

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 transshipped 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 redelegating 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).

* * * * *

(g) *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