From: Robert Feke <robert.feke@am.kwe.com>
Sent: Tuesday, January 31, 2012 8:36 PM
To: PublicComments
Subject: RIN 0694-XA37
Attachments: FPPI Explanation.pdf; FPPI Document-SIM .pdf; U S Designated Agent
Document (Form).doc; KWE SLI II.xls; Monk msg (SLI).eml

To: whom it may concern

Allow me to submit the following suggestions to revising Part 758 of the EAR:

1) All references to the Shipper's Export Declaration (SED – Form 7525-V) should be deleted since subject form no longer is required (see Docket Number: 031009254-6014-03 / RIN 0607-AA38 in the Federal Register).

2) Reference to requirement of submitting Electronic Export Information in AES for items exported under authorization VEU should specify if requirement applies regardless of value.

3) Reference to requirement to obtain Power of Attorney should specify exactly which individual at USPPI or FPPI should provide said document. Export counselors at both the Foreign Trade Division of the U.S. Census Bureau and the Bureau of Industry and Security have advised me that only an officer of a corporation, a legal representative, or a person with signatory power should sign and provide Powers of Attorney to an authorized forwarding agent. Additional clarification regarding which individuals at a USPPI or FPPI should sign written authorizations would be helpful also.

4) Part 758.3(b) desperately needs to be revised to prevent members of the exporting community from thinking mistakenly that a forwarding agent becomes the exporter (shipper) on all shipping documentation if the FPPI agrees to accept licensing responsibility in a routed export transaction. Since Part 758.3(b) refers only to a forwarding agent being shown as the exporter on an application for a license in a routed export transaction, this part of the EAR should be revised to say more specifically and clearly that the forwarding agent can become an exporter only on a license application in a routed export transaction if the FPPI has agreed to accept licensing responsibility. The revised text should say clearly and explicitly that Part 758.3(b) does not dictate that the forwarding agent be shown as shipper/exporter on other shipping documents, such as commercial invoice, packing list, air waybill, or bill of lading. Please see attached files from one of our customers that serve as examples of common misinterpretation of Part 758.3(b). Misinterpretation of Part 758.3(b) by our customers has been a

frequent source of irritation and frustration, and has lead to our company losing business over disputes with our customers as to the meaning of the text in the section of the EAR.

5) Please revise reference to the written authorization form to say that a Shipper's Letter of Instruction (SLI – sample copy is included in the attached Excel file) is an acceptable form of a written authorization. Attached e-mail from C. Harvey Monk, former Chief of the Foreign Trade Division of the U.S. Census Bureau, supports my request for this revision.

I thank you very much for inviting members of the trade to offer suggestions to improve the clarity and meaning of the EAR. I appreciate your kind and careful consideration to the suggestions that I have offered in this e-mail.

Kind regards,

Robert (Bob) Feke,

Director, UHQ Operations Dept.

Kintetsu World Express (USA) Inc.

Middleburg Heights (CLE), Ohio USA

TEL: 440.826.1938

FAX: 440.826.4348

CELL: 330.671.7007

e-mail: robert.feke@am.kwe.com

Email secured by Check Point

The Export Control Team at 3M in the United States is responsible for overseeing compliance with U.S. export control regulations worldwide for 3M. Under U.S. export control regulations, a company that exports a product from the United States has the legal responsibility to comply with all U.S. export laws and regulations. There are specific responsibilities under these regulations when parties agree to a routed transaction. This letter is intended to provide information on those responsibilities.

In a routed export transaction, the foreign principal party in interest ("FPPI"), through a power of attorney, authorizes a U.S. forwarding agent to facilitate the export of items from the United States on its behalf. In their July 10, 2000, Federal Register notice, the Bureau of Export Administration and the Bureau of Census explain:

> 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.

The assumption of this responsibility in the letter between the FPPI and 3M provides that:

(a) the FPPI agrees to assume responsibility for exports, including the determination of whether an export license or other authorizations are required for the products exporting;

(b) the FPPI has designated its U.S. agent to 3M;

(c) the FPPI has instructed 3M that its agent, as required by U.S. law, is accepting responsibility for the preparing and filing of the required "Shipper's Export Declaration" (SED) or AES filing, and will comply with all US export control laws in accurately reporting the product and export information provided by 3M.

The SED/AES record will show 3M as the USPPI, but indicate the transaction is a routed export transaction. The U.S. Agent is also responsible for providing the USPPI, when requested, with a copy of appropriate documentation verifying that the information provided by the USPPI (3M) was accurately reported on the SED/AES record.

(d) the U.S. Agent will represent itself as the exporter on behalf of the FPPI on all other documentation.

I hope that this letter provides sufficient background about the requested letter. If you have any questions, I hope that you will not hesitate to contact me at:

Heather Olson
3M Trade Compliance
Phone: 651-737-0159
Email: hvolson1@mmm.com

SIM MARKETING CORPORATION
17th floor Insular Life Corporate Centre, Tower 2, Filinvest, Alabang, Muntinlupa City 1781
Telephone Nos. (02) 771-1996 / 771-1997 Fax No. (02) 771-2144 E-mail: sales @ sim-mktg.com

3M Company
3M Trade Compliance
3M Center, Bldg 225-4S-18
St. Paul, MN 55144 USA

Re: Assumption of Export Responsibilities

To: 3M Export Trade Compliance Team:

We [**SIM MARKETING CORPORATION**], acknowledge that we are the Foreign Principal Party in Interest (FPPI) in a routed transaction(s) in which 3M is the U.S. Principal Party in Interest. With respect to our purchase of **3M products** for delivery to our U.S. agent, **[Kintetsu World Express (USA) Inc.]**, we hereby agree and represent that we will assume responsibility for determining export licensing requirements for and/or obtaining any required export licenses in cooperation with 3M, if applicable, export reporting, and any other export regulatory compliance as required.

We understand that hazardous items will not be allowed in these Routed Transactions.

We have authorized **[Kintetsu World Express (USA) Inc.]** in the U.S. to act on our behalf in carrying out those obligations and have provided them with a Power of Attorney or other appropriate written authorization, thus the forwarding agent will be the exporter for purposes of the export of these items. We recognize that 3M will require a signed acknowledgement from **[Kintetsu World Express (USA) Inc.]** accepting this legal obligation. We also agree to require our forwarding agent to provide 3M with copies of AES transmissions.

Regards,

Signature:

Name (Printed): MR. RUSTICO A. BAYANI JR.

Title: General Manager

Date: December 14, 2011

[To be typed on letterhead of U.S. Agent]

3M Company
3M Trade Compliance
3M Center, Bldg 225-4S-18
St. Paul, MN 55144 USA

Date:

Re: Assumption of Export Responsibilities

[**name of customer**], acknowledges that they are the Foreign Principal Party in Interest(FPPI) in a routed transaction in which they have authorized (**u.s. agent name)**as their U.S. Agent.

To comply with the Export Regulations pertaining to routed transactions, 3M requires verification that (**u.s. agent name)** has been granted POA (or other authorization) on behalf of (name of Customer), and that (**u.s. agent name)** has agreed to act in this capacity.

We understand that hazardous items will not be allowed in these Routed Transactions.

3M remains the Principal Party in Interest for AES reporting purposes only. (**u.s. agent name)** is the shipper/exporter on all other export documentation. As required of the USPPI in a Routed Transaction, the information for AES reporting will be provided to (**u.s. agent name)** when the material has been received by (**u.s. agent name)**.

(Please reference §758.3(a) of the EAR for further information which can be located at: http://www.access.gpo.gov/bis/ear/ear_data.html)

U.S. Agent Signature_____

Name (Printed) _____

Title _____

Date _____

SHIPPER'S LETTER OF INSTRUCTIONS

KWE

TO: KINTETSU WORLD EXPRESS (U.S.A.), INC.
(U.S. GOVERNMENT AUTHORIZED INTERNATIONAL AIR FREIGHT FORWARDER AND IATA APPROVED AGENT)

THIS DOCUMENT FOR AIR SHIPMENTS ONLY

NOTE: The Shipper or his Authorized Agent hereby authorizes the above named Company, in his name and on his behalf, to prepare any export documents, to prepare, sign and/or accept any other documents relating to said shipment and forward this shipment in accordance with the conditions of carriage and the tariffs of the carriers employed. The shipper guarantees payment of all collect charges in the event the consignee refuses payment.

1a.U.S. PRINCIPAL PARTY IN INTEREST (USPPI) (COMPLETE NAME AND ADDRESS)

ZIP CODE

b.USPPI's EIN (IRS) OR ID NO.

c. PARTIES TO TRANSACTION

RELATED | NON-RELATED

4a ULTIMATE CONSIGNEE (COMPLETE NAME AND ADDRESS)

INSURANCE REQUESTED :

YES ☐ NO ☐

IF YES, AMOUNT $

b. INTERMEDIATE CONSIGNEE (COMPLETE NAME AND ADDRESS)

DECLARED VALUE FOR CARRIAGE $

NUMBER OF PIECES

DATE:

RESERVED AWB #

SHPR. REF. NUMBER

5. FORWARDING AGENT

KINTETSU WORLD EXPRESS (USA) INC.

6. POINT (STATE) OF ORIGIN OR FTZ NO.

7. COUNTRY OF ULTIMATE DEST.

8. LOADING PIER *(VESSEL ONLY)*

9. MODE OF TRANSPORT *(Specify)*

14. CARRIER IDENTIFICATION CODE

15. SHIPMENT REFERENCE NO.

10. EXPORTING CARRIER

11. PORT OF EXPORT

16. ENTRY NUMBER

17. HAZARDOUS MATERIALS YES ☐ NO ☐

12. PORT OF UNLOADING

13. CONTAINERIZED *(VESSEL ONLY)* YES ☐ NO ☐

18. IN BOND CODE

19. ROUTED EXPORT TRANSACTION YES ☐ NO ☐

SHIPPER MUST CHECK ONE:

PREPAID ☐ - or - COLLECT ☐

SPECIAL INSTRUCTIONS TO KINTETSU:

21. D/F	22. SCHEDULE B/HTS No.(s)	23. QTY.	24. KG.WT.	25. VIN/PRODUCT #/VEHICLE TITLE NUMBER	26.VALUE (U.S. DOLLARS, omit cents)

27.LICENSE NO./LICENSE EXCEPTION SYMBOL/AUTHORIZATION

28. ECCN (WHEN REQUIRED)

IMPORTANT:
PLEASE COMPLETE ALL APPLICABLE ITEMS,
THEN SIGN YOUR NAME
WITH PEN AND INK IN BLOCK NO. 29.

29. DULY AUTHORIZED OFFICER OR EMPLOYEE

SIGN HERE

THE USPPI AUTHORIZES THE FORWARDER NAMED ABOVE TO ACT AS FORWARDING AGENT FOR EXPORT CONTROL AND CUSTOMS PURPOSES.

The shipper certifies that the particulars on the face hereof are correct, agrees to the CONDITIONS ON THE REVERSE HEREOF, accepts that carriers liability is limited as stated in 4(c)on the reverse hereof and accepts such value unless a higher value for carriage is declared on the face hereof subject to an additional charge and that insofar as any part of the consignment contains restricted articles, such part is properly described by name and is in proper condition for carriage by air according to applicable governmental regulations and official tariffs.

WE HAVE SHIPPED THE SHIPMENT DESCRIBED HEREIN TO KWE ON
(DATE) _____ VIA TRUCK LINE _____

RECEIPT OR P.O.#

PREPAID ☐ COLLECT ☐

Received in apparent good order at
Driver's signature:

SHIPPER'S DOOR ☐ AIRPORT TERMINAL ☐

DATE TIME

Shipper: **You must indicate whether shipment is to be forwarded Prepaid or Collect:**
Unless otherwise noted shipment will go COLLECT (see mid page).

AES / EEI INFORMATION

Shipper (USPPI) filed EEI in AES: ☐ YES ☐ NO

If YES, enter ITN here:

Hereunder the sole responsibility of the company is as indirect carrier, subject to the provisions contained herein, in its air waybill and its tariff or tariffs, copies of which are available on request, or as agent for the direct carrier after issuance of direct carrier's air waybill. The company is to use reasonable care in the selection of carriers, forwarders, agents and others to whom it may entrust the shipment.

The carrier's maximum total liability for all claims for or relating to goods lost, damaged, destroyed or delayed, including claims for indemnification, is $20 per kilo. Shipper may elect to increase the maximum total liability by declaring a higher value for carriage in the space provided above and paying additional valuation charges. Failure to declare a value "for carriage" will maintain maximum total carrier liability at $20.00 per kilo. Carrier maintains cargo liability insurance in the amount of $250,000.00 per any one occurrence for its benefit. Shipper may purchase insurance for its own benefit.

This document contains two pages. Page two contains the condition of contract. By signing page one, you are acknowledging that you have read page two and have agreed upon its terms.

CONDITIONS OF CONTRACT

(1) As used in this contract, 'Convention' means the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, 12 October 1929, or that Convention as amended by The Hague Protocol , 1955 whichever may be applicable to carriage hereunder, 'Air Waybill' is equivalent to 'air consignment note', 'shipper' is equivalent to 'consignor', 'carriage' is equivalent to 'transportation' and 'carrier' includes the air carrier issuing this Air Waybill and all air carriers that carry the goods hereunder or perform any other services related to such air carriage. For the purposes of the exemption from and limitation of liability provisions set forth or referred to herein, 'carrier' includes agents, servants, or representatives of any such air carrier. A consignee or other party who contracts for carriage hereunder shall be considered to be both the shipper and, respectively, the consignee or other party, whereupon the nominal shipper shall become the shipper's agent. Carriage to be performed hereunder by several successive carriers is regarded as a single operation.

(2) (a) carriage hereunder is subject to the rules relating to liability established by the Convention unless such carriage is not 'international' carriage' as defined by the Convention. (See carrier's tariffs and conditions of carriage for such definition); (b) to the extent not in conflict with the foregoing, carriage hereunder and other services performed by each carrier are subject to: (i) applicable laws (including national laws implementing the Convention), Government regulations, orders and requirements, (ii) provisions herein set forth, and (iii) applicable tariffs, rules, conditions of carriage, regulations and timetables (but not the time of departure and arrival therein) of such carrier, which are made part hereof and which may be inspected at any of its offices and at airports from which it operates regular services;

(c) for the purpose of the Convention, the agreed stopping places (which may be altered by carrier in case of necessity) are those places, except the place of departure and the place of destination, set forth on the face hereof or shown in carrier's timetables as scheduled stopping places for the route;

(d) in the case of carriage subject to the Convention, the shipper acknowledges that he has been given an opportunity to make a special declaration of the value of the goods at delivery and that the sum entered on the face of the Air Waybill as "Shipper's/Consignor's Declared Value for Carriage", if in excess of $20.00 per kilogram, constitutes such special declaration of value.

(3) Insofar as any provision contained or referred to in the Air Waybill may be contrary to mandatory law, Government regulations, orders, or requirements, such provision shall remain applicable to the extent that it is not overridden thereby. The invalidity of any provision shall not affect any other part hereof.

(4) Except as the Convention or other applicable law may otherwise require;
(a) carrier is not liable to the shipper or to any other person for any damage, delay or loss of whatsoever nature (herein collectively referred to as 'damage') arising out of or in connection with the carriage of the goods, unless such damage is provided to have been caused by the negligence or willful fault of carrier and there has been no contributory negligence of the shipper, consignee or other claimant;
(b) carrier is not liable for any damage directly or indirectly arising out of compliance with laws, Government regulations, orders or requirements or from any cause beyond carrier's control;
(c) the charges for carriage having been based upon the value declared by the shipper, it is agreed that any liability shall in no event exceed the shipper's declared value for carriage stated on the face hereof, and in the absence of such declaration by shipper, liability of carrier shall not exceed $20.00 per kilogram of goods destroyed, lost, damaged or delayed; all claims shall be subject to proof of value;
(d) a carrier issuing an Air Waybill for carriage exclusively over the lines of others does so only as a sales agent.

(5) It is agreed that no time is fixed for the completion of carriage hereunder and that carrier may without notice substitute alternate carriers or aircraft. Carrier assumes no obligation to carry the goods by any specified aircraft or over any particular route or routes or to make connection at any point according to any particular schedule, and carrier is hereby authorized to select, or deviate from the route or routes of shipment, notwithstanding that the same may be stated on the face hereof. The shipper guarantees payment of all charges and advances.

(6) The goods, or packages said to contain the goods, described on the face hereof, are accepted for carriage from their receipt at carrier's terminal or airport office at the place of departure to the airport at the place of destination. If so specifically agreed, the goods, or packages said to contain the goods; described on the face hereof, are also accepted for forwarding to the airport of departure and for reforwarding beyond the airport of destination. If such forwarding or reforwarding is by carriage operated by carrier, such carriage shall be upon the same terms as to liability as set forth in Paragraphs (2) and (4) hereof. In any other event, the issuing carrier and last carrier, respectively, in forwarding or reforwarding the goods, shall do so only as agents of the shipper, owner, or consignee, as the case may be, and shall not be liable for any damage arising out of such additional carriage, unless proved to have been caused by its own negligence or willful fault. The shipper, owner and consignee hereby authorize such carriers to do all things deemed advisable to effect such forwarding or reforwarding, including, but without limitation, selection of the means of forwarding or reforwarding and the routes thereof (unless these have been herein specified by the shipper), execution and acceptance of documents of carriage (which may include provisions exempting or limiting liability) and consigning of goods with no declaration of value, notwithstanding any declaration of value in the Air Waybill.

(7) Carrier is authorized (but shall be under no obligation) to advance any duties, taxes or charges and to make any disbursements with respect to the goods, and the shipper, owner and consignee shall be jointly and severally liable for the reimbursement thereof. No carrier shall be under obligation to incur any expense or to make any advance in connection with the forwarding or reforwarding of the goods except against repayment by the shipper. If it is necessary to make customs entry of the goods at any place, the goods shall be deemed to be consigned at such place to the person named on the face hereof as customs consignee or, if no such person be named, to the carrier carrying the goods to such place or to such customs consignee, if any, as such carrier may designate.

(8) At the request of the shipper, and if the appropriate premium is paid and the fact recorded on the face hereof, the goods covered by the Air Waybill are insured on behalf of the shipper under an open policy for the amount requested by the shipper as set out on the face hereof (recovery being limited to the actual loss or damage not exceeding the insured value) against all risks of physical loss or damage from any external cause whatsoever, except those arising directly or indirectly from war risks, strikes, riots, hostilities, legal seizure or delay or inherent vice, and subject to the terms and conditions of such open policy which is available for inspection by the shipper. Claims under such policy must be reported immediately to an office of carrier.

(9) Except as otherwise specifically provided in this contract, delivery of the goods will be made only to the consignee named on the face hereof, unless such consignee is one of the carriers participating in the carriage, in which event delivery shall be made to the person indicated on the face hereof as the person to be notified. Notice of arrival of the goods will, in the absence of other instructions, be sent to the consignee, or the person to be notified, by ordinary methods; carrier is not liable for nonreceipt or delay in receipt of such notice.

(10) (a) no action shall be maintained in the case of damage to goods unless a written notice, sufficiently describing the goods concerned, the approximate date of the damage, and the details of the claim, is presented to an office of carrier within seven days from the date of receipt thereof, in the case of delay, unless presented within 14 days from the date the goods are placed at the disposal of the person entitled to delivery, and in the case of loss (including nondelivery) unless presented within 120 days from the date of issue of the Air Waybill.
(b) any rights to damages against carrier shall be extinguished unless an action is brought within two years after the occurrence of the events giving rise to the claim.

(11) The shipper shall comply with all the applicable laws, customs and other Government regulations of any country to, from, through or over which the goods may be carried, including those relating to the packing, carriage or delivery of the goods, and shall furnish such information and attach such documents to this Air Waybill as may be necessary to comply with such laws and regulations. Carrier is not liable to the shipper or any other person for loss or expense due to shipper's failure to comply with this provision.

(12) No agent, servant or representative of carrier has authority to alter, modify or waive any provision of this contract.

(13) The carrier reserves the right under applicable governmental regulations or otherwise to act alternatively as agent of either the shipper or direct air carrier with respect to the goods carried hereunder whenever the conditions so warrant.

From: c.harvey.monk.jr@census.gov
Sent: Thursday, May 26, 2005 11:41 AM
To: Robert Feke
Subject: Re: RIN 0607-AA38

You are correct. A sample of a power of attorney and written authorization can be found in Appendix B of the proposed rule. Because export information will be file electronically and if you use the same agent to file your export information on a routine basis you only need to issue the power of attorney or written authorization once. If you use a number of different agents to file your export information, you can put on a shipper's letter of instruction the written authorization. If you have any further question please give me a call. Thank you

C. Harvey Monk Jr
Chief, Foreign Trade Division
U.S. Census Bureau
301-763-2255