

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 754, 758, and 762

[Docket No.960523147-01]

RIN: 0694-AB44

Exports of Alaskan North Slope Crude Oil; Establishment of
License Exception TAPS

AGENCY: Bureau of Export Administration, Commerce

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the short supply provisions of the Export Administration Regulations to modify the restrictions on exports of Alaskan North Slope crude oil and establish License Exception TAPS authorizing such exports, with certain conditions. License Exception TAPS is based on: 1) Public Law 104-58, which allows for the export of

crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act(TAPS); 2) the President's April 28, 1996 determination that exports are in the national interest; and 3) the President's direction to the Secretary of Commerce to issue a License Exception with conditions for export of TAPS crude oil.

EFFECTIVE DATE: (DATE OF PUBLICATION).

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, Department of Commerce, Telephone: (202) 482-0894.

SUPPLEMENTARY INFORMATION:

Background

Section 7(d) of the Export Administration Act of 1979, (50 U.S.C. app. 2406) restricts exports of crude oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), with certain exceptions, unless the President makes certain findings, recommends exports to the Congress on the basis of those findings, and the Congress then agrees to the recommendation by

joint resolution enacted into law. Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, and notice of August 15, 1995 (60 FR 42767).

On November 28, 1995, the President signed into law Public Law 104-58, which created a new section 28(s) of the Mineral Leasing Act (30 U.S.C. 185). Public Law 104-58 allows exports of oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), "notwithstanding any provision of this Act or any other provision of law (including any regulation)," unless the President finds that such exports are not in the national interest.

To address the economic and environmental issues identified in Public Law 104-58, the National Economic Council and the Council on Environmental Quality working with the Department of Commerce's Bureau of Export Administration, coordinated an intensive interagency review of the effects of lifting the export ban on oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (TAPS oil). After extensive public hearings, the review of public comments, and analytical evaluation, the interagency working

group found that the exports are not likely to pose a significant impact to the economy or the environment.

On April 28, 1996, the President determined that, subject to certain conditions described below, exports of crude oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (TAPS) are in the national interest. The President found that such exports:

- 1) will not diminish the total quantity or quality of petroleum available to the United States;
- 2) will not pose significant risks to the environment with the imposition of a series of measures to further ensure the safety of the environment; and
- 3) are not likely to cause sustained material oil supply shortages or sustained oil price increases above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including those located in noncontiguous States and Pacific territories.

The President directed the Secretary of Commerce to issue a License Exception, authorizing exports of TAPS oil, subject to

certain conditions designed to preserve the environment.

This final rule amends part 754 of the Export Administration Regulations (EAR) by establishing a new License Exception TAPS. License Exception TAPS authorizes exports of oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (42 U.S.C. 1652) provided that the transaction meets the following conditions:

- 1) The TAPS oil is transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802));

- 2) all tankers involved in the TAPS oil export trade use the same route that they do for shipments to Hawaii until they reach a point 300 miles due south of Cape Hinchinbrook Light and then turn toward Asian destinations. After reaching that point, tankers in the TAPS oil export trade must remain outside of the 200 nautical mile Exclusive Economic Zone, as defined in 16 U.S.C. 1802(6). Tankers returning from foreign ports to Valdez, Alaska must abide by the same restrictions, in reverse, on their return route. This condition shall not be construed to limit any statutory, treaty or Common Law rights and duties imposed

upon and enjoyed by tankers in the TAPS oil export trade, including, but not limited to, force majeure and maritime search and rescue rules;

3) the owner or operator of a tanker exporting TAPS oil shall:

(a) adopt a mandatory program of deep water ballast exchange (i.e., at least 2,000 meters water depth). Exceptions can be made at the discretion of the captain only in order to ensure the safety of the vessel and crew. Specified records shall be maintained and made available for audit by government officials.

(b) be equipped with satellite-based communications systems that will enable the Coast Guard independently to determine the tanker's location;

(c) maintain a Critical Area Inspection Plan for each tanker in the TAPS oil export trade in accordance with the U.S. Coast Guard's Navigation and Inspection Circular No. 15-91 as amended, which shall include an annual internal survey of the vessel's cargo block tanks; and

4) the exporter files with BXA a Shipper's Export

Declaration covering the export not later than 21 days after the export has occurred.

This final rule also makes other conforming changes in the short supply provisions of the EAR by revising part 754 concerning TAPS oil exports, the export clearance provisions of part 758 regarding the requirement to submit the Shippers' Export Declaration (SED) to the Bureau of Export Administration, and the recordkeeping requirements of part 762.

The Export Administration Regulations (EAR) have been totally amended by an interim rule published on March 25, 1996 (61 FR 12714), which provides for a transition period within which exporters can take advantage of both the old rules and the new rules until November 1, 1996. This rule permits exports of TAPS oil pursuant to a license exception. Exporters can make exports of TAPS oil under this exception as of the effective date of this rule. Accordingly, the old rule is not being revised.

Rulemaking Requirements

1. This final rule has been determined to be significant for the purpose of Executive Order 12866.

2. Notwithstanding any other provision of the law, no

person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management Budget Control Number. This rule contains a collection of information subject to the Paperwork Reduction Act, which is cleared by the Office of Management and Budget under existing OMB Control Number 0694-0027. The public reporting burdens for the new collections of information are estimated to range between 5 and 10 minutes for the Shipper's Export Declaration requirement, and 30 minutes per voyage for the Ballast Water Exchange collection. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Bernard Kritzer, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. This rule is being issued without notice of proposed rulemaking and opportunity for comment because Public Law 104-58: 1) provides that the administrative action under this Act is not subject to sections 551 and 553-559 of the Administrative Procedures Act (5 U.S.C. 551, 553-559); and 2) requires these regulations to be issued within 30 days of the President's national interest determination.

5. Under 8 U.S.C. 808(2), there is good cause that notice and public procedure thereon are unnecessary and contrary to the public interest. Notice and public procedure are unnecessary because Public Law 104-58 exempts rulemaking under this Act from the notice and comment requirements of the Administrative Procedures Act and requires regulations to be issued within 30 days of the President's national interest determination. Notice and public procedure are contrary to the public interest because they would delay allowing the exports that the President, as authorized by Public Law 104-58, has determined are in the national interest.

List of subjects

15 CFR part 754

Exports, Foreign Trade, Forests and forest products,
Petroleum, Reporting and recordkeeping requirements.

15 CFR part 758

Administrative practice and procedure, Exports, Foreign
trade, Reporting and recordkeeping requirements.

15 CFR part 762

Administrative practice and procedure, Business and
industry, Confidential business information, Exports, Foreign
trade, Reporting and recordkeeping requirements.

1. The authority citation for 15 CFR part 754 continues to
read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et
seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); Sec. 201, Pub. L. 104-
58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C.
6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 12924, 59 FR
43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60
FR 42767, August 17, 1995).

2. The authority citation for 15 CFR part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

3. The authority citation for 15 CFR part 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

PART 754 - [AMENDED]

4. In §754.2 the following changes are made:

a. in paragraph (a), the phrase "Reserves paragraph (i)" of this section for a License Exception for certain shipments of samples." is revised to read "Reserves, paragraph (i) of this section for a License Exception for certain shipments of samples, and paragraph (j) of this section for a License Exception for exports of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652).".

b. paragraph (c)(1)(i) is revised by adding the following at the end. "The President made a determination on April 28, 1996."; and

c. a new paragraph (j) is added to read as follows:

§754.2 Crude oil.

* * * * *

(j) License Exception for exports of TAPS Crude Oil. (1)

License Exception TAPS may be used to export oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (TAPS), provided the following conditions are met:

(i) The TAPS oil is transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802));

(ii) all tankers involved in the TAPS export trade use the same route that they do for shipments to Hawaii until they reach a point 300 miles due south of Cape Hinchinbrook Light and then turn toward Asian destinations. After reaching that point, tankers in the TAPS oil export trade must remain outside of the

200 nautical mile Exclusive Economic Zone, as defined in 16 U.S.C. 1802(6). Tankers returning from foreign ports to Valdez, Alaska must abide by the same restrictions, in reverse, on their return route. This condition shall not be construed to limit any statutory, treaty or Common Law rights and duties imposed upon and enjoyed by tankers in the TAPS oil export trade, including, but not limited to, force majeure and maritime search and rescue rules; and

(iii) the owner or operator of a tanker exporting TAPS oil shall:

(A) adopt a mandatory program of deep water ballast exchange (i.e., at least 2,000 meters water depth). Exceptions can be made at the discretion of the captain only in order to ensure the safety of the vessel and crew. Records must be maintained in accordance with paragraph (j)(3) of this section.

(B) be equipped with satellite-based communications systems that will enable the Coast Guard independently to determine the tanker's location; and

(C) maintain a Critical Area Inspection Plan for each tanker in the TAPS oil export trade in accordance with the

U.S. Coast Guard's Navigation and Inspection Circular No. 15-91 as amended, which shall include an annual internal survey of the vessel's cargo block tanks.

(2) Shipper's Export Declaration. In addition to the requirements of paragraph (j)(1) of this section, for each export under License Exceptions TAPS, the exporter must file with BXA a Shipper's Export Declaration (SED) covering the export not later than 21 days after the export has occurred. The SED shall be sent to the following address:

Manager, Short Supply Program
Department of Commerce
Office of Chemical and Biological Controls
and Treaty Compliance
Bureau of Export Administration, Room 2075
Washington, D.C. 20230

(3) Recordkeeping requirements for deep water ballast exchange. (i) As required by paragraph (j)(1)(iii)(A) of this section, the master of each vessel carrying TAPS oil under the provisions of this section shall keep records that include the following information, and provide such information to the Captain of the Port (COTP), U.S. Coast Guard, upon request:

(A) the vessel's name, port of registry, and official number or call sign;

(B) the name of the vessel's owner(s);

(C) whether ballast water is being carried;

(D) the original location and salinity, if known, of ballast water taken on, before an exchange;

(E) the location, date, and time of any ballast water exchange; and

(F) the signature of the master attesting to the accuracy of the information provided and certifying compliance with the requirements of this paragraph.

(ii) the COTP or other appropriate federal agency representatives may take samples of ballast water to assess the compliance with, and the effectiveness of, the requirements of paragraph (j)(3)(i) of this section.

5. Section 758.3 is amended by revising paragraph (d)(2)

that was formerly reserved to read as follows:

§758.3 Shipper's Export Declaration (SED).

(d) * * *

(2) You are required under the provisions of §754.2(j)(2) of the EAR.

PART 762 - [AMENDED]

6. Section 762.2 is amended by:

a. Redesignating paragraphs (b)(26) through (b)(34) as (b)(27) through (b)(35) respectively; and

b. adding a new paragraph (b)(26)

§762.2 Records to be retained.

* * * * *

(b) * * *

(26) §754.2(j)(3), Recordkeeping requirements for deep water ballast exchange.

* * * * *

Iain S. Baird

Deputy Assistant Secretary
for Export Administration