to have the DCS text be identical, so any slight differences are being harmonized. This final rule makes the following regulatory changes to address this public comment:

In § 758.6, introductory text of paragraph (a), this final rule makes a conforming edit for text used to ensure the text is the same under the EAR and ITAR DCS. In the first sentence of paragraph (a) introductory text, this final rule is removing the term ''shall'' and adding in its place the term ''must.'' This change is being made to harmonize the EAR text with the text used in the ITAR DCS rule. Commerce and State intended for these words to be the same, but the Commerce and State proposed rules differed, so BIS is making this change in the Commerce final rule. This inconsistency was identified in one of the comments, including the suggestion of adopting State's text because it was clearer regarding it being a requirement. BIS agrees.

Objectives Not Achieved

Comment 8: There should be some way to ensure that this DCS information is communicated to all parties involved and not just to the first party the items will be exported to in the transaction. Often the export occurs to a sales agent/reseller in the foreign country who will first receive the shipment, but they may not be the actual end-user and may be in a country that is not the ultimate destination.

BIS response: BIS agrees. BIS has added text as described below to address such scenarios, along with also providing guidance on how the DCS provisions interact with other EAR provisions, which was noted by several other comments as a concern with potential overreach.

Comment 9: This appears to be a case of harmonization for the sake of harmonization, and would appear to have the potential to create substantial confusion among recipients, impose significant burdens without a correspondingly significant benefit to the government.

BIS response: BIS disagrees. Several other commenters noted the concern in particular over mixed shipments and that the objectives of the rule would be met. BIS disagrees that there would not be benefits to the United States Government. An effective U.S. export control system requires effective reexport controls, which at its most basic level means reexporters understand that an item is subject to U.S. reexport controls. Ensuring that the DCS actually goes out of the U.S. and reaches the parties that will receive the items is key to the United States Government's ability to achieve its objectives in this area with the DCS.

Comment 10: Statement that commercial invoice and contractual documentation would be most likely to travel with shipment not necessarily correct.

BIS response: BIS disagrees. For the commercial invoice, several other commenters disagreed with this commenter's assertion. Requiring the DCS on contractual documentation was not adopted in this final rule, so that part of the comment is no longer applicable.

Decreases Burden

Comment 11: Single DCS statement will make it easier to automate because the same DCS will be used for EAR and ITAR shipments.

BIS response: BIS agrees.

Increases Burden

Comment 12: Changes to the DCS can be costly because it requires recoding the logic for each enterprise resource planning (ERP) system printing the DCS in the export control documentation. Some companies may have several different ERPs, which further increases the burden.

BIS response: The delayed effective date is intended to ease this initial burden of transitioning to the new DCS, which BIS expects will subside quickly and that over the mid to long term the DCS text will ease the burden. BIS acknowledges that there will be a minimal one-time burden on exporters as they need to update the DCS text on an existing document that already requires the DCS, but BIS expects this to be a one-time cost, not a recurring one. The delayed effective date of 90 days will also ease the cost on exporters who have already pre-printed the DCS on their commercial invoice documents by allowing such exporters to use that remaining stock of commercial invoices during the transition period prior to the effective date. In addition, several commenters noted that their systems are set up to prepopulate the commercial invoice, so limiting the requirement to the commercial invoice should ease the burden significantly. Current EAR DCS requirements already extend to the invoice (which has the same meaning as commercial invoice), so exporters' ERP systems should already be set up for this requirement and the extent of the change is limited to updating the text of the statement. Not adopting the proposed requirement to include the DCS on the contractual documentation will significantly reduce the amount of changes needed to ERP systems. This commenter also wanted the ability to continue to include the DCS on the shipping documents. Nothing in the final rule would prohibit continuing that practice, which will also reduce the number of changes needed to ERP systems, except for updating the text used.

Comment 13: Extending to intangible exports would create a significant burden.

BIS Response: BIS agrees. BIS has added changes in this final rule to clarify the EAR DCS is only required on the items exported in tangible form. This final rule makes the following regulatory changes to address this public comment:

In § 758.6, introductory text of paragraph (a), this final rule clarifies that paragraph (a) applies only to items shipped, *i.e.*, exported in tangible form. As discussed above in response to the public comments, several commenters were concerned that the use of the defined term ''export'' would be a significant expansion of the DCS requirement by requiring the DCS for tangible as well as intangible exports. BIS had intended this broader scope when using the term ''export,'' instead of the undefined term shipment, in the proposed rule. However, in reviewing the public comments and in discussing the practice under the ITAR, BIS accepts the public comments on the Commerce rule to clarify that the scope of the DCS requirement only applies to items on the Commerce Control List that are shipped (exported in tangible form). Therefore, this final rule adopts in paragraph (a)(1) the term ''shipped (*i.e.*, exported in tangible form)'' rather than the term ''export.''

In § 758.6, paragraph (a)(2), this final rule removes the term ''exported'' and adds in its place the phrase ''shipped (*i.e.*, exported in tangible form).'' This clarification is made for the same reasons why, as described above, the similar changes were made to paragraph (a)(1) in response to public comments.

Concerns About Costs To Implement

Comment 14: Large and small exporters will incur costs that are dependent on size, but significant in any case. Large exporters will have to

retool their ERP systems to collect information they are not presently collecting (*e.g.*, end-user) and insert it into documents they do not currently generate with a DCS.

BIS response: The commenter is concerned about having to account for changes in the ERP system, but this concern is not warranted because the proposed rule did not change any of the obligations of the parties to the transaction in these situations under the EAR. BIS is clarifying that these obligations of the parties to the transactions will not change, which also addresses the ERP changes concern. These concerns about the extent of changes required to the ERP systems were based on an incorrect understanding that the obligations of the parties to the transactions were also proposed to change in addition to the DCS proposed changes. As discussed elsewhere in this final rule, BIS is clarifying that this is not the case.

Concerns With Proposed DCS Text

Comment 15: There is no justification for requiring the inclusion of the new DCS on documentation associated with NLR exports, as such exports require no authorization from the U.S. Government. Such a requirement would be unnecessarily burdensome and should be eliminated.

BIS response: BIS disagrees. The requirement to include the DCS for most NLR shipments is an existing EAR DCS requirement. An item that can be exported NLR to one country or one end user or end use may require an EAR license for subsequent transfers (in-country) or reexports. For example, NS1, RS1, or MT1 controlled items could go NLR to Canada, but would be subject to a worldwide license requirement for any subsequent reexport. Further, there are certain persons in Canada on the Entity List who are subject to a license requirement for all items subject to the EAR, including a license requirement for transfers (in-country). Merely because the initial export can be made under the NLR designation does not preclude that subsequent reexporters or transfers (in-country) will require a license. Accordingly, no new burden is being imposed because the existing DCS requirements require it for NLR designated shipments and the policy rationale for why a DCS is needed for NLR shipments has not changed.

Comment 16: Proposed rulemaking requires a DCS to be included whenever any item on the CCL is exported. Because exports are defined to include both tangible and intangible transfers, this requirement can be construed to require the DCS to be included on both physical shipments as well as intangible transfers (*e.g.*, when software is downloaded). They propose that the requirements should be limited to physical (tangible) exports only.

BIS response: BIS agrees. BIS has made changes in this final rule to clarify the DCS only applies to shipments (exports in tangible form). This final rule makes the following regulatory changes to address this public comment:

In § 758.6, paragraph (a)(1), this final rule removes an unneeded phrase. Specifically, this final rule removes at the beginning of paragraph (a)(1) the phrase ''For any item on the Commerce Control List being exported'' because the text is not needed. The text is not needed because the same text is already stated in the introductory text of paragraph (a). This will shorten and simplify the text of paragraph (a)(1) without changing the requirements of this paragraph, or the requirements specified in paragraph (a)(2).

Comment 17: Clarifying that the DCS provisions are limited to shipments (tangible exports).

BIS response: After reviewing the public comments, this final rule limits the requirement to shipments, *i.e.*, tangible exports, but notes that when a commercial invoice does exist for intangible exports that BIS recommends as a good compliance practice to include a DCS or other export control related information that may be relevant.

Comment 18: Retain the phrase ''excluding EAR99 items'' in the text of § 758.6 for maximum clarity.

BIS response: BIS agrees. This final rule makes the following regulatory changes to address this public comment:

In § 758.6, introductory text of paragraph (a), this final rule clarifies that items designated as EAR99 do not require a DCS. The proposed rule in the preamble explained that items designated as EAR99 did not require the DCS, and several of the public commenters agreed. However, some of the commenters suggested that this clarification also needed to be added to the regulatory text in paragraph (a)(1). BIS believes the reference in the text of paragraph (a) to ''items on the Commerce Control List'' already clarifies that the requirement would not extend to items designated as EAR99. However, BIS does agree with the commenters that for people not familiar with the EAR, such as certain foreign purchasers or consignees that would be receiving commercial invoices with this DCS, that this nuance of the Commerce Control List may not be well understood and could lead to misunderstanding. BIS agrees that although the text may be slightly redundant that it will be helpful in particular for those not as familiar to the EAR, so the final rule is adding the phrase ''or the item is designated as EAR99'' to the introductory text of paragraph (a) to clarify items designated as EAR99 do not require a DCS.

Comment 19: Clarify whether the use of the term ''end-user'' in the proposed language implies the creation of a new regulatory requirement to identify all potential end-users on all documents for which a DCS is required.

BIS response: The term ''end user'' does not create a new regulatory requirement. This final rule makes the following regulatory changes to address this public comment:

In § 758.6, paragraph (a)(1), this final rule removes the term ''specified'' before the phrase ''country of ultimate destination.'' The use of the term ''specified,'' raised concerns for several of the commenters regarding whether the inclusion of this term would change other obligations of the parties to the transaction in these situations under the EAR for how exports are treated, in particular for subsequent reexports or transfers (in-country). BIS did not intend to change the obligations of the parties to the transaction in these situations under the EAR. In order to address these concerns, BIS has removed the term ''specified.'' BIS, to address the public comments in this area, in particular misunderstandings for how the text of paragraph (a)(1) would be applied in the EAR context, is including Note 2 to paragraph (a)(1) to clarify the application of the phrase ''country of ultimate destination,'' along with adding two other notes for paragraph (a)(1) to address misunderstandings for how paragraph (a)(1) would be applied in the EAR context.

In § 758.6, paragraph (a)(1), this final rule is also adding the term ''ultimate consignee'' before the term ''end-user,'' along with making the term ''end-user'' plural by adding an ''s'' to clarify that the requirement applies to the ''ultimate consignee'' or ''end-user(s).'' This final rule did not adopt the term ''or consignee'' that followed the term ''end-user'' in the proposed rule. Certain commenters requested clarification regarding to which consignees the requirement specified in paragraph (a)(1) was intended to apply, which the more specific text of ''ultimate consignee or end-user(s)'' addresses. To achieve the objectives of the DCS, the commercial invoice must be provided to those two types of consignees: ultimate consignee and end-user(s), as applicable.

Comment 20: Commercial invoice and shipping documents currently in most cases do not include end users.

BIS response: BIS is aware of this, but the commercial invoice is still deemed to be the most appropriate document to achieve the objectives of the DCS. BIS will be adding FAQs to the BIS Web site to provide additional application guidance on applying the DCS in different scenarios.

Comment 21: Insert the phrase ''ultimate consignee or'' before the term end user.

BIS response: BIS accepts this suggestion which may mitigate the concerns people have with needing to include the end user on every document that requires the DCS.

Comment 22: Delete the term ''ultimate'' before the term ''destination'' and delete the term ''ultimate end user.''

BIS response: BIS will delete the term ultimate before those two terms.

DCS Text Is Too ITAR Specific and Will Be Difficult To Understand in EAR Context

Comment 23: Clarify the application of the DCS text in the EAR context as it relates to other EAR provisions, such as shipments to distributors and NLR and multi-step shipments.

BIS response: Many of the commenters that raised concerns regarding the burden or other major concerns were focused on how the DCS text seemed more appropriate for the ITAR regulatory construct than the EAR regulatory construct. These commenters thought that this rule proposed broader changes than intended, and therefore several of them raised significant concerns. For example, they raised concerns about how shipments to distributors would be handled in light of the proposed DCS text. In order to address these concerns, BIS is defining some of the key terms used in the DCS text as they are interpreted in the EAR context, including providing some specific application examples, along with adding notes to clarify the applicability of the DCS requirements in the context of the EAR. These changes will address the various concerns in this area that commenters raised related to NLR shipments or multi-step transactions that consist of discrete controlled events (*e.g.*, ''exported'' to a distributor as one discrete controlled event, and then a subsequent ''reexport'' as another discrete controlled event under the EAR). The proposed rule did not change any of these other provisions under the EAR, but the proposed text of the DCS made some people worry how the text would be applied in the EAR context.

Comment 24: The proposed inclusion of the phrase ''or as otherwise authorized by U.S. law and regulations'' is more likely to cause confusion than the current DCS with respect to items that can be reexported NLR or under a license exception, and lead recipients erroneously to believe that all U.S.-origin items require a specific reexport license. Some exporters have tried to use phrases in export control contractual clauses that limit reexports ''unless otherwise approved in writing by the U.S. government or authorized by U.S. law or regulation.'' Such phrases are understood by sophisticated reexporters, but they inevitably lead to questions about why a reexport license is required, when no export license was required in the first place.

BIS Response: To address this commenter's concern, this final rule includes several clarifications to key terms used, including a new note to define what is meant by ''or as otherwise authorized by U.S. law and regulations.'' This final rule makes the following regulatory changes to address this public comment:

In § 758.6, addition of Note 3 to paragraph (a). This final rule adds Note 3 to paragraph (a) to clarify what is meant in the EAR context by the phrase ''or as otherwise authorized by U.S. law and regulations.'' The note as of the effective date of this final rule will now acknowledge that the phrase includes not just license exceptions, but also shipments made under 'no license required' as well as reexports of foreign made items containing less than *de minimis* U.S. origin controlled content. Some of the commenters acknowledged that the use of this phrase was also explained in the preamble of the proposed rule. However, other commenters did not understand this nuance of this proposed regulatory text. Most of those commenters also requested that BIS make this nuance of the EAR more explicit in regulatory text, in particular to avoid people outside the United States incorrectly believing that the new Commerce DCS provisions were intended to change or limit the applicability of the EAR *de minimis* provisions, or the EAR direct product rule provisions. The Commerce DCS proposed rule did not intend to change any EAR related provisions related to *de minimis* or the direct product rule, which is also the case with the Commerce final rule published today. BIS agrees with the commenters that making the intended meaning of the phrase ''or as otherwise authorized by U.S. law and regulations'' clearer will help understanding of the DCS provisions in the EAR. Therefore, this final rule is adding Note 3 to paragraph (a)(1) to address these comments.

Concern That State and Commerce Documents Are Not Harmonized for DCS

Comment 25: Commerce and State should require the DCS on the same document(s).

BIS response: Commerce and State agree that, in addition to harmonizing the text of the DCS, the requirements regarding the documents on which it needs to be placed should be harmonized as well. Commenters supported the Commerce proposal of including it on the commercial invoice. After reviewing the public comments, Commerce and State agree that using the same document for the requirement is the best approach.

Comment 26: Export clearance phase of corporate export controls compliance programs relies heavily on information technology (IT) as standardization conserves resources and improves compliance. By having different DCS implementation requirements for the ITAR and EAR, the proposed regulation will force companies to have two different IT systems—one for the ITAR and one for the EAR. Companies will have to re-train their compliance staff to be able to determine which commercial document to insert the required DCS statement. This proposal will increase compliance costs. Different documents for DCS will increase likelihood of violations.

BIS Response: BIS agrees. BIS will require the DCS on the same document, the commercial invoice, as required by State.

Supports Using Commercial Invoice

Comment 27: Supports this proposed requirement and recognizes this change as a key element to reinforcing the intent of the regulation which is to provide the foreign consignee with needed information to ensure compliance with the EAR. The foreign consignee is far more likely to receive the commercial invoice and contractual documents between the shipper/USPPI and consignee/buyer than any transportation documentation produced by the carrier/forwarder for any such contract of carriage.

BIS response: BIS agrees. However, as noted elsewhere in this final rule, BIS is limiting the documentation requirement to the commercial invoice.

Comment 28: Exporters generate commercial invoices, but freight forwarders and/or carriers generate bills of lading and air waybills. Imposing

requirements on exporters that they must then flow to other parties to a shipping transaction adds complexity and compliance risk.

BIS response: BIS agrees. The Commerce proposed rule already took these factors into account in proposing that the DCS be placed on the commercial invoice and contractual documentation (documents created by exporter). As described elsewhere in this final rule, the requirement is limited to the commercial invoice (document created by exporter).

Comment 29: Supports the approach taken by BIS for using commercial invoice and contractual documentation, and in particular for recognizing that this lengthy statement does not offer value on the transport document (bill of lading, air waybill) and that the DCS should be required only on the commercial and contractual documents that relate to the transactions between the vendors, purchasers and other parties that may be involved in the commercial relationship for exports.

BIS response: BIS agrees, but as noted elsewhere in the final rule the requirement will be limited to the commercial invoice.

Concerns With Using Commercial Invoice

Comment 30: Invoices are usually filed by the finance function that is responsible for payment and they may not take any action on this information (*e.g.,* restriction on further re-sale/transfer to the end-user); explicitly stating export restriction on the contractual documents would be a more effective way to communicate the importance of compliance with the U.S. exports regulation and use of the items.

BIS response: Other commenters did not support using contractual documentation. BIS notes that although the personnel involved in financial management of a company (*e.g.,* those in accounts payable) may receive the commercial invoice either at the time the items shipped (exported in tangible form) are received or before, at some point in the process typically the commercial invoice is matched up with what was received. If the DCS reaches the ultimate consignee or end-user(s) before the item is subsequently reexported or transferred (in-country) to another party, it helps to achieve the objective of putting the reexporter or transferor on notice that the items are subject to U.S. export controls.

Comment 31: BIS uses the term ''commercial invoice'' but DDTC uses the term ''invoice.'' For some exporters, the term ''invoice'' refers to the final billing document that moves electronically, whereas the commercial invoice moves with the freight.

BIS response: BIS agrees that the terms should be harmonized. Based on other comments received, the term commercial invoice is well understood by industry, as well as by BIS's Office of Export Enforcement, so this final rule adopts the term commercial invoice.

Comment 32: Commercial invoices do not accompany items during shipment. In today's business processes, invoices are sent either electronically (the preferred method) or in hard copy directly to the buyer's accounts payable department. The invoice is not sent to those who might divert the items. In compliance with the EAR, the DCS is currently printed on the invoice, but doing so arguably does not serve the purpose BIS intends.

BIS response: Several other commenters supported BIS's position that the commercial invoice is the document most likely to travel to the end of the export. However, BIS acknowledges and understands that in certain cases a commercial invoice may be sent prior to the items being shipped (exported in tangible form), so this final rule does not specify the timing of when the commercial invoice must be sent, but simply specifies the requirement that the commercial invoice must include the DCS. BIS intends to add FAQs to the BIS Web site once this final rule is published to provide additional application guidance to exporters.

Comment 33: Changing requirement from ''accompanies the shipment'' to when ''such documentation exists'' is a significant expansion of the DCS requirement for little benefit to U.S. national security.

BIS response: BIS disagrees. As was noted by several commenters the DCS requirements under the EAR and ITAR we need to take into account how business is conducted in order for exporters to effectively comply and to achieve the export control objectives of protecting U.S. national security and foreign policy interests. Because the phrase ''accompanies the shipment'' is limiting and does not take into full account how documents are transmitted related to exports in certain cases, BIS does not accept the suggestion, which conflicts with the larger objectives of what the DCS provisions are trying to achieve.

Supports Using Contractual Documentation

Comment 34: The contractual documents and commercial invoice are intended to detail the entirety of the transaction between the parties that are engaging in the transfer of the items. Incorporating the DCS into those documents is much more likely to achieve the intended purpose of the DCS than is including that information on the air waybill.

BIS response: BIS agrees. However, as noted elsewhere in this final rule, BIS is limiting the documentation requirement to the commercial invoice.

Concerns for Using Contractual Documentation

Comment 35: The proposed requirement to include the DCS on contractual documentation raised significant concerns among the majority of commenters, even those that strongly supported the proposed rule. These commenters included a number of well supported reasons for why the use of contractual documentation would be needlessly burdensome and not achieve the stated objectives in the proposed rule. These reasons included the following: (1) The term ''contractual documentation'' was not defined and could be overinclusive of documents, including contractual documentation that are not related directly to items that would be exported, but would still create a significant administrative burden in keeping track of certain contractual documentation that would require the DCS from those that would not; (2) grandfathering of existing contractual documentation, where some commenters noted that amending existing contracts to include the DCS would require amending thousands of contractual documents; (3) would require a U.S. company to have prior knowledge during negotiations for what the item that is subject to the contract that will actually be exported, which often is unknown at the time a contract is signed; (3) handling changes in classification that may impact previous contracts would require contractual documents to be revised; (4) including the DCS in contractual documentation may exacerbate foreign parties' concerns over acknowledging U.S. extraterritoriality; and (5) if the ultimate goal of the proposed rule is to avoid diversion, most commenters noted that requiring the DCS to be included on the commercial invoice will suffice—meaning the objectives of the DCS could be achieved more efficiently by only requiring it on the commercial invoice without creating the significant burdens that would be required to include it on contractual documentation.

BIS response: Commerce and State agree with the public commenters that removing the requirement to include the DCS on the contractual documentation is warranted. The public comments were persuasive that including a

requirement to include the DCS on the contractual documentation would create a significant amount of unneeded complexity and in most cases would not achieve the stated objectives in the Commerce and State proposed rules. Based on the public comments received and additional review by Commerce and State, limiting the requirement to include the DCS on the commercial invoice is sufficient to meet the stated objectives in the Commerce and State proposed rules, and therefore this final rule does not adopt the proposed requirement to include the DCS on contractual documentation. This final rule makes the following regulatory changes to address this public comment:

In § 758.6, introductory text of paragraph (a), this final rule removes the undefined term ''contractual documentation.'' As discussed above, there was considerable concern raised regarding the inclusion of the undefined term ''contractual documentation.'' BIS is not including the undefined term ''contractual documentation'' and instead, as explained above, is limiting the requirement under the EAR to the commercial invoice. The Department of State will only require the DCS to be placed on the commercial invoice under the ITAR.

Create a New Document Specific To Export Controls for Use With DCS

Comment 36: Provide the DCS and other export control information (*e.g.,* as ''600 series'' or a 9x515 ECCN classification) on a completely separate document that can serve multiple purposes and can be sent with the items being shipped or separately in order to convey to the consignees that the items are U.S. export regulated and are intended only for the designated end user and the destination identified. This should be similar to a certificate of compliance or documents of similar nature (usually from a quality perspective) that are usually sent to customers.

BIS response: BIS appreciates the effort this commenter put into the idea, including the templates they created, but ultimately BIS believes that it would be unduly burdensome to create a requirement to generate a wholly new document. Therefore, although we acknowledge there would be some benefits to what the commenter had in mind, BIS believes that it is still preferable to require the DCS on an existing document (the commercial invoice) that is created in the normal course of business. Other public comments support this conclusion.

Allow Flexibility for Exporters To Decide Which Document To Include DCS on, but Require It on One Document That Accompanies Physical Shipment

Comment 37: The regulations should not prescribe the specific document that must include the DCS, but instead require that it appear on one document that accompanies the item to the ultimate destination. Which document will contain the DCS should be determined by the exporter in light of its shipping practices.

BIS response: BIS disagrees. This would create a burden on exporters and other parties to the transaction, as well as the United Stated Government in conducting checks to confirm that exporters are in compliance. Allowing for exporters to pick and choose the document would create more burden than benefits that would come from allowing that level of flexibility because exporters and other parties to the transaction would need to adopt processes to identify on a transaction by transaction basis, which document contained the required DCS. Variability would provide flexibility, but also impose implementation costs. Requiring and identifying a single document, the commercial invoice, creates predictability, will facilitate the adoption of standardized processes and will reduce implementation costs. In addition, exporters are free to place the DCS on additional documents, but at a minimum the final rules published today by Commerce and State require the DCS to be placed on the commercial invoice.

Suggested Notes To Add to DCS Section

Comment 38: In the Supplementary Information, BIS states that, ''. . . in the context of this EAR paragraph ''authorized'' would also include exports that were designated under No License Required (NLR).'' This would be useful information to include in § 758.6.

BIS response: BIS agrees. BIS has added a note to specify this concept as described earlier in the BIS response above to Comment 6.

Other Changes To Enhance Usefulness of DCS in Preventing Diversions

Comment 39: A requirement should be added that all the parties (consignees involved in the transaction between the U.S. exporter and the ultimate end user) should somehow be communicated to about the U.S. regulations restricting further export/transfer to anyone or to any country other than the end user and ultimate destination should be considered in the final export process.

BIS response: Based on other comments received there would likely be significant concern about the burden created and the complexity of compliance programs caused by implementing such a requirement. The parties helping to facilitate the movement of the item to the end of the export are simply moving the item to the ultimate consignee or end user(s). The focus of the DCS on the commercial invoice is to ensure that it reaches the ultimate consignee and/or end user(s) that will be in a position to make a subsequent reexport or transfer (in-country), so they are aware the item in question is subject to U.S. reexport controls. As discussed in other parts of this rule, BIS is defining some of the terms used in the DCS text and adding some clarifying notes to provide additional context for how the DCS is applied in the EAR context.

Request for Delayed Effective Date

Comment 40: Requests that BIS strongly consider setting the implementation date 180–240 days after publication of the final rule to allow sufficient time for all affected parties to make the required changes to system programming, document revision and related procedural tasks. Other commenters had requested a 180 day delayed effective date, along with a delayed compliance date.

BIS response: Commerce and State agree that a delayed effective date is warranted and will delay the effective date of this final rule for 90 days after publication. This delay of effective date will allow exporters, as well as other parties to which these revised DCS requirements will apply, to make any needed changes to their export compliance systems and business processes.

Request for Public Meetings or Additional Proposed Rules Prior to Final Rule Publication

Comment 41: Request for public meetings for public to comment and requests for Commerce and State outreach for the new changes to be implemented.

BIS response: BIS values public participation in the rulemaking process. Through the public comment process, BIS has provided adequate opportunity for comment and has addressed the concerns that were raised. Therefore, BIS does not accept the request to conduct public meetings prior to publishing a final rule. In regard to the request for conducting outreach, BIS agrees that this is a good idea and intends to add updated DCS information to our already robust ECR related

outreach activities, including to instruction at seminars and to the Frequently Asked Questions on the BIS Web site.

Comment 42: A public comment period with relevant meetings will provide the necessary fora to engage with the government and discuss mutually-beneficial alternatives to accomplish the government's objectives without putting any sector of the trade at an inappropriate disadvantage.

BIS response: Commerce and State already provided an opportunity for public review and comment on the proposed rules. Commerce and State have considered those public comments, which were generally supportive of the rule, and for those commenters that raised concerns, Commerce and State were able to refine what was proposed to address those comments and better achieve the stated objectives. Therefore, there is no need for an additional proposed rule or engaging in public meetings before moving forward with final rules, which would delay the reductions in burdens included in the Commerce and State final rules, as well as delaying the benefits for better protecting U.S. national security and foreign policy interests by adopting these more effective DCS requirements under the EAR and the ITAR. No party will be placed at an inappropriate disadvantage as a result of this rule being published in final form because all interested parties had an opportunity to review the proposed rule and make comments for improving the proposed DCS requirements. BIS by addressing those comments in this final rule has led to an improved rule that better achieves the stated objectives. As noted above, Commerce and State have a robust outreach program for ECR related changes and intend to conduct robust outreach regarding the new DCS requirements included in the final rules published today, in particular during the 90 day transition period prior to the effective date.

Including ''600 Series'' and 9x515 ECCNs on Same Documents as DCS

Comment 43: Require the items level classification for 9x515 and ''600 series'' items. In consideration that sub-categories of a same ECCN may not be subject to the same controls (for instance 9A610.x and 9A610.y.1), we suggest that the text be amended to request not only the ECCN, but also the corresponding subcategory.

BIS response: This comment is outside the scope of the proposed DCS rule.

Comment 44: While the requirement to place the DCS found in § 758.6(a)(1) on the commercial invoice is reasonable, the requirement to place the DCS and the ECCN for ''600 series'' or 9x515 item, when required, on contractual documentation, when such contractual documentation exits, may require a level of specificity that is not available at the time of contracting. The suggested change would clarify that the contract itself need not contain each ''600 series'' or 9x515 ECCN if subsequent contract implementing documentation will be the vehicle by which actual commitments for shipment of such items are made.

BIS response: As noted elsewhere in this final rule (*see* BIS response above to Comment 35 under the heading Concerns for using contractual documentation), BIS is not including contractual documents in the final rule, so this comment is no longer applicable.

Broadening Scope of DCS To Also Alert People Receiving Incorporated 9x515 and ''600 Series'' of Such Content

Comment 45: There is no requirement to include a DCS for end items that include ECCN 9x515/600 series de minimis content. This creates a risk related to restrictions on the use of de minimis for Country Group D:5 countries. For example, a non-U.S. prime may receive a system or sub-assembly from an Asian or European supplier for integration into an end-item. That system or sub-assembly may contain ECCN 9x515/600 series de minimis content from another supplier. The non-U.S. prime may never know about the ECCN 9x515/600 series content since there is no requirement for the re-exporter to disclose this information, which may raise a compliance issue when considering further retransfer to Country Group D:5 countries.

BIS response: This comment is outside the scope of the DCS proposed rule, but it is something that BIS will evaluate further. However, as a best practice, BIS does encourage companies to work together to assist each other in complying with the EAR requirements, whether that is in the United States or outside the United States when items that may be subject to the EAR are involved.

Add Provisions To Rescind Previous License Conditions for Currently Valid Licenses That Include a Condition That Current DCS Needed To Be Included on Current DCS Required Documents

Comment 46: Recommend a statement in a final rule to clarify that for existing, valid licenses previously issued by BIS, any license condition to place a DCS on any shipping documentation (*e.g.,* on all bills of lading or air waybills) not specifically required in the revised EAR is rescinded. A common current license condition is as follows: ''Place a Destination Control Statement on all bills of lading, air waybills, and commercial invoices.'' This clarification will relieve exporters with numerous licenses, wherein the license condition to apply DCS to shipping documentation appears, from the need to petition the Commerce Department for relief from the condition.

BIS response: BIS confirms that a condition on a license issued prior to August 17, 2016 to place a destination control statement on documents other than the commercial invoice would no longer be applicable as of November 15, 2016.

Summary of the Regulatory Changes Being Made in This Final Rule to § 758.6

The heading of § 758.6 of the EAR remains the same. However, the provisions that were under paragraph (b) prior to the effective date of this final rule are being moved to a new paragraph (a)(2). Further, new paragraph (a)(2) specifies that the ECCN for each 9x515 or ''600 series'' item being shipped (exported in tangible form) must be included. This is the same requirement that was in paragraph (b) prior to the effective date of this final rule, although it is slightly shortened because the introductory text of paragraph (a) is specifying 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 under this section. The commercial invoice is the same document that the DCS is included on, so this change is shortening and simplifying this section by moving the text of paragraph (b) to paragraph (a)(2). This change will reduce the number of documents upon which this classification needs to be included on to conform with the DCS changes described below.

The introductory text paragraph (a) in this final rule specifies that the exporter shall incorporate the information specified under paragraphs (a)(1) (destination control statement) and (a)(2) (ECCN for 9x515 or ''600 series'' item being shipped (exported in tangible form)) as an integral part of the commercial invoice. The changes in this final rule mean this section of the EAR no longer includes, as of the effective date of this final rule, a requirement to include the DCS on the air waybill, bill

of lading or other export control documents, and instead is limiting the requirement to the commercial invoice.

Consistent with the DCS provisions prior to the effective date of this final rule, this final rule is not requiring an EAR DCS for exports of EAR99 items or items exported under License Exception BAG or GFT. Any other shipment (tangible export) from the United States of any item on the CCL would require the DCS as specified in paragraph (a)(1) and any shipment (tangible export) of a 9x515 or ''600 series'' ECCN would also need to be specified on the commercial invoice as specified in paragraph (a)(2).

The text of the harmonized DCS in this final rule is being specified under revised paragraph (a)(1) of § 758.6 of the EAR. The new DCS this final rule adds does not include EAR-specific language, but rather adopts text that is equally applicable under the ITAR as well as the EAR. However, this final rule adds several clarifying notes to clarify how the DCS provisions are applied in the EAR context. The first sentence of the statement added by this final rule specifies that ''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.'' For clarification this final rule moved the position of the phrase ''by the United States Government'' to the first sentence. This is a clarification to ensure that exporters understand that ''only'' modifies ''authorized'' and not ''controlled.'' 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 in this final rule specifies that the items are authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s). The new DCS included in this final rule uses the term authorized, but in the context of this EAR paragraph ''authorized'' would also include exports that were designated under No License Required (NLR). This final rule adds a new Note 1 to paragraph (a) to specify this in the regulatory text in regards to the applicability of NLR. This final rule adds Note 2 to paragraph (a) to specify the phrase ''country of ultimate destination'' means the country specified on the commercial invoice where the ultimate consignee or end user will receive the items as an ''export.'' This note will assist the exporter's understanding of the use of this phrase in the context of the EAR.

The second sentence of the new harmonized DCS being added in this final rule focuses 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 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. Similar to the first sentence, this second sentence is adopting common text that can be used under the ITAR and the EAR. The application of this second sentence is 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. The final rule adds a new Note 3 to paragraph (a) to make this clearer in regards to how this is applied in the EAR context.

The advantage of the text included in this final rule is that it adopts a new harmonized DCS, while at the same time is still 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.

Adopting a new harmonized DCS in the final rule will simplify export clearance requirements for exporters because they will not have to decide which DCS to include, especially for mixed shipments containing both ITAR and EAR items.

As of the effective date of the Commerce and State final rules, an exporter will still need to go through all of the steps to determine jurisdiction, classification, and 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. It is important to remember when reviewing the changes included in the Commerce and State final rules that the regulations still 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 will be receiving items under this new DCS once this final rule becomes effective on November 15, 2016, although the new DCS is not ITAR or EAR specific, in the case of the ITAR the classification of USML items will be required on the commercial invoice. This classification will alert the parties that the items are subject to the ITAR. For military items under the EAR, because of the requirement this final rule is including in paragraph (a)(2) (which was required under paragraph (b) prior to the effective date of this final rule) of § 758.6 of the EAR, anyone receiving a ''600 series'' military item or an ECCN 9x515 item will know that item is subject to the EAR because the classification information will also need to be included on the commercial invoice. For other EAR items, there is not a requirement to include the classification information, although BIS does encourage the inclusion of that information as an export compliance best practice.

Removal of Paragraph (c)

BIS in this final rule removes the text that was in paragraph (c) of § 758.6 prior to the effective date of this final rule. BIS did not receive any comments on this proposed change and therefore is implementing this change in this final rule. Paragraph (c) was added recently (January 23, 2015, 80 FR 3463) and required prior to the effective date of this final rule a special DCS for items controlled under ECCNs for crime control columns 1 and 3 reasons or regional stability column 2 reasons when those items are destined to India. BIS proposed removing this requirement because the benefit of 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 removes paragraph (c).

This final rule is the same as the May 22, 2015 proposed rule except for the refinements explained above. These changes address the public comments and will achieve the objectives of adopting a harmonized DCS requirement under the EAR and ITAR. These changes will help to further achieve the objectives of ECR to harmonize provisions between the EAR and the ITAR where warranted.

The changes in this final rule will ease the regulatory burden and complexity for exporters, in particular those with mixed shipments, which as noted above is now a much more common occurrence because of ECR. These changes and the corresponding reduction of documents that will require the DCS (now limited to the commercial invoices) will benefit all exporters under the EAR, not just exporters of ''600 series'' and 9x515 items. The DCS

provisions in this final rule will better achieve their stated objectives—meaning all exporters will benefit because the appropriate parties (consignees in a position to make a subsequent reexport or transfer (in-country)) further down the line in export transactions will be receiving the DCS and other export control information required under this section as applicable.

These changes to the DCS provisions under the EAR and the ITAR move beyond harmonization for the sake of harmonization, which as discussed above was a concern of several of the commenters in response to the proposed rule. The changes in this final rule achieve true harmonization in this area of the U.S. export control system under the EAR and the ITAR, while at the same time improving the effectiveness of these provisions under the EAR and the ITAR, which ultimately will lead to better informed parties to transactions that are subject to U.S. export controls and better protecting U.S. national security and foreign policy interests. For the reasons described above, Commerce and State are publishing these final rules today.

As required by Executive Order (E.O.) 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-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 may 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 4, 2016, 81 FR 52587 (August 8, 2016), 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 final rule has been determined to be 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 number 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. BIS acknowledges that there will be a minimal one-time burden on exporters as they need to update the DCS text on an existing document that already requires the DCS, but BIS expects this to be a one-time cost, not a recurring one. The scope of the text change, which is very similar in length to the current DCS, should be easy to implement based on the public comments received that strongly favored using the commercial invoice for the DCS requirement. 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 the May 22 proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities. A summary of the factual basis for the certification was provided in the May 22 proposed rule that is being finalized in this rule and is not repeated here. No comments were received regarding the economic impact of this final rule. Consequently, BIS has not prepared a regulatory flexibility analysis for this final rule.

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 amended as follows:

PART 758—[AMENDED]

■ 1. The authority citation for part 758 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

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

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

(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

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

Note 1 to paragraph (a). In paragraph (a)(1), the term 'authorized' includes exports, reexports and transfers (in-country) designated under No License Required (NLR).

Note 2 to paragraph (a). The phrase 'country of ultimate destination' means the country specified on the commercial invoice where the ultimate consignee or end user will receive the items as an ''export.''

Note 3 to paragraph (a). The phrase 'or as otherwise authorized by U.S. law and regulations' is included because the EAR contain specific exemptions from licensing (*e.g.,* EAR license exceptions and NLR designations) and do not control the reexport of foreign-made items containing less than a de minimis amount of controlled content. See § 734.4 and Supplement No. 2 to part 748.

(b) [Reserved]

Dated: August 8, 2016.

Kevin J. Wolf,

Assistant Secretary of Commerce for Export Administration.

[FR Doc. 2016–19551 Filed 8–16–16; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Parts 120, 123, 124, 125, and 126

[Public Notice: 9606]

RIN 1400–AC88

Amendment to the International Traffic in Arms Regulations: Procedures for Obtaining State Department Authorization To Export Items Subject to the Export Administration Regulations; Revision to the Destination Control Statement; and Other Changes

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: As part of the President's Export Control Reform (ECR) initiative, the Department of State is amending the International Traffic in Arms Regulations (ITAR) to clarify rules pertaining to the export of items subject to the Export Administration Regulations (EAR), revise the destination control statement in ITAR § 123.9 to harmonize the language with the EAR, make conforming changes to ITAR §§ 124.9 and 124.14, and make several minor edits for clarity.

DATES: This rule is effective November 15, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, Destination Control Statement.

SUPPLEMENTARY INFORMATION: The Department published a proposed rule on May 22, 2015 (80 FR 29565) and received 17 public comments on the proposed changes to the ITAR. The Department makes the following revisions in this final rule:

Items Subject to the EAR

This final rule adds clarifying language to various provisions of the ITAR pertaining to the use of exemptions to the license requirements and the export of items subject to the EAR, when the EAR items are shipped with items subject to the ITAR. These revisions include guidance on the use of license exemptions for the export of such items, as well as clarification that items subject to the EAR are not defense articles, even when exported under a license or other approval, such as an exemption, issued by the Department of State. The Department received the following comments on the proposed changes, which are summarized here, along with the Department's responses:

One commenter raised a concern that the proposed revised language restricts industry's exemption options for items subject to the EAR to situations only when related USG authorization exists for the end item. The Department accepts the comment and has revised § 120.5(b) to state that items subject to the EAR may be exported pursuant to an ITAR exemption if exported with defense articles. ITAR exemptions may not be used for the independent export of items subject to the EAR, *i.e.,* a single physical shipment of EAR item(s) that does not include any USML item with which the EAR item may be used. If the items subject to the EAR will be transferred separately from a defense article, license exceptions available under the EAR may be used to authorize the transfer.

One commenter noted that, the proposed § 120.5(b) inadvertently excluded the exemptions at Part 123 of the ITAR from the parenthetical list of applicable ITAR parts. The Department concurs with this comment and adds a reference to part 123 into the parenthetical phrase.

One commenter noted that the Department should provide clarification and guidance on the proper classification to be entered into the Automated Export System (AES) for items subject to the EAR shipped under an ITAR exemption. The commenter noted that proposed edits to § 123.9(b)(2) did not address AES filings. The Department notes that the Department of Commerce (U.S. Census Bureau and Bureau of Industry and Security) has already clarified this. The EAR classification needs to be provided in the export control information on the Electronic Export Information (EEI) filing in AES for all items subject to the EAR, including EAR99 designated items that are authorized for export under a State Department authorization.

One commenter noted that the changes in this rule require that if a shipment includes both ITAR and EAR controlled items then the Export Control Classification Number (ECCN) of items in the shipments must be listed, including any EAR99 designation (if the authorization for the export was through an approved State Department license), and requires the country of ultimate destination, end-user, licensee information to be provided on the export documents. The flexibility of exporting items subject to the EAR under a State Department authorization does warrant this additional level of identification for all of the items subject to the EAR that the Department authorizes for export. Therefore, although the Department understands the comment, given the hybrid nature of the ITAR authorization under the § 120.5(b) process, the Department has determined the requirements are warranted.

One commenter noted that the text under § 120.5(b) does not specify that ''items subject to the EAR'' exported under an exemption must be exported with the specific defense article. They recommend clarifying that this is the intent of the modification or if not, to change the text, so it comports with the requirements for ''items subject to the EAR'' exported under a license or other approval. The Department concurs with this comment. This final rule adds