



# Federal Register

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**Monday,  
July 10, 2000**

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## **Part VIII**

# **Department of Commerce**

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**Bureau of the Census**

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**Bureau of Export Administration**

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**15 CFR Parts 30, 732, et al.**

**Foreign Trade Statistics Regulations;  
Shipper's Export Declaration or Filing  
Export Information Electronically Using  
Automated Export System; Clarification;  
Final Rule**

**Export Administration Regulations; Parties  
to Transaction and Their Responsibilities,  
Routed Export Transactions, Shipper's  
Export Declarations, and Export  
Clearance; Final Rule**

**DEPARTMENT OF COMMERCE****Bureau of the Census****15 CFR Part 30**

[Docket No. 980716180-0030-03]

RIN 0607-AA20

**Foreign Trade Statistics Regulations: Amendment to Clarify Exporter (U.S. Principal Party in Interest) and Forwarding or Other Agent Responsibilities in Preparing the Shipper's Export Declaration or Filing Export Information Electronically Using the Automated Export System and Related Provisions****AGENCY:** Bureau of the Census, Commerce.**ACTION:** Final rule.

**SUMMARY:** The Bureau of the Census (Census Bureau) is amending the Foreign Trade Statistics Regulations (FTSR) to clarify the responsibilities of exporters and forwarding or other agents in completing the Shipper's Export Declaration (SED), or filing the information electronically using the Automated Export System (AES), and to clarify provisions for authorizing forwarding or other agents to prepare and file a paper SED or file the export information electronically using the AES on behalf of a principal party in interest. This rule also clarifies provisions on electronic transmissions of intangible transfers of software and technology; updates provisions related to mail shipments and certain related SED exemptions; notifies the public that in the near future the Census Bureau will revise appropriate "exporter" fields on the paper SED forms and the AES record to read "U.S. principal party in interest," and require the reporting of the U.S. principal party in interest Employer Identification Number (EIN) or other identification number on the SED or AES record; clarifies what information should be listed in these newly revised blocks and the equivalent fields on the AES record; and clarifies provisions for providing import verification information to the Census Bureau.

**DATES:** *Effective Date:* This rule is effective July 10, 2000.*Grace Period:* A 90 day grace period will apply to the requirements set forth in this rule. Until October 10, 2000, Shipper's Export Declarations will be accepted with information that complies with the rules prior to July 10, 2000.**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to C. Harvey Monk,

Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, DC 20233-6700, by telephone on (301) 457-2255, or by fax on (301) 457-2645.

**SUPPLEMENTARY INFORMATION:****Background**

The Census Bureau is responsible for collecting, compiling, and publishing trade statistics for the United States. These data are used by various Federal Government agencies and the private sector for planning and policy development. In order to accomplish its mission, the Census Bureau must receive accurate statistical information from the trade community. The Shipper's Export Declaration (SED) and the Automated Export System (AES) records are the primary vehicles used for collecting such trade data, and the information contained therein is used by the Census Bureau for statistical purposes only and is confidential under the provisions of Title 13, United States Code (U.S.C.), Section 301(g). The Census Bureau's primary objective in this rule is to ensure the accuracy of its trade statistics and to clarify reporting responsibilities for all parties involved in export transactions.

As such, the Census Bureau is amending the Foreign Trade Statistics Regulations (FTSR), 15 Code of Federal Regulations (CFR) Part 30, to clarify responsibilities of exporters and forwarding or other agents in completing the SED, to notify the public that in the near future the Census Bureau will revise the title of the "exporter" blocks on the paper SED forms and the "Exporter" field on the AES record from reading "Exporter" to read "U.S. principal party in interest," and to clarify in this rule what information should be listed in these newly revised blocks and the equivalent fields on the AES record. This rule defines new terms, including "U.S. principal party in interest" and "routed export transaction," and clarifies existing ones (notably the definition of "exporter") for purposes of completing the SED or AES record. The rule clarifies provisions for authorizing a forwarding or other agent to prepare and file an SED or the AES record on behalf of a principal party in interest.

The Census Bureau initially published a notice of proposed rulemaking on this subject in the **Federal Register** on August 6, 1998 (63 FR 41979). As a result of comments received on that proposed rulemaking and subsequent discussions with the Bureau of Export Administration (BXA), the Census Bureau decided to issue a supplementary notice of proposed

rulemaking to address the issues raised during the comment period and to further clarify provisions contained in that notice of proposed rulemaking. The Census Bureau published a supplementary notice of proposed rulemaking in the **Federal Register** on October 4, 1999 (64 FR 53861). The BXA also published a notice of proposed rulemaking in the **Federal Register** on October 4, 1999 (64 FR 53854) revising the Export Administration Regulations (EAR) regarding the responsibilities of the parties to an export transaction, routed export transactions, SEDs, and export clearance. Subsequent to the publication of those notices in the **Federal Register**, the Census Bureau and BXA participated in numerous meetings, conferences, and seminars with the trade community to explain more clearly the provisions of the proposed rules and to resolve questions and concerns of the trade community. BXA is also revising appropriate sections of the EAR in a final rule published elsewhere in this issue of the **Federal Register**. The EAR will conform to the provisions of the FTSR in reference to clarifying the responsibilities of exporters and forwarding or other agents in completing the SED, and BXA also will issue changes to the EAR to simplify export clearance.

In addition to issuing final rules on the provisions addressed in the proposed rulemakings, the Census Bureau and BXA also are issuing final rules in these notices to amend provisions regarding the reporting of value of exports in export transactions, exports of mail shipments via the U.S. Postal Service, amending certain provisions for miscellaneous exemptions and exports transhipped through Canada to a third destination, provisions regarding the electronic transmission of software and technology and other intangible transfers, and provisions for providing import information to the Census Bureau.

The Census Bureau is amending the FTSR to specify that electronic transmissions to be received outside the United States and other intangible transfers, such as downloaded software and technology, are not subject to the FTSR, but may be subject to export control requirements under other laws and regulations. The Census Bureau is further amending the FTSR to clarify making corrections to SEDs submitted to the U.S. Postal Service and to increase the value limitation for mail shipments that do not require an SED or AES record from \$500 or under to \$2,500 or under. The Census Bureau is also amending the FTSR to clarify certain

miscellaneous exemption provisions and provisions for exports transhipped through Canada to be consistent with the EAR and to include a provision requiring importers to provide certain import information to the Census Bureau to verify the accuracy of import data.

### Response to Comments

The Census Bureau received 18 comments on the supplementary notice of proposed rulemaking published in the **Federal Register** on October 4, 1999 (64 FR 53861). A general response was sent to each respondent addressing their concerns with a notation that a more detailed response to the comments would be contained in the final rule. The Census Bureau revised certain provisions in the final rule to address the concerns of the respondents and to more clearly explain our requirements. The major concerns addressed in the comments and the Census Bureau's response are as follows:

1. *Specify that the information required on the SED or AES record is for statistical purposes.* There is concern among commentors that the Census Bureau did not clearly specify that the information reported on the SED or AES record is for statistical purposes. The Census Bureau is specifying in the regulation text of this rule, in § 30.4(a), that the information reported on the SED or AES record is used by the Census Bureau for statistical purposes only. The provisions contained in this part apply only to statistical reporting requirements. However, it must be understood that the SED or AES record is a dual purpose document/format used by the Census Bureau for statistical purposes and by the BXA and other government agencies for export control purposes.

2. *Specify and clarify the documentation and documentation sharing responsibilities of the forwarding or other agents in a routed export transaction.* There is some concern and confusion among commentors that the Census Bureau did not clearly specify the documentation and documentation sharing responsibilities of forwarding or other agents, especially in a routed export transaction. The Census Bureau is specifying, in the regulation text of this rule in § 30.4(b)(c), the reporting and documentation responsibilities of all parties involved in export and routed export transactions. The Census Bureau is further specifying, in the regulation text of this rule in § 30.4(c)(2), the documentation sharing responsibilities of the forwarding or other agent in a routed export transaction. In a routed

export transaction the forwarding or other agent, upon request by the exporter (U.S. principal party in interest), is responsible for providing the exporter (U.S. principal party in interest) with documentation verifying that the information provided by the exporter (U.S. principal party in interest) was accurately reported on the SED or AES record. The Census Bureau will not dictate the format by which this documentation should be made available between the parties. The new regulation does not impose any additional documentation requirements on any party. The documentation provisions stated in the regulation are provisions currently specified in § 30.11 of this Part.

3. *Clarify the liability concerns of the Exporter (U.S. principal party in interest) in a routed transaction.* There is concern among commentors regarding the liability of the exporter (U.S. principal party in interest) especially in a routed export transaction, when the foreign principal party in interest (foreign buyer) authorizes a U.S. forwarding or other agent to act on its behalf in facilitating the export transaction and prepare and file the SED or AES record. The new regulations clearly address the liability concerns of all parties in an export and routed export transaction and provide more protection to the exporter (U.S. principal party in interest) than they have under the current regulations. The new regulations, for the first time, clearly specify in writing, in the regulation text itself, the specific reporting and documentation responsibilities of the exporter (principal party in interest) in § 30.4(c)(1) and the forwarding or other agent in § 30.4(c)(2) in a routed export transaction. Specifically, in a routed export transaction, the exporter (U.S. principal party in interest) is only responsible for providing basic commodity information and their Internal Revenue Service (IRS), Employer Identification Number (EIN) to the forwarding or other agent. The forwarding or other agent is responsible for obtaining a power of attorney or written authorization from the foreign principal party in interest and preparing, signing, and filing the SED or AES record based on the information obtained from the exporter (U.S. principal party in interest) and other parties to the transaction. The exporter (U.S. principal party in interest) is only responsible and liable for the information it is required to provide the forwarding or other agent in § 30.4(c)(2) of the FTSR.

4. *Add a second block/field to the SED or AES record for the manufacturer/seller or other responsible party.* There was a request from some commentors for the Census Bureau to add another block to the paper SED and another field to the AES record for the manufacturer/seller or other related party to the transaction. This addition would essentially duplicate information the Census Bureau currently collects and would increase the reporting burden on the public. For statistical reporting purposes the Census Bureau is only interested in capturing data on the entity that either sold or made available the goods for export abroad. That person is considered the exporter (U.S. principal party in interest), or for statistical reporting purposes on the SED or AES record, the U.S. principal party in interest. In addition, the Census Bureau believes that the public comments requesting the addition of another block on the SED were based upon the misconception that the party listed in the "Exporter" block of the SED or AES record was the person liable for the export under the EAR and the FTSR. The fact of the matter is that all parties that participate in an export transaction are liable for their own actions or inactions, whether they are listed on the export forms or not. In the near future, a revision to the title of the exporter blocks on the paper SED and equivalent fields of the AES record will be revised from reading "Exporter" to read "U.S. principal party in interest," and "Exporter's EIN (IRS) No." to read "U.S. principal party in interest's EIN (IRS) No." Both BXA and the Census Bureau have the same definition for "principal party in interest," therefore this revision will alleviate the confusion over the "Exporter" block of the SED or AES record.

5. *Exporter's concern on providing their Internal Revenue Service Employer Identification Number (EIN) to the forwarding or other agent in a routed transaction.* There is some concern among commentors about providing their EIN to a U.S. forwarding or other agent especially in a routed transaction. The requirement for reporting the exporter's EIN has been part of export regulatory requirements since 1980. The Census Bureau uses the EIN to identify the specific company exporting merchandise from the United States. Company names are usually varied and the Census Bureau needs a more definitive identifier for this purpose. The appropriate fields on the SED and AES record will be revised to require the reporting of the U.S. principal party in interest's EIN or other ID number. In

addition, a company's EIN is reported on numerous business and financial documents to verify the identity of a specific business entity. The EIN on the SED or AES record is kept strictly confidential and is not released to any other party. Section 30.91 of the FTSR specifically prohibits the disclosure of information on the SED or AES record to anyone except the exporter or his agent by those having possession of or access to any copy for official purposes. The forwarding or other agent is not permitted to release copies of the SED or AES record to any other party for unofficial purposes.

6. *Clarify provisions on preparing SEDs for consolidated or containerized shipments.* There is some concern among commentators on the implication the new regulations will have on consolidated or containerized shipments. The current regulations require the consolidator or forwarding or other agent to prepare a separate SED or AES record for each shipment in the container, i.e., all merchandise being sent from one exporter to one consignee, to a single country of destination, on a single carrier, on the same day. Under the new regulation, the consolidator or forwarding or other agent cannot be listed as exporter on the SED or AES record, but will need a separate SED or AES record by individual exporter (U.S. principal party in interest) for each shipment in the container.

7. *Clarify conformity of documents provisions.* There is also some concern among commentators about the conformity of documentation requirements for export documents. The only conformity of documents requirement is contained in § 758.4(b) of the EAR and states that when a license is issued by BXA, the information entered on related export control documents (e.g., the SED, bill of lading or air waybill) must be consistent with the license. Complying with the conformity of documents requirement in the EAR would have been a problem with the term "Exporter" in the exporter blocks on the paper SED and on the equivalent field of the AES record, but with the pending revision of the paper SED and AES record to revise the title of this block/field to "U.S. principal party in interest," this will no longer be a concern.

#### Program Requirements

The Census Bureau is amending Title 15, Code of Federal Regulations (CFR), Part 30, to address the issues raised by commentators to the supplementary notice of proposed rulemaking to: (A) Define the term "exporter," for purposes of completing the SED or AES record, as

the U.S. principal party in interest in the export transaction; (B) Clarify the reporting responsibilities of the U.S. principal party in interest and the forwarding or other agent in completing the SED or AES record; (C) Clarify provisions for authorizing a forwarding or other agent to prepare and file an SED or file the information electronically using the AES; and (D) Clarify the documentation and compliance responsibilities of parties involved in the export transaction. For purposes of this rule, all references to preparing and filing the paper SED also pertain to preparing and filing the AES electronic record.

This rule clarifies the responsibilities of the exporter (U.S. principal party in interest) and the forwarding or other agent in preparing the SED or AES record. For export shipments, the Census Bureau recognizes "routed export transactions" as a subset of "export transactions." A routed export transaction is where the foreign principal party in interest authorizes a U.S. forwarding or other agent to facilitate export of items from the United States.

The "exporter" and "EIN" fields on the SED and AES records are being revised to read U.S. principal party in interest." For purposes of completing the SED or AES record, use the definition found in section 30.4(a)(1) of the FTSR for "Exporter (principal party in interest)" to determine who should be listed in the new "U.S. principal party in interest" block/field of the SED or AES record. The FTSR defines the term exporter (U.S. principal party in interest) as the person in the United States that receives the primary benefit, monetary or otherwise, of the export transaction. Generally, that person is the U.S. seller, manufacturer, order party, or foreign entity. The foreign entity must be listed as the U.S. principal party in interest on the SED or AES record, if it is *in the United States* when the items are purchased or obtained for export. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§ 30.4 and 30.7 of the FTSR, pertaining to the U.S. principal party in interest. In most cases, the forwarding or other agent is not a principal party in interest.

Keep in mind, however, that the EAR defines the exporter as the person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States (see EAR 15 CFR Part 772). In some transactions, this definition permits the forwarding or other agent to apply for a license and be the exporter, as defined in the EAR.

The person who signs the SED must be in the United States at the time of signing. If a U.S. manufacturer sells merchandise directly to a foreign principal party in interest for export, the U.S. manufacturer must be listed as the U.S. principal party in interest on the SED or AES record. If a U.S. manufacturer sells merchandise, as a domestic sale, to a U.S. buyer (wholesaler/distributor) and that U.S. buyer sells the merchandise to a foreign principal party in interest, the U.S. buyer (wholesaler/distributor) must be listed as the U.S. principal party in interest on the SED or AES record. If a U.S. order party, as defined in § 30.4(a)(1)(iii) of this rule, arranges for the sale and export of merchandise to a foreign principal party in interest directly, the U.S. order party must be listed as the U.S. principal party in interest on the SED or AES record. When a foreign entity is *in the United States* when the items are purchased or obtained for export it is the exporter (U.S. principal party in interest) and must be listed as the U.S. principal party in interest on the SED or AES record. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§ 30.4 and 30.7 pertaining to the U.S. principal party in interest.

The forwarding or other agent is that person in the United States who is authorized by a principal party in interest to perform the services required to facilitate the export of items from the United States. The forwarding or other agent must be authorized by the exporter (U.S. principal party in interest), or in the case of a routed export transaction, the foreign principal party in interest. In a routed export transaction, the forwarding or other agent may be the exporter for compliance purposes under the EAR. However, the forwarding or other agent is never the "U.S. principal party in interest" on the paper SED or in the "U.S. principal party in interest" field of the AES record, except when the forwarding or other agent acts as an "order party."

The exporter (U.S. principal party in interest) can prepare and file the SED or AES record, or it can authorize a forwarding or other agent to prepare and file the SED or AES record on its behalf. If the exporter (U.S. principal party in interest) authorizes a forwarding or other agent to complete the SED or AES record on its behalf, the exporter (U.S. principal party in interest) is responsible for: (A) Providing the forwarding or other agent with the information necessary to complete the SED or AES record; (B) Providing the

forwarding or other agent with authorization to complete the SED or AES record, in the form of a power of attorney or written authorization, or signing the authorization block printed on the paper SED (block 23 on Commerce Form 7525-V or block 29 on Commerce Form 7525-V-ALT); and (C) Maintaining documentation to support the information provided to the forwarding or other agent for completing the SED or AES record.

The forwarding or other agent, if authorized by a principal party in interest, is responsible for: (A) Preparing the SED or AES record, based on information received from the exporter (U.S. principal party in interest) or other parties in the transaction; (B) Maintaining documentation to support the information reported on the SED or AES record; and (C) Upon request, providing the exporter (U.S. principal party in interest) with a copy of the export information filed in the form of a completed SED, an electronic facsimile, or in any other manner prescribed by the exporter (U.S. principal party in interest).

In a routed export transaction, where a foreign principal party in interest designates a U.S. forwarding or other agent to act on its behalf to prepare and file the SED or AES record, the exporter (U.S. principal party in interest) must provide the forwarding or other agent with the following information to assist them in preparing the SED or AES record: (1) Name and address of the U.S. principal party in interest; (2) U.S. principal party in interest's IRS, EIN; (3) Point of origin (State or Foreign Trade Zone (FTZ)); (4) Schedule B description of commodities; (5) Domestic (D), foreign (F), or Foreign Military Sale (FMS) (M) code; (6) Schedule B Number; (7) Quantity/unit of measure; (8) Value; (9) Upon request by the foreign principal party in interest or its agent, the Export Control Classification Number (ECCN) or with sufficient technical information to determine the ECCN; and (10) Any information that it knows will affect the determination of license authority.

**Note:** For Items 9 and 10, where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

In a routed export transaction, the forwarding or other agent is responsible for preparing, signing, and filing the SED or AES record based on information received from the exporter (U.S. principal party in interest) and other parties involved in the transaction. In addition to reporting the

information provided by the exporter (U.S. principal party in interest) on the SED or AES record, the forwarding or other agent must provide the following export information on the SED or AES record: (1) Date of exportation; (2) Bill of lading/airway bill number; (3) Ultimate consignee; (4) Intermediate consignee; (5) Forwarding or other agent name and address; (6) Country of ultimate destination; (7) Loading pier; (8) Method of transportation; (9) Exporting carrier; (10) Port of export; (11) Port of unloading; (12) Containerized; (13) Weight; (14) ECCN; (15) License Authority; and (16) Signature in the certification block on the paper SED (block 24 on Commerce Form 7525-V and block 36 on Commerce Form 7525-V-ALT). In a routed export transaction, the exporter (U.S. principal party in interest) must be listed as the U.S. principal party in interest on the SED or the AES record.

**Note:** For items 14 and 15 where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

In a routed export transaction, the forwarding or other agent is responsible for: (A) Obtaining a power of attorney or written authorization from the foreign principal party in interest to act on its behalf; (B) Preparing, signing, and filing the SED or AES record based on information received from the exporter (U.S. principal party in interest) and other parties involved in the transaction; (C) Maintaining documentation to support the information reported on the SED or AES record, and (D) Upon request, providing the exporter (U.S. principal party in interest), with appropriate documentation verifying that the information provided by the exporter (U.S. principal party in interest) in interest was accurately reported on the SED or AES record.

The FTSR places primary responsibility for compliance of the SED and AES requirements on the exporter (U.S. principal party in interest) in an export transaction and on the forwarding or other agent in a routed export transaction. However, the FTSR also considers all parties involved in the transaction responsible for the truth, accuracy, and completeness of the information reported on the SED or AES record. The parties to the transaction must provide the forwarding or other agent with the information necessary to correctly prepare the paper SED or to file the data electronically using the AES. As always, documentation must be maintained by all parties involved in

the transaction to support the information reported on the SED or the AES record.

All parties that participate in transactions subject to the FTSR are responsible for compliance with the FTSR. In all cases where a violation of the FTSR occurs, the documentation of all parties involved in the transaction must be made available to the proper enforcement officials to determine the liability and responsibility for the export violation pursuant to FTSR § 30.11. Acting through a forwarding or other agent or delegating or re delegating authority does not in and of itself relieve anyone of their compliance responsibility.

This notice further clarifies provisions for using a power of attorney or written authorization when a principal party in interest authorizes a forwarding or other agent to prepare and file the SED on its behalf and when the SED information is filed electronically using the AES. Suggested formats for a power of attorney and a written authorization for executing a SED are available upon request from the U.S. Census Bureau, Foreign Trade Division.

This rule further specifies in § 30.4(f) the requirement that the SED be prepared in English. This provision is already included in the Census Bureau's instructions for completing the SED and this rule will simply include that requirement in the CFR.

In addition, this amendment clarifies the provision in § 30.7(d)(2) that a foreign entity, if in the United States when the items are purchased or obtained for export, must be listed as the U.S. principal party in interest on the SED or AES record and follow the provisions as specified in this part pertaining to the U.S. principal party in interest. In such situations, when the foreign entity does not have an EIN or Social Security Number (SSN), a border crossing number, passport number, or any number assigned by U.S. Customs is required to be reported on the SED or the AES record. On the paper SED, the appropriate number should be preceded by the symbol "T." On the AES record, the appropriate AES identifier code, as specified in the Automated Export System Trade Interface Requirements (AESTIR) must be reported. Using another's EIN or SSN is prohibited.

In addition to addressing the issues contained in the supplementary notice of proposed rulemaking (addressed above), this rule is also amending the FTSR to: (A) Include provisions on electronic transmission of software and technology; (B) Amend the provision for reporting value in an export transaction; (C) Include revisions to provisions

concerning mail shipments and certain related SED miscellaneous exemptions; (D) Clarify provisions for exports of items subject to the EAR that are transhipped through Canada to a third destination; and (E) Clarify provisions for providing import verification information to the Census Bureau. The specific revisions to the FTSR to include these changes are detailed in this rule.

In order to clarify the provisions of the FTSR with regards to the export reporting requirements for electronic transmissions and intangible transfers of software and technology, the Census Bureau is including a new section, 30.1(d), to the FTSR to state that electronic transmissions to be received outside the United States and other intangible transfers, such as downloaded software, and technology, are not subject to the provisions of the FTSR, but may be subject to export control requirements under other laws and regulations. Such transmissions and transfers are outside the scope and control of the Census Bureau and the FTSR. The FTSR only covers shipments of tangible/physical merchandise.

The Census Bureau is amending § 30.7(q), Value, to clarify the provision for reporting value information on the SED or AES record in an export transaction. In all export transactions the selling price or value to be reported on the SED or AES record is the U.S. principal party in interest's price to the foreign principal party in interest.

In order to update the Census Bureau's provisions on mail shipments currently included in the FTSR, the Census Bureau is clarifying provisions contained in § 30.16 for submitting corrections to SEDs that were initially submitted through the U.S. Postal Service. The Census Bureau is directing that all corrections to SEDs filed through the U.S. Postal Service be sent directly to the Census Bureau's National Processing Center in Jeffersonville, Indiana. The Census Bureau is also increasing the value limitation for goods exported through the mail that do not require a SED or AES record from \$500 or under to \$2,500 or under. This will bring all mail exports under the same provisions as for all other exports. Therefore, the Census Bureau will remove and reserve § 30.54, Special exemptions for mail shipments, as it is no longer necessary.

The Census Bureau is amending § 30.55, Miscellaneous exemptions, by revising paragraphs (g) and (h), and by adding paragraphs (n) and (o). Paragraphs (g) and (h) are being revised to make the FTSR language consistent with EAR revisions. Paragraph (n) will state that a SED or AES record is not

required for exports of software and technology that does not require an export license, except that a SED or AES record is required for mass market software. For purposes of the FTSR, mass market software is defined as software that is generally available to the public by being sold from stock at retail selling points or directly from the software developer or supplier, by means of over the counter transactions, mail order transactions, telephone transactions, or electronic mail order transactions, and designed for installation by the user without further substantial technical support by the developer or supplier. Paragraph (o) will state that a SED or AES record is not required for any intangible exports of software and technology, such as downloaded software and technical data, including technology and software that requires an export license and mass market software exported electronically.

This rule is amending § 30.58 to revise the phrase "validated export license" to read "license" in paragraph (c)(1) and by adding paragraph (c)(6) for exports of items subject to the EAR that will be transhipped through Canada to a third country.

This rule also will include a provision to § 30.70, Statistical information required on import entries, to require importers to provide certain import information to the Census Bureau to verify the accuracy of import data. This is being included to ensure the cooperation of the importer in responding to requests from the Census Bureau when resolving problems or errors on import documents.

The revisions contained in this final rule are consistent with the provisions contained in the final rule issued by the BXA in its revisions to the EAR regarding the export control responsibilities of exporters and forwarding or other agents. The Department of the Treasury concurs with the provisions contained in this final rule.

#### Changes to the Proposed Rule

In order to comply with comments received from the trade community, and to update the FTSR to clarify all of the items discussed above, minor revisions were made to the proposed rule. These revisions are not substantial and reflect changes required to clarify the concerns of commentators to the supplementary notice of proposed rulemaking and to make minor updates to the FTSR to reflect changes the Census Bureau and the BXA are making to harmonize the FTSR and the EAR. The changes to the proposed rule are as follows:

(1) Section 30.1 is amended by adding paragraph (d) to clarify that electronic transmissions and other intangible transfers of software and technology are not subject to the provisions of the FTSR.

(2) Section 30.4(a) is amended by including clarifying language to specify that the information reported on the SED or AES record is used by the Census Bureau for statistical reporting purposes only and that for purposes of this part the provisions apply only to statistical reporting requirements.

(3) Section 30.4(a)(1) is amended by including clarifying language to specify that the person listed in the previously designated "exporter" block of the paper SED or in the "exporter" field on the AES record must be the U.S. principal party in interest; and adding paragraph (iv) to clarify provisions for when a foreign entity must be listed as U.S. principal party in interest on the SED or AES record.

(4) Section 30.4(a)(1)(iii) is amended by adding the definition for order party in the regulation text and removing order party as a footnote.

(5) Section 30.4(b)(1) *Designating a forwarding or other agent* in export transactions is removed and the provisions included in the *Exporter (U.S. principal party in interest) responsibilities* in export transactions, which is now designated Section 30.4(b)(1).

(6) Section 30.4(b)(3) is now designated Section 30.4(b)(2) *Forwarding or other agent responsibilities*.

(7) Section 30.4(c)(1) *Designating a forwarding or other agent* in routed export transactions is removed and the provisions included in the *Forwarding agent responsibilities* in routed export transactions, that is now designated Section 30.4(c)(2). Section 30.4(c)(2) *Exporter (U.S. principal party in interest) responsibilities* in routed export transactions is now designated section 30.4(1). Section 30.4(c)(3) *Forwarding agent responsibilities* in routed export transactions is now designated Section 30.4(c)(2).

(8) Section 30.4(c)(1) is amended by adding clarifying language to specify the documentation requirements of the exporter (U.S. principal party in interest) in a routed export transaction and to reference the current documentation provisions as specified in § 30.11.

(9) Section 30.4(c)(2) is amended by clarifying the responsibilities of the forwarding or other agent in a routed export transaction, and by adding specific language, in the regulation text, to clarify the documentation and

documentation sharing responsibilities of the forwarding or other agent in a routed export transaction, as referenced in § 30.11. In a routed export transaction, upon request of the exporter (U.S. principal party in interest), the forwarding or other agent must provide the exporter (U.S. principal party in interest) with documentation verifying that the information provided by the exporter (U.S. principal party in interest) was accurately reported on the SED or AES record.

(10) Section 30.7(d)(1) and (2) is amended by clarifying that for purposes of completing the SED or AES record, the exporter (U.S. principal party in interest) must be listed as the "U.S. principal party in interest," that the U.S. principal party in interest's EIN or other identification number be reported on the SED or AES record, and clarifying reporting responsibilities of a foreign entity who is in the United States when conducting an export transaction, and not possessing an EIN or SSN. In such situations, the foreign entity is required to report a border crossing number, a passport number, or any other number assigned by U.S. Customs on the SED or AES record in lieu of the EIN or SSN.

(11) Section 30.7(q) Value, is amended by clarifying the provision for reporting value information in an export transaction. In all export transactions the selling price or value to be reported on the SED or AES record is the U.S. principal party in interest's price to the foreign principal party in interest.

(12) Section 30.16 is amended by revising provisions for submitting corrections to SEDs for mail exports filed with the U.S. Postal Service. The Census Bureau will require that, in the case of mail exports, exporters submit corrections to SEDs directly to the Census Bureau's National Processing Center in Jeffersonville, Indiana. Current regulations require that corrections be submitted through the Postmaster at the post office where the export was mailed.

(13) Section 30.54, Special exemptions for mail shipments, is removed and reserved from this part. This section is no longer necessary since the Census Bureau is raising the value limitation for when a SED or AES record is not required from \$500 or under to \$2,500 or under. This change in the value requirement for mail exports, brings mail exports under the same provisions as for all other exports and no further special exemptions are required.

(14) Section 30.55(g) is amended by updating and clarifying language to reflect the Bureau of Export Administration's, Export

Administration Regulations for License Exception GFT for single gift parcels.

(15) Section 30.55(h) is amended by making the FTSR language consistent with EAR provisions.

(16) Section 30.55 is further amended by adding paragraphs (n) and (o). Paragraph (n) will state that a SED or AES record is not required for exports of technology and software that does not require a license, except that a SED or AES record is required for mass market software. For purposes of the FTSR, mass market software is defined as software that is generally available to the public by being sold from stock at retail selling points or directly from the software developer or supplier, by means of over the counter transactions, mail order transactions, telephone transactions, or electronic mail order transactions, and designed for installation by the user without further substantial technical support by the developer or supplier. Paragraph (o) will state that a SED or AES record is not required for any intangible exports of software and technology, such as downloaded software and technical data, including technology and software that requires an export license and intangible mass market software exported electronically.

(17) Section 30.58 is amended by revising the phrase "validated export license" to read "license" in paragraph (c)(1) and by adding paragraph (c)(6) to include provisions for the export of items subject to the EAR that will be transshipped through Canada to a third destination.

(18) Section 30.70 is amended by adding provisions to require importers to provide certain import information to the Census Bureau to verify the accuracy of import data.

#### Rulemaking Requirements

This rule is exempt from all requirements of Section 553 of the Administrative Procedure Act because it deals with a foreign affairs function (5 U.S.C.), 553(a)(1)).

#### Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

#### Executive Orders

This rule has been determined to be significant for purposes of Executive Order (E.O.) 12866. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

#### Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, this rule's collections of information are cleared by the OMB under OMB Control Number 0607-0152. This rule will not impact the current reporting-hour burden requirements as approved under that OMB Control Number. We will furnish report forms to organizations included in the survey, and additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233-0101.

#### List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 15 CFR Part 30 is amended as follows:

#### PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

**Authority:** 5 U.S.C. 301; 13 U.S.C. 301-307; Reorganization Plan No. 5 of 1950 (3 CFR 1949-1953 Comp., 1004); Department of Commerce Organization Order No. 35-2A, August 4, 1975, 40 CFR 42765.

#### Subpart A—General Requirements—Exporters

2.-3. Section 30.1 is amended by adding paragraph (d) to read as follows:

#### § 30.1 General statement of requirement for Shipper's Export Declarations.

\* \* \* \* \*

(d) *Electronic transmissions and intangible transfers.* Electronic transmissions to be received outside the United States and other intangible transfers, such as downloaded software, technical data, and technology, are not subject to this part, but may be subject to export control requirements under other laws and regulations. See 15 CFR parts 730 through 774 of the EAR.

4. Section 30.4 is revised to read as follows:

#### § 30.4 Preparation and signature of Shipper's Export Declaration (SED).

(a) *General requirements (SED).* For purposes of this part, all references to



preparing and filing the paper SED also pertain to preparing and filing the AES electronic record. The SED or AES record is a dual purpose document used by the Census Bureau for statistical reporting purposes only, and by the Bureau of Export Administration (BXA) and other government agencies for export control purposes. For purposes of this part, the provisions apply only to statistical reporting requirements. The Shipper's Export Declaration (SED) or the AES record must be prepared and signed by a principal party in interest or by a forwarding or other agent authorized by a principal party in interest. The person who signs the SED must be in the United States at the time of signing. That person, whether exporter (U.S. principal party in interest) or agent, is responsible for the truth, accuracy, and completeness of the SED or AES record, except insofar as that person can demonstrate that he or she reasonably relied on information furnished by others. The Census Bureau recognizes "routed export transactions" as a subset of export transactions. A routed export transaction is where the foreign principal party in interest authorizes a U.S. forwarding or other agent to facilitate export of items from the United States. See paragraph (c) of this section for responsibilities of parties in a routed export transaction.

(1) *Exporter (U.S. principal party in interest)*. For purposes of completing the paper SED or AES record in all export transactions, the exporter (U.S. principal party in interest) is listed as the "U.S. principal party in interest" on the SED or AES record. In all export transactions, the person listed in the U.S. principal party in interest block on the paper SED or in the U.S. principal party in interest field of the AES record is the exporter (U.S. principal party in interest) in the transaction. The U.S. principal party in interest is the person in the United States that receives the primary benefit, monetary or otherwise, of the transaction. Generally that person is the U.S. seller, manufacturer, order party, or foreign entity. The foreign entity must be listed as the U.S. principal party in interest on the SED or AES record, if it is *in the United States* when the items are purchased or obtained for export. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§ 30.4 and 30.7 pertaining to the U.S. principal party in interest. In most cases, the forwarding or other agent is not a principal party in interest.

(i) If a U.S. manufacturer sells merchandise directly for export to a foreign principal party in interest, the

U.S. manufacturer must be listed as the U.S. principal party in interest on the SED or AES record.

(ii) If a U.S. manufacturer sells merchandise, as a domestic sale, to a U.S. buyer (wholesaler/distributor) and that U.S. buyer sells the merchandise for export to a foreign principal party in interest, the U.S. buyer (wholesaler/distributor) must be listed as the U.S. principal party in interest on the SED or AES record.

(iii) If a U.S. order party directly arranges for the sale and export of merchandise to a foreign buyer, the U.S. order party must be listed as the U.S. principal party in interest on the SED or AES record. The order party is that person in the United States who conducted the direct negotiations or correspondence with the foreign principal party in interest and who, as a result of these negotiations, received the order from the foreign principal party in interest.

(iv) If a foreign entity is *in the United States* when the items are purchased or obtained for export, it is the exporter (U.S. principal party in interest) and must be listed as the U.S. principal party in interest on the SED or AES record (see § 30.4(a)(1)).

**Note to paragraph (a)(1):** The EAR defines the "exporter" as the person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States (see 15 CFR Part 772 of the EAR). For statistical purposes the Foreign Trade Statistics Regulations (FTSR) have a different definition of "exporter" from the Export Administration Regulations (EAR). Under the FTSR the "exporter" will always be the U.S. principal party in interest. For purposes of licensing responsibility under the EAR, the U.S. agent of the foreign principal party in interest may be the "exporter" or applicant on the license, in certain routed export transactions (see 15 CFR 758.3 of the EAR).

(2) *Forwarding or other agent*. The forwarding or other agent is that person in the United States who is authorized by a principal party in interest to perform the services required to facilitate the export of items from the United States. The forwarding or other agent must be authorized by the exporter (U.S. principal party in interest) or, in the case of a routed export transaction, the foreign principal party in interest to prepare and file the SED or the AES record. In a routed export transaction, the forwarding or other agent can be the exporter for export control purposes under the EAR. However, the forwarding or other agent is never the "U.S. principal party in interest" in the U.S. principal party in interest block on the paper SED or in the "U.S. principal party in interest" field

of the AES record unless the forwarding or other agent acts as an "order party." (See paragraph (a)(1)(iii) for definition of order party)

(3) *Principal parties in interest*. Those persons in a transaction that receive the primary benefit, monetary or otherwise, of the transaction. Generally, the principals in a transaction are the seller and the buyer. In most cases, a forwarding or other agent is not a principal party in interest.

(b) *Responsibilities of parties in export transactions*. (1) *Exporter (U.S. principal party in interest) responsibilities*. (i) The exporter (U.S. principal party in interest) can prepare and file the SED or AES record itself, or it can authorize a forwarding or other agent to prepare and file the SED or AES record on its behalf. If the exporter (U.S. principal party in interest) prepares the SED or AES record itself, the exporter (U.S. principal party in interest) is responsible for the accuracy of all the export information reported on the SED or AES record, for signing the paper SED, filing the paper SED with U.S. Customs, or transmitting the AES record to U.S. Customs.

(ii) When the exporter (U.S. principal party in interest) authorizes a forwarding or other agent to complete the SED or AES record on its behalf, the exporter (U.S. principal party in interest) is responsible for:

(A) Providing the forwarding or other agent with the export information necessary to complete the SED or AES record;

(B) Providing the forwarding or other agent with a power of attorney or written authorization to complete the SED or AES record, or signing the authorization block printed on the paper SED (block 23 on Commerce Form 7525-V and block 29 on Commerce Form 7525-V-ALT); and

(C) Maintaining documentation to support the information provided to the forwarding or other agent for completion of the SED or AES record, as specified in § 30.11.

(2) *Forwarding or other agent responsibilities*. The forwarding or other agent, when authorized by an exporter (U.S. principal party in interest) to prepare and sign the SED or prepare and file the AES record in an export transaction, is responsible for:

(i) Accurately preparing the SED or AES record based on information received from the exporter (U.S. principal party in interest) and other parties involved in the transaction;

(ii) Obtaining a power of attorney or written authorization to complete the SED or AES record, or obtaining a paper SED with a signed authorization from



the exporter (U.S. principal party in interest);

(iii) Maintaining documentation to support the information reported on the SED or AES record, as specified in § 30.11; and

(iv) Upon request, providing the exporter (U.S. principal party in interest) with a copy of the export information filed in the form of a completed SED, an electronic facsimile, or in any other manner prescribed by the exporter (U.S. principal party in interest).

(c) *Responsibilities of parties in a routed export transaction.* (1) *Exporter (U.S. principal party in interest) responsibilities.* In a routed export transaction where the foreign principal party in interest authorizes a U.S. forwarding or other agent to prepare and file the SED or AES record, the exporter (U.S. principal party in interest) must maintain documentation to support the information provided to the forwarding or other agent for preparing the SED or AES record as specified in § 30.11 and provide such forwarding or other agent with the following information to assist in preparing the SED or AES record:

- (i) Name and address of the U.S. principal party in interest;
- (ii) U.S. principal party in interest's, IRS, EIN;
- (iii) Point of origin (State or FTZ);
- (iv) Schedule B description of commodities;
- (v) Domestic (D), foreign (F), or FMS (M) code;
- (vi) Schedule B Number;
- (vii) Quantity/unit of measure;
- (viii) Value;
- (ix) Upon request from the foreign principal party in interest or its agent, the Export Control Classification Number (ECCN) or sufficient technical information to determine the ECCN; and
- (x) Any information that it knows will affect the determination of license authority.

**Note to paragraph (c)(1):** For items in paragraph (c)(1)(ix) and (x) of this section, where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

(2) *Forwarding or other agent responsibilities.* In a routed export transaction, the forwarding or other agent is responsible for; obtaining a power of attorney or written authorization from the foreign principal party in interest to prepare and file the SED or AES record on its behalf; preparing, signing, and filing the SED or AES record based on information obtained from the exporter (U.S. principal party in interest) or other

parties involved in the transaction; maintaining documentation to support the information reported on the SED or AES record, and upon request by the exporter (U.S. principal party in interest), provide appropriate documentation to the exporter (U.S. principal party in interest) verifying that the information provided by the exporter (U.S. principal party in interest) was accurately reported on the SED or AES record. The forwarding or other agent must also provide the following export information on the SED or AES record:

- (i) Date of exportation;
- (ii) Bill of lading/airway bill number;
- (iii) Ultimate consignee;
- (iv) Intermediate consignee;
- (v) Forwarding or other agent name and address;
- (vi) Country of ultimate destination;
- (vii) Loading pier;
- (viii) Method of transportation;
- (ix) Exporting carrier;
- (x) Port of export;
- (xi) Port of unloading;
- (xii) Containerized;
- (xiii) Weight;
- (xiv) ECCN;
- (xv) License Authority;
- (xvi) Signature in the certification block on the paper SED (block 24 on Commerce Form 7525-V and block 36 on Commerce Form 7525-V-ALT). In a routed export transaction the exporter (U.S. principal party in interest) must be listed as U.S. principal party in interest on the SED or on the AES record;

**Note to paragraph (c)(2):** For items in paragraph (c)(2)(xiv) and (xv) of this section, where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

(d) *Information on the Shipper's Export Declaration (SED) or Automated Export System (AES) record.* The data provided on the SED or AES electronic record shall be complete, correct, and based on personal knowledge of the facts stated or on information furnished by the parties involved in the export transaction. All parties involved in export transactions, including U.S. forwarding or other agents, should be aware that invoices and other commercial documents may not necessarily contain all the information needed to prepare the SED or AES record. The parties must ensure that all the information needed for completing the SED or AES record, including correct export licensing information, is provided to the forwarding or other agent for the purpose of correctly preparing the SED or AES record as stated in this section.

(e) *Authorizing a Forwarding or other agent.* In a power of attorney or other written authorization, authority is conferred upon an agent to perform certain specified acts or kinds of acts on behalf of a principal (see 15 CFR 758.1(h) of the EAR). In cases where a forwarding or other agent is filing export information on the SED or AES record, the forwarding or other agent must obtain a power of attorney or written authorization from a principal party in interest to file the information on its behalf. A power of attorney or written authorization should specify the responsibilities of the parties with particularity, and should state that the forwarding or other agent has authority to act on behalf of a principal party in interest as its true and lawful agent for purposes of the export transaction in accordance with the laws and regulations of the United States.

(f) *Format requirements for SEDs:* The SED shall be prepared in English and shall be typewritten or prepared in ink or other permanent medium (except indelible pencil). The use of duplicating processes, as well as the overprinting of selected items of information, is acceptable.

(g) *Copies of SEDs:* All copies of the SEDs must contain all of the information called for in the signature space as to name of firm, address, name of signer, and capacity of signer. The original SED must be signed in ink, but signature on other copies is not required. The use of signature stamps is acceptable. A signed legible carbon or other copy of the export declaration is acceptable as an "original" of the SED.

5. Section 30.7 is amended by revising paragraphs (d), (e) and (q)(1) to read as follows:

**§ 30.7 Information required on Shipper's Export Declarations.**

\* \* \* \* \*

(d) *Name of the U.S. principal party in interest and U.S. principal party in interest's Employer Identification Number (EIN).* For purposes of completing the paper SED or AES record the exporter (U.S. principal party in interest) is the U.S. principal party in interest. The name and address (number, street, city, state, ZIP Code) of the U.S. principal party in interest and the U.S. principal party in interest's EIN shall be entered where requested on the SED or AES electronic record. The EIN shall be the U.S. principal party in interest's own and not another's EIN.

(1) *Name of the U.S. principal party in interest.* In all export transactions, the person listed in the U.S. principal party in interest block on the SED or in the U.S. principal party in interest field on

the AES record must be the exporter (U.S. principal party in interest) in the transaction. The U.S. principal party in interest is the person in the United States that receives the primary benefit, monetary or otherwise, of the export transaction. Generally that person is the U.S. seller, manufacturer, order party, or foreign entity, if in the United States when the items are purchased or obtained for export. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§ 30.4 and 30.7 pertaining to the U.S. principal party in interest. (See § 30.4 for details on the specific reporting responsibilities of exporter (U.S. principal party in interest)).

(2) U.S. principal party in interest's Employer Identification Number (EIN). An exporter (U.S. principal party in interest) shall report its own Internal Revenue Service (IRS) EIN in the U.S. principal party in interest's (IRS) EIN block/field on the SED. If, and only if, no IRS EIN has been assigned to the exporter (U.S. principal party in interest), the exporter's (U.S. principal party in interest) own SSN, preceded by the symbol "SS," must be reported on the paper SED. On the AES record the appropriate SSN symbol must be reported. When a foreign entity is in the United States when the items are purchased or obtained for export it is the exporter (U.S. principal party in interest). In such situations, when the foreign entity does not have an EIN or SSN, a border crossing number, passport number, or any number assigned by U.S. Customs must be reported on the SED or the AES record. On the paper SED, the appropriate number should be preceded by the symbol "T." On the AES record, the appropriate AES identifier code as specified in the Automated Export System Trade Interface Requirements (AESTIR) must be reported. Use of another's EIN or SSN is prohibited.

(e) Forwarding or other agent. The name and address of the duly authorized forwarding or other agent (if any) of a principal party in interest must be recorded where required on the SED or AES record. (See § 30.4 for details on the specific reporting responsibilities of forwarding or other agents).

(q) Value. (1) In general, the value to be reported on the Shipper's Export Declaration or AES record shall be the value at the U.S. port of export (selling price or cost if not sold, including inland freight, insurance, and other charges to U.S. port of export) (nearest whole dollar; omit cents figures). The

"Selling price" for goods exported pursuant to sale, and the value to be reported on the SED or AES record, is the exporter's (U.S. principal party in interest) price to the foreign principal party in interest, net any unconditional discounts from list price, but without deducting any discounts which are conditional upon a particular act or performance on the part of the customer. Commissions to be paid by an exporter (U.S. principal party in interest) to his agent abroad, or to be deducted from the selling price by the agent abroad should be excluded. For goods shipped on consignment without a sale actually having been made at the time of export, the "selling price" to be reported on the SED or AES record is the market value at the time of export at the United States port from which exported.

\* \* \* \* \*

6. Section 30.16 is amended by revising the first sentence to read as follows:

**§ 30.16 Corrections to Shipper's Export Declarations.**

The Exporter (U.S. principal party in interest) (or its agent) must report corrections, cancellations, or amendments to information reported on Shipper's Export Declarations to the Customs Director at the port of exportation (or, in the case of mail shipments directly to the U.S. Census Bureau, National Processing Center, Attention: Foreign Trade Section, 1201 East 10th Street, Jeffersonville, Indiana 47132) as soon as the need to make such correction, cancellation, or amendment is determined. \* \* \*

**Subpart D—Exemptions from the Requirements for the Filing of Shipper's Export Declarations**

**§ 30.54 [Removed and reserved]**

7. Section 30.54 is removed and reserved.

8. Section 30.55 is amended by revising paragraphs (g) and (h), adding paragraphs (n) and (o), and removing the authority citation at the end of the section, to read as follows:

**§ 30.55 Miscellaneous exemptions.**

\* \* \* \* \*

(g) Shipments of single gift parcels as authorized by the Bureau of Export Administration under License Exception GFT, see 15 CFR 740.12 of the EAR.

(h) Except as noted in paragraph (h)(2) of this section exports of commodities where the value of the commodities, shipped from one exporter to one consignee on a single exporting carrier,

classified under an individual Schedule B number, is \$2,500 or less.

(1) This exemption applies to individual Schedule B commodity numbers regardless of the total shipment value. In instances where a shipment contains a mixture of individual Schedule B commodity numbers valued \$2,500 or less and individual Schedule B commodity numbers valued over \$2,500, only those commodity numbers valued \$2,500 or more need be reported on a Shipper's Export Declaration or AES record.

(2) This exemption does not apply to exports:

(i) Destined for Cuba, Iran, Iraq, Libya, North Korea, Serbia (excluding Kosovo), Sudan and Syria.

(ii) Requiring a Department of Commerce license (15 CFR Parts 730 through 774 of the EAR).

(iii) Requiring a Department of State, Office of Defense Trade Controls export license under the International Traffic In Arms Regulations (ITAR) (22 CFR Parts 120 through 130).

(iv) Subject to the ITAR but exempt from license requirements.

(v) Requiring a Department of Justice, Drug Enforcement Administration export permit (21 CFR Part 1312). This exemption shall be conditioned upon the filing of such reports as the Bureau of the Census shall periodically require to compile statistics on \$2,500 and under shipments.

\* \* \* \* \*

(n) Exports of technology and software as defined in 15 CFR Part 772 of the EAR that do not require an export license, except that an SED or AES record is required for mass market software. For purposes of the FTSR, mass market software is defined as software that is generally available to the public by being sold at retail selling points, or directly from the software developer or supplier, by means of over the counter transactions, mail order transactions, telephone transactions, or electronic mail order transactions, and designed for installation by the user without further substantial technical support by the developer or supplier.

(o) Intangible exports of software and technology, such as downloaded software and technical data, including technology and software that requires an export license and mass market software exported electronically.

9. Section 30.58 is amended by revising the phrase "validated export license" to read "license" in paragraph (c)(1), and by adding paragraph (c)(6) to read as follows:

**§ 30.58 Exemption for shipments from the United States to Canada.**

\* \* \* \* \*

(c) \* \* \*

(6) For all exports of items subject to the EAR (15 CFR Parts 730 through 799) that will be transhipped through Canada to a third destination, that would require an SED, AES record, or Commerce license if shipped directly to the final destination from the United States (see § 30.55(h)(2), including exports of items subject to the EAR that will be transhipped through Canada to Cuba, Iran, Iraq, Libya, North Korea, Serbia (excluding Kosovo), Sudan, and Syria.

**Subpart F—General Requirements—Importers**

10. Section 30.70 is amended by redesignating footnote 9 as footnote 7 and adding a sentence before the last sentence of the introductory text to read as follows:

**§ 30.70 Statistical information required on import entries.**

\* \* \* Upon request, the importer or import broker must provide the Census Bureau with information or documentation necessary to verify the accuracy or resolve problems regarding the reported import transaction received by the Census Bureau. \* \* \*

\* \* \* \* \*

Dated: June 29, 2000.

**Kenneth Prewitt,***Director, U.S. Census Bureau.*

[FR Doc. 00-16895 Filed 7-6-00; 8:45 am]

BILLING CODE 3510-07-P

**DEPARTMENT OF COMMERCE****Bureau of Export Administration****15 CFR Parts 732, 740, 743, 748, 750, 752, 758, 762, 772, and 774**

[Docket No. 990709186-0128-02]

RIN 0694-AB88

**Parties to a Transaction and Their Responsibilities, Routed Export Transactions, Shipper's Export Declarations, the Automated Export System (AES), and Export Clearance****AGENCY:** Bureau of Export Administration, Commerce.**ACTION:** Final rule.

**SUMMARY:** The Bureau of Export Administration is revising the Export Administration Regulations (EAR) to clarify the responsibilities of parties to export and reexport transactions, the filing and use of Shipper's Export

Declarations, Destination Control Statement requirements, and other export clearance issues. In addition, this rule adds information about the scope and requirements for the Automated Export System (AES) Option 4 provision.

**DATES:** *Effective Date:* This rule is effective July 10, 2000.

*Grace Period:* A 90 day grace period will apply to the requirements set forth in this rule. Until October 10, 2000, Shipper's Export Declarations will be accepted with information that complies with the rules prior to July 10, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, at (202) 482-2440.

For additional information on the AES in general, please contact: C. Harvey Monk, Chief Foreign Trade Division, U.S. Census Bureau, (301) 457-2255, fax (301) 457-2645, e-mail: c.harvey.monk.jr@census.gov

For information about obtaining BXA approval to use AES Option 4 for items subject to the EAR, contact: Tom Andrukonis or Donald Lyles, Director, Office of Enforcement Analysis, Bureau of Export Administration, (202) 482-4255, fax (202) 482-0971, e-mail: tandruko@bxa.doc.gov

**SUPPLEMENTARY INFORMATION:****Background**

The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) in order to simplify and clarify the export clearance process and facilitate compliance. The amendment promotes flexibility so that parties to transactions subject to the EAR may structure their transactions freely, consistent with national security and foreign policy objectives.

In this final rule, BXA defines new terms, including "principal parties in interest", "routed export transaction", and "end-user", and clarifies existing ones (notably the definition of "exporter"). The amendments ensure that for every transaction subject to the EAR, some party to the transaction is clearly responsible for determining licensing authority (License, License Exception, or NLR), and for obtaining the appropriate license or other authorization. The amendments also encourage communication among all parties to a transaction to ensure that each party knows its responsibilities in order to comply with the EAR.

For export control purposes the exporter has generally been the seller. An export transaction, however, has two principal parties in interest: a U.S. party

and a foreign party—usually the seller and the buyer. In a "routed export transaction," the foreign principal party in interest agrees to terms of sale that may include assuming responsibility for export licensing. This rule provides that when the foreign principal party expressly assumes responsibility in writing for determining license requirements and obtaining necessary authorization, that foreign party must have a U.S. agent who becomes the "exporter" for export control purposes. Without such a written undertaking by the foreign principal, the U.S. principal is the exporter, with all attendant responsibilities.

In addition to clarifying export licensing responsibilities, this rule institutes a requirement that the export licensee communicate license conditions to those parties to whom conditions apply and, when required by the license, obtain written acknowledgment of receipt of the conditions. This new provision is part of BXA's License and Enforcement Action Program (LEAP), which is designed to enhance compliance with the EAR.

In addition, these amendments significantly revise the first six sections of Part 758 of the EAR by reorganizing, streamlining and clarifying necessary provisions while deleting unnecessary or redundant provisions. Section 758.1 consolidates into one section the export control-related provisions pertaining to the SED or AES record. In consolidating these provisions into one section, BXA has eliminated those that are already contained in the FTSR, or that were otherwise unrelated to export controls. Section 758.2 provides new rules for BXA's AES Option 4 approval process. Commenters asked that this be added to the final regulation. Section 758.3 clarifies and consolidates provisions relating to the responsibilities of the parties, and § 758.4 consolidates, but does not significantly change, provisions concerning the use of an export license. Section 758.4, which contained very specific provisions relating to conformity of documents, has been greatly simplified in the interest of flexibility, and moved to section 758.5. Former sections 758.5 (general destination control requirements) and § 758.6 (destination control statement) have been combined and reduced to one paragraph at § 758.6.

Lastly, section 762.7 is amended to add language that clarifies that BXA has legal authority to issue subpoenas requiring individuals to appear and testify during the investigatory phase of an export case. The authority for this is found in both the Export Administration

Act of 1979 in section 12(a)(1), and in the International Emergency Economic Powers Act in section 1702(a)(2).

The Census Bureau initially published a notice of proposed rulemaking as to who goes in block 1(a) of the SED in the **Federal Register** on August 6, 1998 (63 FR 41979). As a result of comments received on that proposed rulemaking and subsequent discussions with the Bureau of Export Administration (BXA), the Census Bureau decided to issue a supplementary notice of proposed rulemaking to address the issues raised during the comment period and to further clarify provisions contained in that notice of proposed rulemaking. The Census Bureau published a supplementary notice of proposed rulemaking in the **Federal Register** on October 4, 1999 (64 FR 53861). BXA also published a notice of proposed rulemaking in the **Federal Register** on October 4, 1999 (64 FR 53854) revising the Export Administration Regulations (EAR) regarding the responsibilities of the parties to an export transaction, routed export transactions, Shipper's Export Declarations, and export clearance. Before and after the publication of those notices in the **Federal Register**, both the Census Bureau and BXA participated in numerous meetings, conferences, and seminars with the trade community to gain an understanding of business issues, and to more clearly explain the provisions of the proposed rules.

#### Response to Comments

BXA received twenty-eight (28) comments on the notice of proposed rulemaking published in the **Federal Register** on October 4, 1999 (64 FR 53861). BXA revised certain provisions in the final rule to address the concerns of the respondents and to more clearly explain the requirements. The major concerns addressed in the comments and BXA's response are as follows:

1. *Requirement to put the Export Control Classification Number (ECCN) on the SED or AES record whenever exporting an item that is listed on the Commerce Control List.* Commenters expressed concern this requirement would be very burdensome. These commenters explained the greater administrative burden in terms of having to report ECCNs subject only to Anti-terrorism (AT) controls even when the ultimate destination is a non-terrorism supporting country. BXA also received comments supporting the proposed ECCN requirement, because of the vital importance of the ECCN both to Government agencies such as the U.S. Customs Service, and to the business

community as a foundation for making correct license determinations. In fact, one company suggested that BXA expand the requirement to include requiring the ECCN on the invoice and bill of lading in order to provide information to the foreign principal for reexport purposes. In response to the comments, BXA narrowed the scope of the ECCN requirement in the final rule so that exporters only have to report the ECCN on the SED or AES record for items exported under a license or License Exception, and "No License Required" (NLR) shipments of items having a reason for control other than anti-terrorism (AT). The only exception to this requirement would be for items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3) of the EAR.

2. *Clarify the writing required from the foreign principal party in interest in routed transactions to permit its agent to become the "exporter."* Some commenters wanted clarification as to what the writing should include. Others wanted to know if the Incoterm "EXW" would be sufficient for the writing. One commenter expressed support for an express writing, as opposed to Incoterms, because of the lack of understanding of the Incoterms among small and medium size exporters, who typically hire clerks to comply with export regulations. In response to these concerns, BXA has included in this preamble an example of an acceptable writing. This example is similar to the language that describes the buyer's responsibility for export licenses in the Incoterms 2000 publication. BXA's sample writing would be signed by the foreign principal party in interest, and reads, "I undertake to determine any export license requirements, to obtain any export license or other official authorization, and to carry out any customs formalities for the export of the goods." This is just an example of a writing. No doubt the exporting community will use good judgement in determining the extensiveness of the writing it chooses to use, by considering the strategic applications and capabilities of the item being exported, its level of relationship with the foreign principal party in interest, and the foreign principal's knowledge of U.S. export laws. The format or language is not the most important part of the writing requirement. The most important aspect of the writing is that it reflects an agreement between the principals concerning their specific roles in determining the license

requirements and obtaining any license that is required.

Some specific questions were submitted by some commenters about the writing.

1. *Question:* May one writing cover multiple transactions between the same principals?

*Answer:* Yes, and this has been clarified in this final rule.

2. *Question:* In a routed transaction that is supported by an assumption of responsibility in writing, must the U.S. principal party in interest also obtain a writing from the U.S. agent of the foreign principal party in interest stating that the agent has assumed export compliance responsibilities on behalf of the foreign principal party in interest?

*Answer:* While the EAR do not require the U.S. principal party in interest to obtain a writing from the agent to establish its export compliance role, it would be a good business practice to confirm the agent's responsibilities.

3. *The liability of the U.S. principal party in interest when complying with the information sharing requirement.* Several commenters were concerned about the liability that may accrue to the U.S. principal party in interest in a routed transaction when it gives the foreign principal party in interest or its agent the Export Control Classification Number (ECCN), technical specifications of an item, or other information related to license determination. This final rule does not change the current standards of liability as they apply to provision of information. The foreign principal party in interest or its authorized agent is responsible for ensuring that the export complies with all applicable requirements of the EAR, including, as necessary, the accuracy of the product classification. If the foreign principal party in interest has reason to doubt the accuracy of the ECCN provided, is unclear about the classification of the item based on the technical specifications provided or has questions about any other aspect of export control requirements, the foreign principal party in interest must make inquiries and take appropriate action to ensure compliance with the EAR.

Some companies expressed concern about requests for information that is readily available from other sources, proprietary, not in the possession of the U.S. principal party in interest, or not available. In addition to the availability concern, some companies were concerned about the cost of complying with information sharing requests. BXA has not made any changes in the final rule in this regard, as the U.S. principal is generally in a better position to obtain

the ECCN or technical specifications than the foreign principal or its agent. There is no requirement to go beyond the information necessary to classify the item according to the technical parameters of the CCL. BXA believes that all these concerns are better dealt with in the business environment among the principals, rather than by regulation.

4. *Requirement for the licensee to obtain written acknowledgment of license conditions, when it is required per condition on the license.* Some companies are concerned that BXA licensing officers will overuse this condition. Several individuals suggested a notification requirement instead of a notification and acknowledgment combination. The practice of including a condition for the licensee to notify a particular party or parties of the conditions on a license or in some case obtain an acknowledgment of this notification has been in use for many years by BXA. This rule simply adds the practice to the regulations, for transparency.

One individual expressed concern that it would be unclear as to what constitutes compliance if the licensee were required to notify all end-users of conditions in a situation where the ultimate consignee was a distributor. Applicants must remember that conditions may be negotiated between BXA and the applicant. Moreover, if an applicant receives a license, but is not comfortable with the conditions, the applicant may choose not to proceed with the transaction.

5. *Effective date of publication.* There is some industry concern about the effective date of these provisions, as it may take some time to reprogram automated processes, provide training to personnel, and create new compliance procedures within export management systems. BXA believes that a 90 day "grace period" will give adequate time to the exporting community to ensure compliance with the rules set forth in this regulation.

6. *Clarify conformity of documents provisions.* Several commenters stated their belief that BXA's new definition of "exporter", coupled with the Bureau of Census' new requirement for the U.S. principal party in interest to be placed in block 1(a) of the SED or in the "exporter" block of the AES record, was confusing to some commenters. They expressed concern over the fact the "exporter" for EAR purposes may not be the person in the "exporter" block of the SED or AES record. Some commenters came to the conclusion that the different definitions of "exporter" might impact the conformity of documents

requirement contained in § 758.5(b) of the EAR. To alleviate the confusion and the conformity of document conflict caused by BXA's and Census' different definitions of the term "exporter," Census will be revising the SED and AES record to remove the term "exporter" from blocks 1a, 1b, and the AES record, and replacing it with the term "U.S. Principal Party in Interest."

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 10, 1999 (64 FR 44101) (August 13, 1999).

#### Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. This rule involves collections that have been approved by the Office of Management and Budget under control numbers 0694-0038, and 0694-0096. This rule contains collections that have been approved by the Office of Management and Budget under control numbers: 0607-0152, 0694-0040, 0694-0094, 0694-0095, 0694-0097, 0694-0088, and 0694-0120. Notwithstanding any other provision of law, no person is required to respond 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 OMB Control Number.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

#### List of Subjects

##### 15 CFR Part 732

Administrative practice and procedure, Advisory committees, Exports, Foreign trade, Reporting and recordkeeping requirements, Strategic and critical materials.

##### 15 CFR Parts 740, 743, 748, 750, 752, 758, and 772

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.

##### 15 CFR Part 774

Exports, Foreign trade.

Accordingly, parts 732, 740, 743, 748, 750, 752, 758, 762, 772, and 774 of the Export Administration Regulations (15 CFR Parts 730-799) are amended as follows:

1. The authority citation for 15 CFR parts 758 and 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 10, 1999, 3 CFR, 1999 Comp., p. 302.

2. The authority citation for 15 CFR parts 732, 748, 752, and 772 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; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

3. The authority citation for 15 CFR part 740 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; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

4. The authority citation for 15 CFR part 743 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 10, 1999, 3 CFR, 1999 Comp., p. 302.

5. The authority citation for 15 CFR part 750 is revised 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; E.O. 12981, 60 FR 62980, 3 CFR, 1997 Comp., p. 60; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

6. The authority citation for 15 CFR part 774 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); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

7. Parts 740 through 772 are amended by revising the phrase "U.S. exporter" to read "exporter" in the following places:

- a. § 740.9(a)(2)(iii) last sentence;
- b. § 740.10(b)(3)(ii)(C);
- c. § 743.1(b);
- d. § 748.11(e)(4)(ii)(1);
- e. Supplement No. 3 to part 748, "BXA-711, Statement By ultimate consignee and Purchaser Instructions", Block 8; and
- f. Supplement No. 3 to part 752, "Instructions on Completing Form BXA-752 'Statement by Consignee in Support of Special Comprehensive License-A'", Block 5.

**PART 732—[AMENDED]**

8. Section 732.5 is revised to read as follows:

**§ 732.5 Steps regarding Shipper's Export Declaration, Destination Control Statements, and recordkeeping.**

(a) *Step 27: Shipper's Export Declaration (SED) or Automated Export System (AES) record.* Exporters or agents authorized to complete the Shipper's Export Declaration (SED), or to file SED information electronically using the Automated Export System (AES), should review § 758.1 of the EAR to determine when an SED is required and what export control information should be entered on the SED or AES record. More detailed information about how to complete an SED or file the SED information electronically using AES may be found in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) at 15 CFR part 30. Reexporters

and firms exporting from abroad may skip Steps 27 through 29 and proceed directly to § 732.6.

(1) *Entering license authority.* You must enter the correct license authority for your export on the SED or AES record (License number, License Exception symbol, or No License Required designator "NLR") as appropriate. See § 758.1(g) of the EAR and 15 CFR 30.7(m) of the FTSR.

(i) *License number and expiration date.* If you are exporting under the authority of a license, you must enter the license number on the SED or AES record. The expiration date must be entered on paper versions of the SED only.

(ii) *License Exception.* If you are exporting under the authority of a License Exception, you must enter the correct License Exception symbol (*e.g.*, LVS, GBS, CIV) on the SED or AES record. See § 740.1 and § 740.2 of the EAR.

(iii) *NLR.* If you are exporting items for which no license is required, you must enter the designator NLR. You should use the NLR designator in two circumstances: first, when the items to be exported are subject to the EAR but not listed on the Commerce Control List (CCL) (*i.e.*, items that are classified as EAR99), and second, when the items to be exported are listed on the CCL but do not require a license. Use of the NLR designator is also a representation that no license is required under any of the General Prohibitions set forth in part 736 of the EAR.

(2) *Item description.* You must enter an item description identical to the item description on the license when a license is required, or enter an item description sufficient in detail to permit review by the U.S. Government and verification of the Schedule B Number (or Harmonized Tariff Schedule number) for License Exception shipments or shipments for which No License is Required (NLR). See § 758.1(g) of the EAR; and 15 CFR 30.7(l) of the FTSR.

(3) *Entering the ECCN.* You must enter the correct Export Control Classification Number (ECCN) on the SED or AES record for all licensed and License Exception shipments, and "No License Required" (NLR) shipments of items having a reason for control other than anti-terrorism (AT). The only exception to this requirement would be the return of unwanted foreign origin items, meeting the provisions of License Exception TMP, under § 740.9(b)(3). See § 758.1(g) of the EAR.

(b) *Step 28: Destination Control Statement.* The Destination Control Statement (DCS) must be entered on the

invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad. The person responsible for preparation of those documents is responsible for entry of the DCS. The DCS is required for all exports from the United States of items on the Commerce Control List and is not required for items classified as EAR99, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR). Reexporters should review § 752.15 of the EAR for DCS requirements when using a Special Comprehensive License; otherwise, DCS requirements do not apply to reexports. See § 758.6 of the EAR.

(c) *Step 29: Recordkeeping.* Records of transactions subject to the EAR must be maintained for five years in accordance with the recordkeeping provisions of part 762 of the EAR.

**§ 732.6 [Amended]**

9. Section 732.6 is amended by:

- a. Revising the citation "\$ 758.2" to read "\$ 758.4" in paragraph (a); and
- b. Revising the citation "\$ 758.4" to read "\$ 758.1" in paragraph (b).

**PART 740—[AMENDED]**

**§ 740.1 [Amended]**

10. Section 740.1 is amended by revising:

- a. The phrase "requirements of § 758.5 and § 758.6 of the EAR." in paragraph (e) to read "requirements of § 758.6 of the EAR."; and
- b. Paragraph (d) to read as follows:

**§ 740.1 Introduction.**

\* \* \* \* \*

(d) *Shipper's Export Declaration or Automated Export System (AES) record.* You must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the correct License Exception symbol (*e.g.*, LVS, GBS, CIV) and the correct Export Control Classification Number (ECCN) (*e.g.*, 4A003, 5A002) for all shipments of items exported under a License Exception. Items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3), are excepted from this requirement. See § 758.1 of the EAR for Shipper's Export Declaration requirements or § 758.2 of the EAR for Automated Export System (AES) requirements.

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**§ 740.7 [Amended]**

11. Section 740.7 is amended by revising the citation “758.6(a)(ii)” to read “758.6” in paragraph (e)(2).

**PART 748—[AMENDED]**

12. Section 748.4 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 748.4 Basic guidance related to applying for a license.**

(a) *License applicant.* (1) *Export transactions.* Only a person in the United States may apply for a license to export items from the United States. The applicant must be the exporter, who is the U.S. principal party in interest with the authority to determine and control the sending of items out of the United States, except for Encryption License Arrangements (ELA) (see § 750.7(d) of the EAR). See definition of “exporter” in part 772 of the EAR.

(2) *Routed export transactions.* The U.S. principal party in interest or the duly authorized U.S. agent of the foreign principal party in interest may apply for a license to export items from the United States. Prior to submitting an application, the agent that applies for a license on behalf of the foreign principal party in interest must obtain a power of attorney or other written authorization from the foreign principal party in interest. See § 758.3(b) and (d) of the EAR.

(3) *Reexport transactions.* The U.S. or foreign principal party in interest, or the duly authorized U.S. agent of the foreign principal party in interest, may apply for a license to reexport controlled items from one country to another. Prior to submitting an application, an agent that applies for a license on behalf of a foreign principal party in interest must obtain a power-of-attorney or other written authorization from the foreign principal party in interest, unless there is a preexisting relationship by ownership, control, position of responsibility or affiliation. See power-of-attorney requirements in paragraph (b)(2) of this section.

(b) *Disclosure of parties on license applications and the power of attorney.* (1) *Disclosure of parties.* License applicants must disclose the names and addresses of all parties to a transaction. When the applicant is the U.S. agent of the foreign principal party in interest, the applicant must disclose the fact of the agency relationship, and the name and address of the agent’s principal. If there is any doubt about which persons should be named as parties to the transaction, the applicant should disclose the names of all such persons

and the functions to be performed by each in Block 24 (Additional Information) of the BXA-748P Multipurpose Application form. Note that when the foreign principal party in interest is the ultimate consignee or end-user, the name and address need not be repeated in Block 24. See “Parties to the transaction” in § 748.5.

(2) *Power of attorney or other written authorization.* (i) *Requirement.* An agent must obtain a power of attorney or other written authorization from the principal party in interest, unless there is a preexisting relationship by ownership, control, position of responsibility or affiliation, prior to preparing or submitting an application for a license, when acting as either:

(A) An agent, applicant, licensee and exporter for a foreign principal party in interest in a routed transaction; or

(B) An agent who prepares an application for export on behalf of a U.S. principal party in interest who is the actual applicant, licensee and exporter in an export transaction.

(ii) *Application.* When completing the BXA-748P Multipurpose Application Form, Block 7 (documents on file with applicant) must be marked “other” and Block 24 (Additional information) must be marked “748.4(b)(2)” to indicate that the power of attorney or other written authorization is on file with the agent. See § 758.3(d) for power of attorney requirement, and see also part 762 of the EAR for recordkeeping requirements.

\* \* \* \* \*

13. Section 748.5 is revised to read as follows:

**§ 748.5 Parties to the transaction.**

The following parties may be entered on the BXA-748P Multipurpose Application Form or electronic equivalent. The definitions, which also appear in part 772 of the EAR, are set out here for your convenience to assist you in filling out your application correctly.

(a) *Applicant.* The person who applies for an export or reexport license, and who has the authority of a principal party in interest to determine and control the export or reexport of items. See § 748.4(a) and definition of “exporter” in part 772 of the EAR.

(b) *Other party authorized to receive license.* The person authorized by the applicant to receive the license. If a person and address is listed in Block 15 of the BXA-748P Multipurpose Application Form or the electronic equivalent, the Bureau of Export Administration will send the license to that person instead of the applicant. Designation of another party to receive

the license does not alter the responsibilities of the applicant, licensee or exporter.

(c) *Purchaser.* The person abroad who has entered into the transaction to purchase an item for delivery to the ultimate consignee. In most cases, the purchaser is not a bank, forwarding agent, or intermediary. The purchaser and ultimate consignee may be the same entity.

(d) *Intermediate consignee.* The person that acts as an agent for a principal party in interest and takes possession of the items for the purpose of effecting delivery of the items to the ultimate consignee. The intermediate consignee may be a bank, forwarding agent, or other person who acts as an agent for a principal party in interest.

(e) *Ultimate consignee.* The principal party in interest located abroad who receives the exported or reexported items. The ultimate consignee is not a forwarding agent or other intermediary, but may be the end-user.

(f) *End-user.* The person abroad that receives and ultimately uses the exported or reexported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.

**PART 750—[AMENDED]**

14. Section 750.7 is amended by revising paragraph (d) to read as follows:

**§ 750.7 Issuance of licenses.**

\* \* \* \* \*

(d) *Responsibility of the licensee.* The person to whom a license is issued is the licensee. In export transactions, the exporter must be the licensee, and the exporter-licensee is responsible for the proper use of the license, and for all terms and conditions of the license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. In the case of Encryption License Agreements (ELA), the licensee may not necessarily be the exporter or reexporter. In this case, the authorized user of the ELA is responsible for proper use of the license, and for all terms and conditions of the license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. In reexport or routed export transactions, a U.S. agent acting on behalf of a foreign principal party in interest may be the licensee; in these cases, both the agent and the foreign principal party in interest, on whose behalf the agent has acted, are responsible for the use of the license, and for all terms and conditions of the



license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. It is the licensee's responsibility to communicate the specific license conditions to the parties to whom those conditions apply. In addition, when required by the license, the licensee is responsible for obtaining written acknowledgment(s) of receipt of the conditions from the party(ies) to whom those conditions apply.

\* \* \* \* \*

## PART 752—[AMENDED]

### § 752.15 [Amended]

15. Section 752.15 is amended by revising the citation “§ 758.3” to read “§ 758.1” in paragraph (a) introductory text.

## PART 758—[AMENDED]

16. Part 758 is amended by revising sections 758.1 through 758.6, to read as follows:

## PART 758—EXPORT CLEARANCE REQUIREMENTS

### § 758.1 The Shipper's Export Declaration (SED) or Automated Export System (AES) record.

(a) *The Shipper's Export Declaration (SED) or Automated Export System (AES) record.* The SED (Form 7525-V, Form 7525-V-Alt, or Automated Export System record) is used by the Bureau of Census to collect trade statistics and by the Bureau of Export Administration for export control purposes. The SED or AES record collects basic information such as the names and addresses of the parties to a transaction; the Export Control Classification Number (ECCN) (when required), the Schedule B number or Harmonized Tariff Schedule number, the description, quantity and value of the items exported; and the license authority for the export. The SED or the AES electronic equivalent is a statement to the United States Government that the transaction occurred as described.

(b) *When an SED or AES record is required.* Except when the export of items subject to the EAR is to take place electronically or in an otherwise intangible form, you must file an SED or AES record with the United States Government for items subject to the EAR, including exports by U.S. mail, in the following situations:

(1) For all exports of items subject to the EAR that are destined to Cuba, Iran, Iraq, Libya, North Korea, Serbia (except Kosovo), Sudan, or Syria, regardless of value (see 15 CFR 30.55(h) of the FTSR); and

(2) For all exports of items subject to the EAR that are authorized under a license, regardless of value, or destination;

(3) For all exports of commodities and mass market software subject to the EAR that are authorized under a License Exception or under NLR, when the value of the commodities or mass market software classified under a single Schedule B Number (or Harmonized Tariff Schedule number) is over \$2,500, except as exempted by the Foreign Trade Statistics Regulations (FTSR) in 15 CFR part 30 and referenced in paragraph (c) of this section;

(4) For all exports of items subject to the EAR that will be transhipped through Canada to a third destination, where the export would require an SED or AES record or license if shipped directly to the final destination from the United States (see 15 CFR 30.58(c) of the FTSR).

**Note to paragraph (b):** In addition to the Shipper's Export Declaration for exports, the Bureau of Census Foreign Trade Statistics Regulations provide for a specific Shipper's Export Declaration for In-Transit Goods (Form 7513). See 15 CFR 30.3 and 30.8 of the FTSR.

(c) *Exemptions.* A complete list of exemptions from the SED or AES filing requirement is set forth in the FTSR. Some of these FTSR exemptions have elements in common with certain EAR License Exceptions. An FTSR exemption may be narrower than a License Exception. The following references are provided in order to direct you to the FTSR exemptions that relate to EAR License Exceptions:

(1) License Exception Baggage (BAG), as set forth in § 740.14 of the EAR. See 15 CFR 30.56 of the FTSR;

(2) License Exception Gift Parcels and Humanitarian Donations (GFT), as set forth in § 740.12 of the EAR. See 15 CFR 30.55(g) of the FTSR;

(3) License Exception Aircraft and Vessels (AVS), as set forth in § 740.15 of the EAR. See 15 CFR 30.55(l) of the FTSR;

(4) License Exception Governments and International Organizations (GOV), as set forth in § 740.11 of the EAR. See 15 CFR 30.53 of the FTSR;

(5) License Exception Technology and Software Under Restriction (TSR), as set forth in § 740.6 of the EAR. See 15 CFR 30.55(n) of the FTSR; or

(6) License Exception Temporary Imports, Exports, and Reexports (TMP) “tools of trade”, as set forth in § 740.9(a)(2)(i) of the EAR. See 15 CFR 30.56(b) of the FTSR.

(d) *Notation on export documents for exports exempt from SED or AES record requirements.* When an exemption from

filing the Shipper's Export Declaration or Automated Export System record applies, the export authority (License Exception or NLR) of all the items must be entered on the loading document (e.g., Cargo Declaration, manifest, bill of lading, (master) air waybill) by the person responsible for preparing the document. This requirement is intended to parallel the Bureau of Census requirement, so that notations as to the basis for the SED exemption and the license authority are entered in the same place and manner (see 15 CFR 30.21 of the FTSR for detailed requirements). The loading document must be available for inspection by government officials, along with the items, prior to lading on the carrier.

(e) *Signing the Shipper's Export Declaration or transmitting data via AES.* The person who signs the SED must be in the United States at the time of signing. The person who transmits data via AES must be a certified AES participant in accordance with 15 CFR 30.60 of the FTSR. The person that signs the SED or transmits data via AES, whether exporter or agent, is responsible for the truth, accuracy, and completeness of the SED or AES record, except insofar as that person can demonstrate that he or she reasonably relied on information furnished by others.

(f) *The SED or AES record is an export control document.* The SED or AES record is a statement to the U.S. Government. The SED or AES record is an export control document as defined in part 772 of the EAR. False statements made thereon may be a violation of § 764.2(g) of the EAR. When an SED or AES record is presented to the U.S. Government, the signer or filer of the SED or AES record represents the following:

(1) Export of the items described on the SED or AES record is authorized under the terms and conditions of a license issued by BXA; is in accordance with the terms and conditions of a License Exception; is authorized under “NLR” as no license is required for the shipment; or is not subject to the EAR;

(2) Statements on the SED or AES record are in conformity with the contents of any license issued by BXA, with the possible exception of the exporter block in routed transactions; and

(3) All information shown on the SED or AES record is true, accurate, and complete.

(g) *Export control information on the SED or AES record.* For each item on the SED or AES record, you must show the license authority (License number, License Exception, or No License

Required (NLR)), the Export Control Classification Number (ECCN) (when required), and the item description in the designated blocks. The item description must be stated in Commerce Control List terms. If those terms are inadequate to meet Census Bureau requirements, the FTSR requires that you give enough additional detail to permit verification of the Schedule B Number (or Harmonized Tariff Schedule number). The FTSR also requires separate descriptions of items for each Schedule B classification (or Harmonized Tariff Schedule number). See 15 CFR 30.6 (separate SED or AES records), § 30.7(l) (description of items) and § 30.9 (separation of items on the SED) of the FTSR.

(1) *Exports under a license.* When exporting under the authority of a license, you must enter on the SED or AES record the license number and expiration date (the expiration date is only required on paper versions of the SED), the ECCN, and an item description identical to the item description on the license.

(2) *Exports under a License Exception.* You must enter on any required SED or AES record the ECCN and the correct License Exception symbol (e.g., LVS, GBS, CIV) for the License Exception(s) under which you are exporting. Items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3), are excepted from this requirement. See also § 740.1(d) of the EAR.

(3) *No License Required (NLR) exports.* You must enter on any required SED or AES record the "NLR" designation when the items to be exported are subject to the EAR but not listed on the Commerce Control List (i.e., items are classified as EAR99), and when the items to be exported are listed on the CCL but do not require a license. In addition, you must enter the correct ECCN on any required SED or AES record for all items being exported under the NLR provisions that have a reason for control other than anti-terrorism (AT). The designator "TSPA" may be used, but is not required, when the export consists of technology or software outside the scope of the EAR. See § 734.7 through § 734.11 of the EAR for TSPA information.

(h) *Power of attorney or other written authorization.* In a "power of attorney" or other written authorization, authority is conferred upon an agent to perform certain specified acts or kinds of acts on behalf of a principal.

(1) An agent must obtain a power of attorney or other written authorization in the following circumstances:

(i) An agent that represents a foreign principal party in interest in a routed transaction must obtain a power of attorney or other written authorization that sets forth his authority; and

(ii) An agent that applies for a license on behalf of a principal party in interest must obtain a power of attorney or other written authorization that sets forth the agent's authority to apply for the license on behalf of the principal.

**Note to paragraph (h)(1):** The Bureau of Census Foreign Trade Statistics Regulations impose additional requirements for a power of attorney or other written authorization. See 15 CFR 30.4(e) of the FTSR.

(2) This requirement for a power of attorney or other written authorization is a legal requirement aimed at ensuring that the parties to a transaction negotiate and understand their responsibilities. The absence of a power of attorney or other written authorization does not prevent BXA from using other evidence to establish the existence of an agency relationship for purposes of imposing liability.

(i) *Submission of the SED or AES record.* The SED or AES record must be submitted to the U.S. Government in the manner prescribed by the Bureau of Census Foreign Trade Statistics Regulations (15 CFR part 30).

#### **§ 758.2 Automated Export System (AES).**

The Census Bureau's Foreign Trade Statistics Regulations (FTSR) (15 CFR 30) contain provisions for filing Shipper's Export Declarations (SEDs) electronically using the Automated Export System (AES). In order to use AES, you must apply directly to the Census Bureau for certification and approval through a Letter of Intent (see 15 CFR 30.60(b) and Appendix A to part 30 of the FTSR). Four AES filing options are available for transmitting shipper's export data. Option 1 is the standard paper filing of the SED, while the other three options are electronic. Option 2 requires the electronic filing of all information required for export prior to export (15 CFR 30.61(a) and 30.63 of the FTSR); Option 3 requires the electronic filing of only specified data elements prior to export, with complete information transmitted within 5 working days of exportation (15 CFR 30.61(b) and Appendix B of the FTSR); Option 4 is only available for approved filers (approval by Census Bureau, U.S. Customs Service, BXA and other agencies) and requires no information to be transmitted prior to export, with complete information transmitted within 10 working days of exportation (15 CFR 30.61(c) and 30.62(c) of the FTSR).

(a) *Census' Option 4 application process.* Exporters, or agents applying on behalf of an exporter, may apply for Option 4 filing privileges by submitting a Letter of Intent to the Census Bureau in accordance with 15 CFR 30.60(b) and 30.62 of the FTSR. The Census Bureau will distribute the Letter of Intent to BXA and other agencies participating in the Option 4 approval process. Any agency may notify Census that an applicant has failed to meet its acceptance standards, and the Census Bureau will provide a denial letter to the applicant naming the denying agency. If no agency denies the application within 30 days, nor requests an extension of time within 30 days, the Census Bureau will provide the applicant with an approval letter. See 15 CFR 30.62(b) of the FTSR.

(b) *BXA Option 4 application process.* When AES filers wish to use Option 4 for exports of items that require a BXA license, those filers must seek separate approval directly from BXA by completing a questionnaire and certification. (Separate BXA approval is not required for the use of Option 4 in connection with exports that do not require a BXA license.) The questionnaire and certification should be mailed to: U.S. Department of Commerce, Bureau of Export Administration, The Office of Enforcement Analysis, 14th & Pennsylvania Avenue, N.W., Room 4065, Washington, D.C. 20230.

(1) *Questionnaire.* The following questions must be answered based on your experiences over the past five years. If the answer to either of the questions is "yes", it must be followed with a full explanation. Answering "yes" to either of the questions will not automatically prevent your participation in Option 4. BXA will consider the facts of each case and any remedial action you have taken to determine whether your reliability is sufficient to participate in this program.

(i) Have you been charged with, convicted of, or penalized for, any violation of the EAR or any statute described in § 766.25 of the EAR?

(ii) Have you been notified by any government official of competent authority that you are under investigation for any violation of the EAR or any statute described in § 766.25 of the EAR?

(2) *Certification.* Each applicant must submit a signed certification as set forth in this paragraph. The certification will be subject to verification by BXA.

I (We) certify that I (we) have established adequate internal procedures and safeguards to comply with the requirements set forth in the U.S. Department of Commerce Export

Administration Regulations (EAR) and Foreign Trade Statistics Regulations (FTSR). These procedures and safeguards include means for:

(i) Making a proper determination as to whether a license is required for a particular export;

(ii) Receipt of notification of approval of the export license, if required, before the export is made;

(iii) Compliance with all the terms and conditions of the license, License Exception, or NLR provisions of the EAR as applicable;

(iv) Return of revoked or suspended licenses to BXA in accordance with § 750.8(b) of the EAR, if requested;

(v) Compliance with the destination control statement provisions of § 758.6 of the EAR;

(vi) Compliance with the prohibition against export transactions that involve persons who have been denied U.S. export privileges; and

(vii) Compliance with the recordkeeping requirements of part 762 of the EAR.

I (we) agree that my (our) office records and physical space will be made available for inspection by the Bureau of the Census, BXA, or the U.S. Customs Service, upon request.

(c) *BXA Option 4 evaluation criteria.* BXA will consider the grounds for denial of Option 4 filing status set forth in 15 CFR 30.62(b)(2) of the FTSR, as well as the additional grounds for denial set forth in this paragraph.

(1) Applicants have not been approved for Option 4 filing privileges by the Census Bureau or other agency;

(2) Applicants are denied persons (*i.e.*, persons listed on the Denied Persons List in Supplement No. 2 to Part 764 of the EAR); or

(3) Exports are destined to the countries designated by the Secretary of State as supporters of international terrorism under Section 6(j) of the Export Administration Act of 1979, as amended. These "T-7" countries currently include Iran, Iraq, Libya, North Korea, Cuba, Sudan, and Syria.

(d) *Contacts for assistance.* (1) For additional information on the AES in general, please contact: Chief Foreign Trade Division, U.S. Census Bureau, (301) 457-2255, facsimile: (301) 457-2645.

(2) For information about BXA's Option 4 approval process to use AES Option 4 for items subject to the EAR, contact: Director, Office of Enforcement Analysis, Bureau of Export Administration, (202) 482-4255, facsimile: (202) 482-0971.

#### § 758.3 Responsibilities of parties to the transaction.

All parties that participate in transactions subject to the EAR must comply with the EAR. Parties are free to structure transactions as they wish, and to delegate functions and tasks as they deem necessary, as long as the transaction complies with the EAR.

However, acting through a forwarding or other agent, or delegating or re-delegating authority, does not in and of itself relieve anyone of responsibility for compliance with the EAR.

(a) *Export transactions.* The U.S. principal party in interest is the exporter, except in certain routed transactions. The exporter must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization. The exporter may hire forwarding or other agents to perform various tasks, but doing so does not necessarily relieve the exporter of compliance responsibilities.

(b) *Routed export transactions.* All provisions of the EAR, including the end-use and end-user controls found in part 744 of the EAR, and the General Prohibitions found in part 736 of the EAR, apply to routed export transactions. The U.S. principal party in interest is the exporter and must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization, *unless* the U.S. principal party in interest obtains from the foreign principal party in interest a writing wherein the foreign principal party in interest expressly assumes responsibility for determining licensing requirements and obtaining license authority, making the U.S. agent of the foreign principal party in interest the exporter for EAR purposes. One writing may cover multiple transactions between the same principals. See § 748.4(a)(3) of the EAR.

**Note to paragraph (b):** For statistical purposes, the Foreign Trade Statistics Regulations (15 CFR part 30) have a different definition of "exporter" from the Export Administration Regulations. Under the FTSR the "exporter" will always be the U.S. principal party in interest. For purposes of licensing responsibility under the EAR, the U.S. agent of the foreign principal party in interest may be the "exporter" in a routed transaction.

(c) *Information sharing requirements.* In routed export transactions where the foreign principal party in interest assumes responsibility for determining and obtaining licensing authority, the U.S. principal party in interest must, upon request, provide the foreign principal party in interest and its forwarding or other agent with the correct Export Control Classification Number (ECCN), or with sufficient technical information to determine classification. In addition, the U.S. principal party in interest must provide the foreign principal party in interest or the foreign principal's agent any information that it knows will affect the

determination of license authority, see § 758.1(g) of the EAR.

(d) *Power of attorney or other written authorization.* In routed export transactions, a forwarding or other agent that represents the foreign principal party in interest, or who applies for a license on behalf of the foreign principal party in interest, must obtain a power of attorney or other written authorization from the foreign principal party in interest to act on its behalf. See § 748.4(b)(2) and § 758.1(h) of the EAR.

#### § 758.4 Use of export license.

(a) *License valid for shipment from any port.* An export license issued by BXA authorizes exports from any port of export in the United States unless the license states otherwise. Items that leave the United States at one port, cross adjacent foreign territory, and reenter the United States at another port before being exported to a foreign country, are treated as exports from the last U.S. port of export.

(b) *Shipments against expiring license.* Any item requiring a license that has not departed from the final U.S. port of export by midnight of the expiration date on an export license may not be exported under that license unless the shipment meets the requirements of paragraphs (b)(1) or (2) of this section.

(1) BXA grants an extension; or

(2) Prior to midnight on the date of expiration on the license, the items:

(i) Were laden aboard the vessel;

(ii) Were located on a pier ready for loading and not for storage, and were booked for a vessel that was at the pier ready for loading; or

(iii) The vessel was expected to be at the pier for loading before the license expired, but exceptional and unforeseen circumstances delayed it, and BXA or the U.S. Customs Service makes a judgment that undue hardship would result if a license extension were required.

(c) *Reshipment of undelivered items.* If the consignee does not receive an export made under a license because the carrier failed to deliver it, the exporter may reship the same or an identical item, subject to the same limitations as to quantity and value as described on the license, to the same consignee and destination under the same license. If an item is to be reshipped to any person other than the original consignee, the shipment is considered a new export and requires a new license. Before reshipping, satisfactory evidence of the original export and of the delivery failure, together with a satisfactory explanation of the delivery failure, must be submitted by the exporter to the

following address: Operations Division, Bureau of Export Administration, U.S. Department of Commerce, Room 2705, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230.

**§ 758.5 Conformity of documents and unloading of items.**

(a) *Purpose.* The purpose of this section is to prevent items licensed for export from being diverted while in transit or thereafter. It also sets forth the duties of the parties when the items are unloaded in a country other than that of the ultimate consignee as stated on the export license.

(b) *Conformity of documents.* When a license is issued by BXA, the information entered on related export control documents (e.g., the SED or AES record, bill of lading or air waybill) must be consistent with the license.

(c) *Issuance of the bill of lading or air waybill.* (1) *Ports in the country of the ultimate consignee.* No person may issue a bill of lading or air waybill that provides for delivery of licensed items to any foreign port located outside the country of the intermediate or the ultimate consignee named on the BXA license and Shipper's Export Declaration (SED) or AES electronic equivalent.

(2) *Optional ports of unloading.* (i) *Licensed items.* No person may issue a bill of lading or air waybill that provides for delivery of licensed items to optional ports of unloading unless all the optional ports are within the country of ultimate destination or are included on the BXA license and SED or AES electronic equivalent.

(ii) *Unlicensed items.* For shipments of items that do not require a license, the exporter may designate optional ports of unloading on the SED or AES electronic equivalent and other export control documents, so long as the optional ports are in countries to which the items could also have been exported without a license. See also 15 CFR 30.7(h) of the FTSR.

(d) *Delivery of items.* No person may deliver items to any country other than the country of the intermediate or ultimate consignee named on the BXA license and SED or AES record without prior written authorization from BXA, except for reasons beyond the control of the carrier (such as acts of God, perils of the sea, damage to the carrier, strikes, war, political disturbances or insurrection).

(e) *Procedures for unscheduled unloading.* (1) *Unloading in country where no license is required.* When items are unloaded in a country to which the items could be exported without a license issued by BXA, no

notification to BXA is required. However, any persons disposing of the items must continue to comply with the terms and conditions of any License Exception, and with any other relevant provisions of the EAR.

(2) *Unloading in a country where a license is required.* (i) When items are unloaded in a country to which the items would require a BXA license, no person may effect delivery or entry of the items into the commerce of the country where unloaded without prior written approval from BXA. The carrier, in ensuring that the items do not enter the commerce of the country, may have to place the items in custody, or under bond or other guaranty. In addition, the carrier must inform the exporter and BXA of the unscheduled unloading in a time frame that will enable the exporter to submit its report within 10 days from the date of unscheduled unloading. The exporter must within 10 days of the unscheduled unloading report the facts to and request authorization for disposition from BXA using either: mail, fax, or E-mail. The report to BXA must include:

- (A) A copy of the manifest of the diverted cargo;
- (B) Identification of the place of unloading;
- (C) Statement that explains why the unloading was necessary; and
- (D) A proposal for disposition of the items and a request for authorization for such disposition from BXA.

(ii) *Contact information.* U.S. Department of Commerce, Bureau of Export Administration, Office of Exporter Services, Room 1093, 14th and Pennsylvania Avenue, NW, Washington, DC 20230; phone number 202-482-0436; facsimile number 202-482-3322; and E-Mail address: RPD@BXA.DOC.GOV.

**§ 758.6 Destination control statement.**

The Destination Control Statement (DCS) must be entered on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad. The person responsible for preparation of those documents is responsible for entry of the DCS. The DCS is required for all exports from the United States of items on the Commerce Control List that are not classified as EAR99, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR). At a minimum, the DCS must state: "These commodities, technology or software were exported from the United States in accordance with the Export

Administration Regulations. Diversion contrary to U.S. law is prohibited."

**PART 762—[AMENDED]**

17. Section 762.2 is amended by:
- a. Revising the citation "\$ 758.1(b)(3)" to read "\$ 758.1(h)" in paragraph (b)(29);
  - b. Revising paragraphs (b)(15), (b)(30), (b)(39), and (b)(40); and
  - c. Adding a new paragraph (b)(41) to read as follows:

**§ 762.2 Records to be retained.**

- \* \* \* \* \*
- (b) \* \* \*
- (15) \$ 750.7, Issuance of license and acknowledgment of conditions;
- \* \* \* \* \*
- (30) \$ 758.1 and \$ 758.2, Shipper's Export Declaration or Automated Export System record;
- \* \* \* \* \*
- (39) \$ 745.1, Annual reports;
- (40) \$ 745.2, End-use certificates; and
- (41) \$ 758.2(c), Assumption writing.

**§ 762.7 [Amended]**

18. Section 762.7 is amended by revising the phrase in paragraph (a) "subpoenas for books, records, and other writings." to read "subpoenas requiring persons to appear and testify, or produce books, records, and other writings."

**PART 772—[AMENDED]**

19. Part 772 is amended by:
- a. Revising the definitions of "Applicant", "Exporter", "Forwarding agent", "Intermediate consignee", "Purchaser", and "Ultimate Consignee";
  - b. Revising the phrase "Shipper's Export Declaration (SED)" in the definition for "Export control document" to read "Shipper's Export Declaration (SED) or Automated Export System (AES) record";
  - c. Removing the definition for "U.S. exporter"; and
  - d. Adding definitions for "AES", "Automated Export System (AES)", "End-user", "Order Party", "Other party authorized to receive license", "Principal parties in interest", and "Routed export transaction" in alphabetic order, to read as follows:

**PART 772—DEFINITION OF TERMS**

\* \* \* \* \*

**AES.** See "Automated Export System."

\* \* \* \* \*

**Applicant.** The person who applies for an export or reexport license, and who has the authority of a principal party in interest to determine and

control the export or reexport of items. See § 748.4 of the EAR and definition for "exporter" in this part of the EAR.

\* \* \* \* \*

*Automated Export System (AES).* AES is a nationwide system operational at all ports and for all methods of transportation through which export shipment data required by multiple agencies is filed electronically to Customs, using the efficiencies of Electronic Data Interchange (EDI). AES provides an alternative to filing paper Shipper's Export Declarations (SEDs), so that export information is collected electronically and edited immediately. For more information about AES, visit the Bureau of Census website at: <http://www.customs.ustreas.gov/impoexpo/abaesint.htm>

\* \* \* \* \*

*End-user.* The person abroad that receives and ultimately uses the exported or reexported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.

\* \* \* \* \*

*Exporter.* The person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States. Note that the Foreign Trade Statistics Regulations have a different definition for the term "exporter". Under the FTSR, the "exporter" is the U.S. principal party in interest (see Foreign Trade Statistics Regulations title 15 part 30).

\* \* \* \* \*

*Forwarding agent.* The person in the United States who is authorized by a principal party in interest to perform the services required to facilitate the export of the items from the United States. This may include air couriers or carriers. In routed export transactions, the forwarding agent and the exporter may be the same for compliance purposes under the EAR.

\* \* \* \* \*

*Intermediate consignee.* The person that acts as an agent for a principal party in interest for the purpose of effecting delivery of items to the ultimate consignee. The intermediate consignee may be a bank, forwarding agent, or other person who acts as an agent for a principal party in interest.

\* \* \* \* \*

*Order Party.* The person in the United States who conducted the direct negotiations or correspondence with the foreign purchaser or ultimate consignee and who, as a result of these

negotiations, received the order from the foreign purchaser or ultimate consignee.

\* \* \* \* \*

*Other party authorized to receive license.* The person authorized by the applicant to receive the license. If a person and address is listed in Block 15 of the BXA-748P Multipurpose Application Form, the Bureau of Export Administration will send the license to that person instead of the applicant. Designation of another party to receive the license does not alter the responsibilities of the applicant, licensee or exporter.

\* \* \* \* \*

*Principal parties in interest.* Those persons in a transaction that receive the primary benefit, monetary or otherwise, of the transaction. Generally, the principals in a transaction are the seller and the buyer. In most cases, the forwarding or other agent is not a principal party in interest.

\* \* \* \* \*

*Purchaser.* The person abroad who has entered into a transaction to purchase an item for delivery to the ultimate consignee. In most cases, the purchaser is not a bank, forwarding agent, or intermediary. The purchaser and ultimate consignee may be the same entity.

\* \* \* \* \*

*Routed export transaction.* A transaction where the foreign principal party in interest authorizes a U.S. forwarding or other agent to facilitate export of items from the United States.

\* \* \* \* \*

*Ultimate consignee.* The principal party in interest located abroad who receives the exported or reexported items. The ultimate consignee is not a forwarding agent or other intermediary, but may be the end-user.

\* \* \* \* \*

**PART 774—[AMENDED]**

**Supplement No. 1 to Part 774—The Commerce Control List**

20. Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and "Toxins", is amended by revising the License Requirements section of ECCN 1C355, to read as follows:

**1C355 Chemical Weapons Convention (CWC) Schedule 2 and 3 Chemicals and Families of Chemicals, Not Controlled by ECCN 1C350 or by the Department of State Under the ITAR**

**License Requirements**

*Reason for Control:* CW

*Control(s)*

CW applies to entire entry. A license is required for CW reasons only to CWC non-States Parties (destinations not listed in Supplement No. 2 to part 745), unless an End-Use Certificate is obtained by the exporter (see § 742.18 of the EAR). See § 745.2 of the EAR for End-Use Certificate requirements, and the License Requirements Notes of this entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.

*License Requirements Notes:*

1. Chemicals listed in this entry may be shipped NLR (No License Required) when destined to most CWC States Parties (countries listed in Supplement No. 2 to part 745). Also see License Requirement Note 3.

2. Chemicals listed in this entry may be shipped NLR when destined to most non-States Parties (destinations *not* listed in Supplement No. 2 to part 745) if supported by an End-Use Certificate described by § 745.2 of the EAR and if the ECCN is indicated on the Shipper's Export Declaration in the appropriate space as provided in § 758.1 of the EAR. Chemicals listed in this entry require a license when exported to non-States Parties if the export is not supported by an End-Use Certificate described by § 745.2 of the EAR.

3. Chemicals listed in this entry may not be shipped NLR if restrictions of other sections of the EAR apply (*e.g.*, see the end-use and end-user restrictions of part 744 of the EAR and the restrictions that apply to embargoed countries in part 746 of the EAR).

4. MIXTURES: Mixtures controlled by this entry that contain certain concentrations of precursor and intermediate chemicals are subject to the following requirements:

a. Mixtures are controlled under this entry when containing at least one of the chemicals controlled under 1C355.a when the chemical constitutes more than 10 percent of the weight of the mixture.

b. Mixtures are controlled under this entry when containing at least one of the chemicals controlled under 1C355.b when the chemical constitutes more than 25 percent of the weight of the mixture.

c. Mixtures containing chemicals identified in this entry are not controlled by ECCN 1C355 when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

**Note to mixtures:** Calculation of concentrations.

a. *Exclusion.* No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. *Absolute Weight Calculation.* When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents;

c. *Example.*

11% chemical listed in 1C355.a  
39% chemical not listed in 1C355.a  
50% Solvent

100% Mixture  
11/100 = 11% chemical listed in 1C355.a

In this example, the mixture is controlled under this entry because a chemical listed in 1C355.a. constitutes more than 10 percent of the weight of the mixture.

5. *COMPOUNDS.* Compounds created with any chemicals identified in this ECCN 1C355 may be shipped NLR, unless those compounds are also identified in this entry.

**Technical Notes:** For purposes of this entry, a "mixture" is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

\* \* \* \* \*

Dated: June 28, 2000.

R. Roger Majak,  
*Assistant Secretary for Export Administration.*

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