

**DEPARTMENT OF COMMERCE****Bureau of Export Administration**

**15 CFR Parts 732, 740, 743, 748, 750, 752, 758, 762, and 772**

[Docket No. 990709186-9186-01]

RIN 0694-AB88

**Parties to a Transaction and their responsibilities, Routed Export Transactions, Shipper's Export Declarations, and Export Clearance**

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Proposed rule, with request for comments.

**SUMMARY:** The Bureau of Export Administration proposes to revise the Export Administration Regulations (EAR) to clarify the responsibilities of parties to an export transaction, the filing and use of Shipper's Export Declarations, Destination Control Statement requirements, and other export clearance issues.

**DATES:** Comments must be received December 3, 1999.

**ADDRESSES:** Written comments should be sent to Sharron Cook, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, at (202) 482-2440.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Bureau of Export Administration (BXA) proposes to amend the Export Administration Regulations (EAR) in order to simplify and clarify the export clearance process and facilitate compliance. BXA's primary objective is to promote 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 proposed 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 proposed 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 proposed 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 proposed 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.

The Shipper's Export Declaration (SED) plays an important role in export clearance. Both the EAR and the Foreign Trade Statistics Regulations (FTSR) of the Bureau of Census contain specific requirements regarding the use of this document. The EAR govern the use of the SED as an export control document, while the FTSR govern its use as a source of trade statistics. For statistical purposes, the Census Bureau requires the name of the U.S. principal party in interest, generally the seller, in Block (1a) of the SED. For purposes of responsibility for export licensing requirements under the EAR, however, the U.S. agent of the foreign principal party in interest may be the exporter, regardless of who is listed in Block (1a) of the SED. It is important to note that all parties who participate in transactions subject to the EAR are responsible for complying with the EAR. Therefore, a party that is listed in Block 1(a) of the SED or in the exporter field of the Automated Export System (AES) record is not the sole party to the transaction responsible for compliance with the EAR.

In addition to clarifying export licensing responsibilities, this rule institutes a requirement that the export licensee communicate license conditions to all parties to whom those conditions apply and, when required by the license, to 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.

Finally, these proposed 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 all export control-related provisions pertaining to SEDs. 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 clarifies and consolidates provisions relating to the responsibilities of the parties, and § 758.3 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. Sections 758.5 and § 758.6 have been combined and reduced into one paragraph.

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 proposed rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule contains and involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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-XXXX.

Comments are invited on (a) whether the collection of information is necessary for the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection

of information; (c) ways to enhance the quality, utility, and clarify of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments regarding these or any other aspects of the collection of information to: Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, U.S. Department of Commerce Room 2705, 14th Street and Pennsylvania Ave., N.W. Washington, DC 20230.

Because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in the development of final regulations. Comments will be considered on provisions included in the regulations as well as provisions or guidance which commenters believe should be included in the regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close December 3, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6883, Department of Commerce, 14th Street

and Pennsylvania Avenue, N.W., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from the Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482-0500.

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

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 (Sec. 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 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. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

#### List of Subjects

##### 15 CFR Part 730

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, and 758

Administrative practice and procedure, Exports, Foreign trade, Reporting and Record keeping requirements.

##### 15 CFR Part 762

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

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

1. The authority citation for 15 CFR parts 758 and 762 are 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; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. The authority citation for 15 CFR parts 732, 748, 752, and 772 are 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. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

3. The authority citation for 15 CFR part 740 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. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

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, 64 FR 44101 (August 13, 1999).

5. The authority citation for 15 CFR part 750 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. 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, 64 FR 44101 (August 13, 1999).

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

§ 740.9(a)(2)(iii) last sentence

§ 740.10(b)(3)(ii)(C)

§ 743.1(b)

§ 748.11(e)(4)(ii)(1)

Supplement No. 3 to part 748, "BXA-711, Statement By ultimate consignee and Purchaser Instructions", Block 8  
Supplement No. 3 to part 752, "Instructions on Completing Form BXA-752 "Statement by Consignee in Support of Special Comprehensive License", Block 5

#### PART 732—[AMENDED]

7. 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).* 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 of this part.

(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(f) 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 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(f) 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 items having a classification other than EAR99, i.e.,

items listed on the Commerce Control List in Supplement No. 1 to part 774 of the EAR. See § 758.1(f) of the EAR; and 15 CFR 30.7(m) of the FTSR.

(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 that are not 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.

(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.

#### PART 740—[AMENDED]

8. Section 740.1 is amended by revising paragraph (d) to read as follows:

##### § 740.1 Introduction.

\* \* \* \* \*

(d) *Shipper's Export Declaration: Clearing exports under License Exceptions.* 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, TMP, etc., for the License Exception(s) you use to export. In addition, you must enter the correct Export Control Classification Number (ECCN), e.g., 4A003, 5A002, etc., on the SED or AES record for all items having a classification other than EAR99, i.e., items listed on the Commerce Control List in Supplement No. 1 to part 774 of the EAR. See § 758.1 of the EAR for Shipper's Export Declaration requirements.

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#### PART 748—[AMENDED]

9. 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 that principal party in interest with the authority to determine and control the sending of items out of the United States. 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 § 758.2(c) and (e) 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. 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.* Prior to submitting an application for a license, an agent must obtain a power of attorney or other written authorization from the foreign principal party in interest to act on behalf of the foreign principal party in interest. 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 applicant (agent). See part 762 of the EAR for recordkeeping requirements.

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10. 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. 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) of this part 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, 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]**

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

**§ 750.7 Issuance of licenses.**

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(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 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 parties to whom those conditions apply.

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**PART 752—[AMENDED]**

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

**PART 758—[AMENDED]**

12. Part 758 is amended by revising § 758.1, through 758.5 and removing and reserving § 758.6, to read as follows:

**§ 758.1 The Shipper's Export Declaration (SED).**

(a) *The Shipper's Export Declaration (SED).* The SED (Forms 7525-V or 7525-V-Alt or the Automated Export System (AES electronic equivalent)) is used by the Bureau of Census to collect trade statistics and by the Bureau of Export Administration for export control purposes. The SED and the AES collect basic information such as the names and addresses of the parties to a transaction; the description, the Export Control Classification Number (ECCN) (when required), the Schedule B number or Harmonized Tariff Schedule number, the 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 is required.* You must file a paper SED, or file the SED information electronically using the AES, with the United States Government in the following situations:

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

(2) For all shipments of tangible items subject to the EAR that are authorized under a License Exception or NLR, when the value of the items 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;

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

(4) For all shipments that will be transshipped through Canada to a third destination, where the shipment would require an SED 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 30.54(b) and 30.55 (h) 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 requirements.* When an exemption from filing the Shipper's Export Declaration applies, the forwarding or other agent must include on the bill of lading, air waybill, or other loading document the export authority of the items, i.e., either the number of and expiration date of a license issued by BXA, the appropriate License Exception symbol, or NLR "No License Required" designator. This notation applies to any bill of lading or other loading document, including one issued by a consolidator (indirect carrier) for an export included in a consolidated shipment. However, this requirement does not apply to a "master" bill of lading or other loading document issued by a carrier to cover a consolidated shipment. The bill of lading or other loading document must be available for inspection along with the items prior to lading on the carrier.

(e) *Signing the Shipper's Export Declaration.* The person who signs the SED must be in the United States at the time of signing. That person, whether exporter or agent, is responsible for the truth, accuracy, and completeness of the SED, except insofar as that person can demonstrate that he or she reasonably relied on information furnished by others.

(f) *The SED or AES electronic equivalent is an export control document.* The SED or AES electronic equivalent is a statement to the U.S. Government. The SED or AES electronic equivalent 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 electronic equivalent is presented to the U.S. Government, the signer or filer of the SED or AES electronic equivalent represents the following:

(1) Export of the items described on the SED or AES electronic equivalent is authorized under the terms and conditions of the designated license issued by BXA; is in accordance with the terms and conditions of the appropriate License Exception; or is authorized under "NLR" as No License is Required for the shipment;

(2) Statements on the SED or AES electronic equivalent are in conformity

with the contents of any license issued by BXA; and

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

(g) *Export control information requirement on the SED or AES electronic equivalent.* 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 of the SED or AES electronic equivalent.

(1) *Specific information requirements for licensed exports.* When exporting under the authority of a license, you must enter on the Shipper's Export Declaration or AES equivalent 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. The item description on the license must be stated in Commerce Control List terms, which may be inadequate to meet Census Bureau requirements. In this event, the item description you place on the SED or AES electronic equivalent must be given in enough additional detail to permit verification of the Schedule B Number (or Harmonized Tariff Schedule number) (e.g., size, material, or degree of fabrication). See 15 CFR 30.7(l) of the FTSR. If you include other items on the SED or AES electronic equivalent that do not require licenses, but that may be exported under the authority of a License Exception or No License Required, you must show the License Exception symbol or NLR designator, along with the specific description (quantity, Schedule B Number (or Harmonized Tariff Schedule number), value) of the item(s) to which the authorization applies in the designated blocks. See 15 CFR 30.7(m) of the FTSR.

(2) *Specific information requirements for License Exceptions.* You must enter on any required Shipper's Export Declaration (SED) or AES electronic equivalent the correct License Exception symbol (e.g., LVS, GBS, CIV) for the License Exception(s) under which you are exporting. Also, you must enter the correct Export Control Classification Number (ECCN) on the SED or AES electronic equivalent for all items having a classification other than EAR99, i.e., items listed on the Commerce Control List in Supplement No. 1 to part 774 of the EAR. In addition, an item description that is sufficiently detailed to permit review by the U.S. Government and verification of the Schedule B Number (or Harmonized

Tariff Schedule number) is required. See § 740.1(d) of the EAR.

(3) *Specific information requirements when no license is required.* You must enter on any required Shipper's Export Declaration (SED) or AES electronic equivalent 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 the SED or AES electronic equivalent for all items being exported under the NLR provisions that have a classification other than EAR99, i.e., items listed on the Commerce Control List in Supplement No. 1 to part 774 of the EAR. Also, you must enter on the SED or AES electronic equivalent an item description that is sufficiently detailed to permit review by the U.S. Government and verification of the Schedule B Number (or Harmonized Tariff Schedule number). 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) *Submission of the SED.* The SED 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).

(i) *Exports by U.S. Mail.* When you make an export by U.S. mail that requires the submission of an SED, a properly executed paper version of the SED must be submitted to the post office at the place of mailing, or you must file the export information via AES procedures found in the FTSR. See 15 CFR 30.12 of the FTSR. Whenever you export items subject to the EAR that meets one of the exemptions for submission of an SED, you must enter the appropriate export authority on the parcel, i.e., either the number of and expiration date of a license issued by BXA, the appropriate License Exception symbol, or NLR "No License Required" designator.

(j) *Power of attorney or other written authorization.* (1) 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.

(2) 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;

(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 (j)(2):** 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.

(3) 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.

#### **§ 758.2 Responsibilities of parties to the transaction.**

(a) *General.* 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 redelegating authority, does not in and of itself relieve anyone of responsibility for compliance with the EAR.

(b) *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.

(c) *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. See § 748.4(a)(3) of the EAR.

**Note to paragraph (c)** For statistical purposes, the Census Bureau requires the name of the U.S. principal party in interest, generally the seller, in Block (1a) of the SED. For purposes of licensing responsibility under the EAR, however, the U.S. agent of the foreign principal party in interest may be the exporter, regardless of who is listed in Block (1a) of the SED.

(d) *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 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(f) of the EAR.

(e) *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) and § 758.1(i) of the EAR.

#### **§ 758.3 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; or

(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 make 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, N.W., Washington, D.C. 20230.

#### **§ 758.4 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, 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).

(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.

(ii) *Unlicensed items.* For shipments of items that do not require a license, the exporter may designate optional ports of unloading on the SED 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 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 of BXA is required. However, any persons disposing of the items must continue to comply with the terms and conditions of any license or 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 license issued by BXA, 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; and
- (C) 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, N.W., Washington, D.C. 20230; phone number

202-482-0436; facsimile number 202-482-3322; and E-Mail address: RPD@BXA.DOC.GOV.

#### § 758.5 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]

13. Section 762.2 is amended by:
- a. Revising the citation "\$ 758.1(b)(3)" to read "\$ 758.2(d)(2)(ii)" in paragraph (b)(29);
  - b. Revising the citation "758.6" to read "\$ 758.1" in paragraph (b)(31);
  - c. Revising paragraphs (b)(15), (b)(37), and (b)(38); and
  - d. Adding a new paragraph (b)(39) to read as follows:

#### § 762.2 Records to be retained.

- (b) \* \* \*
- (15) § 750.7, Issuance of license and acknowledgment of conditions;
- (37) § 743.1, Wassenaar reports;
- (38) § 748.14, Exports of firearms; and
- (39) § 758.2(c), Assumption writing.

#### PART 772—[AMENDED]

14. Part 772 is amended by revising the definitions of "Applicant", "Exporter", "Forwarding agent", "Intermediate consignee", "Purchaser", and "Ultimate Consignee"; removing the definition for "U.S. exporter"; and adding definitions for "End-user", "Order Party", "Other party authorized to receive license", "Principal parties in interest", and "Routed export transaction" in alphabetical order, to read as follows:

*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.

*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. For purposes of completing the SED or filing export information on the Automated Export System (AES), the exporter is the U.S. principal party in interest (see Foreign Trade Statistics Regulations, 15 CFR 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.

\* \* \* \* \*

Dated: September 23, 1999.

**R. Roger Majak,**

*Assistant Secretary for Export Administration.*

[FR Doc. 99-25604 Filed 10-1-99; 8:45 am]

BILLING CODE 3510-33-P

## DEPARTMENT OF COMMERCE

### Bureau of the Census

#### 15 CFR Part 30

[Docket No. 980716180-9171-02]

RIN 0607-AA20

#### Clarification of Exporters' and Forwarding Agents' Responsibilities; Authorizing an Agent To Prepare and File a Shipper's Export Declaration on Behalf of a Principal Party in Interest

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Supplementary notice of proposed rulemaking.

**SUMMARY:** The U.S. Census Bureau (Census Bureau) proposes amending the Foreign Trade Statistics Regulations (FTSR), 15 CFR part 30, to clarify the responsibilities of exporters and forwarding agents in completing the Shipper's Export Declaration (SED) and to clarify provisions for authorizing forwarding agents to prepare and file an SED or file the export information electronically using the Automated Export System (AES) on behalf of a principal party in interest.

**DATES:** Written comments must be submitted on or before December 3, 1999.

**ADDRESSES:** Direct all written comments on this proposed rulemaking to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, D.C. 20233.

**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, D.C. 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) record 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 proposed 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 proposes amending the FTSR to clarify responsibilities of exporters and forwarding agents in completing the SED and to clarify who should be listed in the "Exporter" box on the SED and in the exporter field on the AES record. This proposed 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. The proposed rule will also clarify provisions authorizing an agent to prepare and file an SED or its AES electronic equivalent on behalf of a principal party in interest.

The Census Bureau 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 has 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 BXA is also revising appropriate sections of the Export Administration Regulations (EAR) in a document 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 agents in completing the SED, and BXA will also propose changes to the EAR to simplify export clearance.

#### Comments

The Census Bureau received sixty-nine (69) comments on the notice of proposed rulemaking published in the **Federal Register** on August 6, 1998 (63 FR 41979). Of the comments received, fifty-nine (59) were opposed to some provisions of the proposed rule and ten supported the proposed rulemaking. Of the fifty-nine comments opposed to the proposed rule, twenty-four (24) had interpreted the rule to require that the "manufacturer" always be listed as the exporter of record on the SED in all export transactions. This was a misinterpretation of the proposed rule, and the revised proposed rulemaking will clearly stipulate that only the "U.S. seller or principal party in interest" be listed as the exporter on the SED. Only when the manufacturer is the actual "seller of the merchandise for export" should it be listed as exporter on the SED or AES electronic record.

The other major reason for opposition to the proposed rule concerned identifying the U.S. seller or principal as the "exporter of record" in EX WORKS (EXW) transactions. EXW is a "term of sale" whereby the foreign buyer takes possession of the merchandise in the United States, and the foreign buyer takes responsibility for facilitating the export of the merchandise out of the United States, including export documentation responsibility. The major concern the U.S. sellers presented, when required to be listed as the "exporter of record" in these transactions, is that the U.S. seller does not have effective control over the merchandise once it is turned over to the foreign buyer's agent. The U.S. seller does not want to be held liable for any export control violations that may occur in such a transaction.

The proposed Census Bureau export regulations do not intend to interfere with the terms of sale between the