



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 740, 744, 756, 758, and 762

[Docket No. 120524116-2116-01]

RIN: 0694-AF70

Revisions to the Export Administration Regulations (EAR): Unverified List (UVL)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: The Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) by: requiring exporters to file an Automated Export System (AES) record for all exports subject to the EAR involving a party or parties to the transaction who are listed on the Unverified List (the “Unverified List” or UVL); suspending the availability of license exceptions for exports, reexports, and transfers (in-country) involving a party or parties to the transaction who are listed on the UVL; requiring exporters, reexporters, and transferors to obtain a UVL statement from a party or parties to the transaction who are listed on the UVL before proceeding with exports, reexports, and transfers (in-country) involving items subject to the EAR, but where the item does not require a license, i.e., No License Required (NLR); publishing the UVL in the EAR; and adding to the EAR the procedures to request removal or modification of a UVL entry.

These proposed changes to the UVL enhance the U.S. Government’s ability to verify the

bona fides of parties to exports, reexports, or transfers (in-country) of items subject to the EAR and provide the U.S. Government increased visibility into such exports, reexports, and transfers involving persons whose *bona fides* could not be verified.

DATES: Comments must be received by BIS no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (www.regulations.gov). The regulations.gov Docket ID for this rule is: BIS-2012-0017. Comments may also be submitted via e-mail to publiccomments@bis.doc.gov or on paper to Regulatory Policy Division, Bureau of Industry and Security, Room 2099B, U.S. Department of Commerce, 14th St. and Pennsylvania Ave., N.W., Washington, DC 20230. Please refer to RIN 0694-AF70 in all comments and in the subject line of e-mail comments.

FOR FURTHER INFORMATION CONTACT: Kevin Kurland, Director, Office of Enforcement Analysis, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-2385 or by email at Kevin.Kurland@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 2002, the Bureau of Industry and Security (“BIS”) published a notice in the *Federal Register* (67 FR 40910) establishing a list of persons in foreign countries who were parties to past export transactions with respect to which pre-license checks or post-shipment verifications could not be conducted for reasons outside the control of the U.S. Government, including lack of cooperation by the host government authority, the end user, or the ultimate consignee (the “Unverified List” or “UVL”). That *Federal Register* notice also indicated that

BIS may add to the UVL names of persons that BIS discovers are affiliated with a person on the UVL by virtue of ownership, control, position of responsibility, or other affiliation or connection in the conduct of trade or business. Since that time, BIS has issued subsequent notices that added to or removed persons from the UVL, as circumstances have warranted. Currently, the UVL is published in the *Federal Register* in its entirety and updated as foreign persons are added to or removed from that list. The UVL is also available on the BIS website at http://www.bis.doc.gov/enforcement/unverifiedlist/unverified_parties.html.

The participation of a person listed on the UVL in any proposed transaction raises a “red flag” for purposes of the “Know Your Customer” guidance set forth in Supplement No. 3 to Part 732 of the EAR. *See* 67 FR 40910 (June 14, 2002) and 69 FR 42562 (July 16, 2004). Under that guidance, whenever there is a “red flag,” exporters have an affirmative duty to inquire, verify, or otherwise satisfy themselves that the transaction does not involve a proliferation activity prohibited by Part 744 and does not violate other provisions of the EAR.

On July 16, 2004 (69 FR 42652), BIS expanded the criteria for adding persons to the UVL to include situations in which BIS is not able to verify the existence or authenticity of the end user, intermediate consignee, ultimate consignee, or other party to an export transaction.

On August 21, 2008 (73 FR 49311), BIS expanded the scope of reasons to add persons to the Entity List. That rule amended Section 744.11 of the EAR to provide illustrative examples of the types of conduct that the U.S. Government could determine are contrary to U.S. national security or foreign policy interests for purposes of changes to the Entity List. One example listed in that section is, “[p]reventing accomplishment of an end use check conducted by or on behalf of BIS or the Directorate of Defense Trade Controls of the Department of State by: precluding access to; refusing to provide information about; or providing false or misleading

information about parties to the transaction or the item to be checked.” That notice also included a discussion of the apparent overlap in criteria for adding foreign persons to the Entity List and the Unverified List based on a lack of cooperation with an end-use check.

End-use checks sometimes cannot be completed for reasons unrelated to the cooperation of the foreign party subject to the end-use check. In such situations, BIS has added parties to the UVL where BIS or federal officials acting on BIS’s behalf have been unable to verify a foreign person’s *bona fides* (i.e., legitimacy and reliability relating to the end use and end user of items subject to the EAR), where an end-use check, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for such purposes for reasons outside the U.S. Government’s control. For example, BIS sometimes initiates end-use checks and cannot find a foreign party at the address indicated on export documents, and cannot locate the party by telephone or email. Additionally, BIS sometimes is unable to conduct end-use checks when host government agencies do not respond to requests to conduct end-use checks or refuse to schedule them in a timely manner. Under these circumstances, there may not be a basis to add the foreign persons at issue to the Entity List, particularly if there is no nexus between the foreign person’s conduct and the failure to produce a complete, accurate and useful check (see § 744.11(b)(4) of the EAR (Criteria for revising the Entity List)).

Furthermore, BIS sometimes conducts end-use checks but cannot verify the *bona fides* of a foreign party. For example, BIS may be unable to verify *bona fides* if during the conduct of an end-use check a recipient of items subject to the EAR is unable to produce those items for visual inspection or provide sufficient documentation to confirm the disposition of those items. The inability of foreign persons subject to end-use checks to demonstrate their *bona fides* raises concerns about the suitability of such persons as participants in future exports, reexports,

or transfers (in-country) and indicates a risk that items subject to the EAR may be diverted to prohibited end uses and/or end users. However, BIS may have insufficient information to establish that such persons are involved in activities described in Section 744.11 of the EAR, preventing the placement of the persons on the Entity List. In such circumstances, those foreign persons may be added to the Unverified List.

Reasons for this Rule

This rule proposes to eliminate ambiguity for listing foreign persons on the UVL and the Entity List by removing lack of cooperation by a foreign party as a basis for revising the UVL. Where the U.S. Government determines that the foreign party's lack of cooperation prevented the accomplishment of an end-use check, BIS may add such parties to the Entity List on the basis of § 744.11(b)(4) of the EAR.

Specifically, BIS is amending the EAR to include the criteria for listing persons in the UVL, including examples of actions that could result in a person being listed on the UVL. These amendments, consistent with past practice, will apply to foreign persons who are parties to an export, reexport, and transfer (in-country) subject to the EAR if BIS, or federal officials acting on BIS's behalf, cannot verify the *bona fides* of such persons because an end-use check, such as a PLC or a PSV, cannot be completed satisfactorily for reasons outside of the U.S. Government's control. Examples of actions that could result in a person being listed on the UVL include: the subject of the check is unable to demonstrate the disposition of items during an end-use check; the existence or authenticity of the subject of an end-use check cannot be verified because, *inter alia*, the subject of the check cannot be located or contacted; or lack of cooperation by the host government authority.

In addition, BIS is no longer considering affiliation with a person on the UVL as a basis for adding foreign persons without further substantiation (e.g., conduct of an end-use check at the affiliate). A determination to list a particular person on the UVL is premised on BIS's inability to evaluate the *bona fides* of that person by conducting an end-use check. The fact that another, separate person is affiliated with a person on the UVL will no longer be considered a criterion for listing the affiliate. If BIS discovers a foreign person may be affiliated with a person listed on the UVL, BIS will initiate an end-use check on an export, reexport, or transfer (in-country) to which that person was a party. That person may be listed on the UVL if BIS is unable to verify that person's *bona fides* through an end-use check in accordance with the criteria described above.

BIS is proposing these changes to the UVL to address concerns raised by the public in the past about how to address a "red flag" identified by the U.S. Government. Accordingly, the proposed changes to the regulation provide guidance on how exporters can conduct business with a UVL person. Any license requirements for exports, reexports, or transfers (in-country) of items subject to the EAR continue to apply. For items not subject to a license requirement, the exporter, reexporter, or transferer (in-country) must receive from the UVL-listed person a UVL statement prior to the export, reexport, or transfer (in-country), in which the UVL-listed party certifies the end use, end user, and country of ultimate destination of items subject to the EAR and consents to an end-use check by the U.S. Government. The end-use check may include checks to any transaction to which that person was a party for items subject to the EAR exported, reexported, or transferred (in country) in the last five years, to enable the U.S. Government to satisfy earlier concerns with the UVL-listed party as well as its concerns with the current transaction.

Proposed Changes to the EAR

BIS proposes to amend the EAR by: (1) requiring exporters to file an AES record for all exports subject to the EAR involving persons listed on the UVL; (2) suspending the availability of license exceptions for exports, reexports, and transfers (in-country) involving persons listed on the UVL; (3) requiring exporters, reexporters and transferors (in-country) to obtain a UVL statement from UVL-listed persons before proceeding with exports, reexports, and transfers (in-country) that are not otherwise subject to a license requirement under the EAR involving such persons; (4) adding the UVL to Supplement No. 6 to Part 744; and (5) adding to the EAR procedures to request removal or modification of a UVL entry.

The first of these changes, requiring the filing of an AES record for all exports to which a person listed on the UVL is a party, is described in § 748.5(d)-(f) of the EAR, and would increase U.S. Government awareness of transactions involving U.S.-origin items to such persons. Under current regulations, an AES filing is only required if an export license is also required or if the transaction is above a certain value. This rule proposes an exception to require an AES filing regardless of value or destination if a person involved in the transaction as described above is listed on the UVL.

Secondly, this rule's proposed suspension of license exceptions for exports, reexports, and transfers (in-country) of U.S.-origin items to persons listed on the UVL would increase U.S. Government insight into certain transactions involving such persons of items on the Commerce Control List (set forth in Supplement No. 1 to Part 774 of the EAR) by requiring a license for those transactions. This suspension is also consistent with § 740.2(b) of the EAR, which states,

“all License Exceptions are subject to revision, suspension, or revocation, in whole or in part, without notice.”

Third, BIS proposes to require exporters to obtain a signed UVL statement from UVL-listed persons before proceeding with any export, reexport, or transfer (in-country) involving such persons, when such persons are parties to a transaction as described in § 748.5 of the EAR, and when the item at issue is subject to the EAR but does not require a license under the EAR. The rule would require that the statement certify the end use, end user, and country of ultimate destination of the items, and set forth the person’s consent to an end-use check by the U.S. Government. To facilitate any future end-use checks by the U.S. Government, the UVL-listed person would also include its complete contact information in the UVL statement, including its physical address. Such a statement would, in effect, establish that the UVL-listed party knows that it is required to comply with the EAR and agrees to an end-use check. The statement would also provide the U.S. Government with some assurance that the U.S.-origin item would be delivered to an identified end user and end use and that the transaction will comply with the EAR. In the absence of such compliance, the UVL statement would assist the U.S. Government’s ability to take enforcement action.

BIS believes the proposed suspension of license exceptions, which would allow pre-shipment review by the U.S. Government of exports, reexports, and transfers (in-country) of certain controlled items involving persons listed on the UVL, coupled with the proposed requirement for exporters to obtain a UVL statement for exports, reexports, and transfers (in-country) involving such persons of items not subject to a license requirement, provides greater guidance on what steps are necessary in order to undertake an export, reexport, or transfer (in-

country) of items subject to the EAR involving a party to the transaction who is listed on the UVL

Specifically, when an export, reexport, or transfer (in-country) is otherwise eligible for a license exception, if a party to the transaction as described in § 748.5 of the EAR is listed on the UVL, the use of license exceptions is not authorized. Under these circumstances, an exporter must apply to BIS for a license. If an export, reexport, or transfer (in-country) involving a person listed on the UVL is not subject to a license requirement under the EAR, the possible availability of a license exception does not arise. In such a case, an exporter may proceed with the export, reexport, or transfer (in-country) once the exporter obtains the signed UVL statement proposed herein and files an AES record in accordance with § 758.1 of the EAR, as amended. The signed UVL statement is not needed for transactions in which a license is required because BIS oversight of the transaction resulting from the grant of the license renders a UVL statement unnecessary.

Fourth, BIS proposes to add the UVL to the EAR in Supplement No. 6 to Part 744. When adding a person to the UVL, BIS would list the person's name and address, and the date on which the person was added to the UVL by publication in the *Federal Register*. Updates to the UVL would continue to be published in the *Federal Register*, and would remain available on the BIS website. The UVL also would continue to be included in the Consolidated Screening List, available at www.export.gov.

Once published in the EAR, the UVL shall contain the names and addresses of foreign persons who are or have been parties to a transaction, as that term is described in § 748.5 of the EAR, involving the export, reexport, or transfer (in-country) of items subject to the EAR, and whose *bona fides* BIS has been unable to verify through an end-use check. Any changes to the

UVL would be published in the *Federal Register* as an amendment to the UVL.

In addition to adding the UVL to Supplement No. 6 to Part 744, BIS proposes adding to the regulations an overview of the UVL, the conditions it imposes with respect to exports, reexports, and transfers (in-country) to listed persons, the criteria for revising the UVL, and the procedures for requesting removal or modification of a UVL entry.

BIS adds a person to the UVL under certain circumstances. For example, in some instances, BIS may not be able to conduct an end-use check, such as a PLC or a PSV, at all because, among other potential reasons, BIS was unable to locate or contact the subject of the check or the host government declined to schedule the check in a timely manner. Alternatively, BIS may not be able to complete a satisfactory end-use check because, *inter alia*, the foreign party is unable to demonstrate its *bona fides* or the disposition of the items in question during the end-use check. In either circumstance, BIS may determine to add the foreign person to the UVL.

BIS removes a person listed on the UVL using certain procedures. The successful completion of an end-use check, or, in the limited circumstance where such a check cannot be completed due to lack of host government cooperation, a suitable alternative process to verify the *bona fides* of the foreign party at issue would be a prerequisite for removing persons from the UVL. One illustrative example of alternative authentication could involve the U.S. exporter or license applicant visiting the foreign person subject to the end-use check, at that person's request, and providing sufficient information to the U.S. Government to verify the foreign person's *bona fides* and satisfy questions relating to the end use and end user of the items in question. Procedures for requesting an alternative process to verify the *bona fides* of a

foreign person in this circumstance are identical to the procedures for requesting removal of a UVL listing, set forth in Section 744.15 of the EAR.

If BIS confirms the *bona fides* of the listed person, any subsequent determination to remove the foreign person from the UVL would be published in the *Federal Register*. Once a foreign person is removed from the UVL, the provisions in the EAR regarding persons listed on the Unverified List will no longer apply to that person, though other provisions in the EAR will continue to apply as appropriate. BIS is reviewing the entries of those parties who are currently on the UVL and will publish its determination of which, if any, of the current UVL-listed parties will be removed from the UVL at the time that this rule is published in final form. Until such time, any parties listed on the UVL will remain on the UVL unless separately removed through a *Federal Register* notice. BIS will subsequently regularly review the UVL for the purpose of identifying and implementing any needed corrections and updates.

Lastly, this rule proposes to modify the procedures for requesting removal of a person listed on the UVL by adding decisions on requests to remove or modify a UVL entry to the list of administrative actions that are not subject to Part 756 appeals. This would be accomplished through the proposed addition of § 744.15(d) of the EAR. Decisions regarding the removal or modification of UVL listings would now be made by the Deputy Assistant Secretary for Export Enforcement, based on a demonstration by the listed person of its *bona fides*.

Proposed amendment to Supplement No. 1 to part 730

Due to changes to § 744.15 of the EAR, which are described below, BIS proposes amending Supplement No. 1 to Part 730 of the EAR to include references to the two additional information collections associated with this proposed rule: (1) the UVL statement and (2) requests to remove or modify listings on the UVL. The collection and retention of the UVL

statement by private parties in connection with the export, reexport, or transfer (in-country) to a person listed on the UVL of items not subject to a license requirement under the EAR shall be made under Office of Management and Budget (OMB) control number 0694-0122 (“Licensing Responsibilities and Enforcement”). The submission of information to BIS by persons listed on the UVL in support of an appeal for removal a UVL listing will be made under OMB control number 0694-0134. Accordingly, BIS proposes to amend Supplement No. 1 to Part 730 of the EAR by adding a reference to proposed § 744.15 in connection with existing collection number 0694-0122, and by changing the title of existing collection number 0694-0134 to “Procedure for parties on the Entity List or Unverified List to Request Removal or Modification of their Listing” and adding a reference to proposed § 744.15 in connection with that collection number.

Proposed amendments to § 740.2

BIS proposes adding a new paragraph (a)(17) to the § 740.2 “Restrictions on all License Exceptions.” This paragraph would state that license exceptions may not be used where a party to the transaction as described in § 748.5 of the EAR is listed on the Unverified List.

Proposed new § 744.15 and amendment to § 756.1

BIS proposes adding a new section to Part 744 to set forth the new provisions pertaining to persons listed on the UVL. New section § 744.15 would provide an overview of the UVL, the conditions it imposes with respect to exports, reexports, and transfers (in-country) to listed persons, and the criteria for revising the UVL. This new section would also include the procedures for requesting removal or modification of a person on the UVL.

BIS also proposes to exclude appeals for removal of Unverified List entries from the provisions of Part 756 of the EAR. Requests for removal instead will be made according to the procedures set forth in proposed § 744.15 of the EAR. Accordingly, paragraph (a)(3) of § 756.1 of the EAR would be amended by adding a reference to decisions on requests to remove UVL entries made pursuant to proposed § 744.15 of the EAR.

Proposed new Supplement No. 6 to Part 744

The UVL would be added to the EAR in Supplement No. 6 to Part 744. Each listing would be grouped by country, and would be accompanied by the person's address(es) as well as the *Federal Register* citation and date the person was added to the UVL. In addition, the UVL would include a citation to § 744.15, indicating that exports, reexports, and transfers (in-country) where parties to the transactions are listed on the Unverified List are subject to the provisions of § 744.15.

Proposed amendment to § 758.1

BIS proposes adding a new paragraph (b)(8) of § 758.1 of the EAR, which would state that filing an AES record is required for all exports of items subject to the EAR where a party to the transaction as described in §748.5(d)-(f) is listed on the Unverified List, regardless of value or destination.

Proposed amendment to § 762.2

Paragraph (b) in § 762.2 of the EAR contains references to parts, sections, and supplements of the EAR which require the retention of records or contain recordkeeping provisions.

Proposed § 744.15 of the EAR contains a recordkeeping requirement related to the retention of UVL statements. Section 762.2(b)(13) of the EAR is currently reserved. BIS proposes to modify that paragraph to reference the UVL statement recordkeeping requirement in proposed § 744.15 of the EAR.

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013) has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under the following control numbers: 0694-0088, 0694-0122, 0694-0134, and 0694-0137. Specifically, BIS would be requesting a revision and extension of existing collection OMB 0694-0134 (Procedure for parties on the Entity List to Request Removal or Modification of their Listing) and non-substantive changes to OMB Control Numbers 0694-0088 (Simplified Network Application Processing and Multipurpose Application Form), 0694-0122 (Licensing Responsibilities and Enforcement), and 0694-0137 (License Exemptions and Exclusions).

This proposed rule, if published in final form, would slightly increase public burden in a collection of information approved by OMB under control number 0694-0088, which authorizes, among other things, export license applications. The removal of license exceptions for listed parties on the Unverified List would result in increased license applications being submitted to BIS by exporters. Total burden hours associated with the Paperwork Reduction Act and OMB control number 0694-0088 are expected to increase minimally, as the suspension of license exceptions will only affect transactions involving parties listed on the Unverified List and not all export transactions. If license exceptions are restricted from use, this rule will decrease public burden in a collection of information approved by OMB under control number 0694-0137 minimally, as this will only affect a very small number of individual listed parties. The increased burden under 0694-0088 would be reciprocal to the decrease of burden under 0694-0137, which would result in no change of burden to the public.

This proposed rule would also increase public burden in a collection of information under OMB control number 0694-0122, as a result of the exchange of UVL statements between private parties, and under OMB control number 0694-0134 as a result of appeals from persons listed on the UVL for removal of their listing. The total increase in burden hours associated with both of these collections is expected to be minimal, as they involve a limited number of persons listed on the UVL.

3. This proposed rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

Number of Small Entities

Currently, BIS does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be impacted by this rule, it acknowledges that this rule would impact some unknown number. This rule would affect exporters and freight forwarders, with obligations to apply for export licenses, obtain and retain UVL statements, and/or file AES records in connection with exports, reexports, or transfers (in-country) in which a person listed on the UVL is a party to the transaction. These requirements would apply to all entities proceeding with such transactions, regardless of size.

Conclusion

BIS is unable to determine whether there are a substantial number of small entities affected by this rule. However, this rule is not expected to affect a disproportionate number of small entities because it is directed at a limited number of foreign persons and will impact all export transactions to these persons, regardless of whether the exports are made or intended to be made by small, medium, or large entities. BIS has administered the UVL based on listing criteria similar to those proposed in this rule since 2002. This rule would impact transactions involving persons listed on the UVL, which currently has 36 persons listed. Due to the limited number of persons expected to be maintained on the UVL, BIS estimates that the number of transactions involving these persons represents only a small fraction of the total number of transactions recorded in AES. BIS estimates that regulated entities would incur minimal economic burdens on transactions involving UVL persons as a result of this rule because there are few transactions involving such persons and for those transactions where they are involved, there is no monetary fee to apply for a BIS license or file a record in AES. Moreover, obtaining a signed UVL statement from UVL persons for items not subject to a license requirement will result in minimal burden to U.S. exporters, as the statement can simply be copied from the EAR and forwarded to the UVL person for review and signature. The maintenance of any such UVL statement also will have minimal burden on U.S. exporters as the EAR already has similar recordkeeping requirements under Section 762.2 of the EAR. As a result, the requirements proposed by this rule would amount to very little economic burden.

For the reasons above, the Chief Counsel for Regulation certified that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

15 CFR Part 730

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

15 CFR Part 740

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

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 756

Appeals.

15 CFR Part 758

Export Clearance Requirements.

15 CFR Part 762

Recordkeeping.

Accordingly, 15 CFR Parts 730, 740, 744, 756, 758, and 762 of the Export Administration Regulations are proposed to be amended as follows:

Part 730 - [AMENDED]

1. The authority citation for 15 CFR part 730 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of September 11, 2012, 77 FR 56519 (September 12, 2012) ; Notice of November 1, 2012, 77 FR 66513 (November 5, 2012); Notice of January 17, 2013, 78 FR 4303 (January 22, 2013).

2. Supplement No. 1 to part 730 is amended by:

a. Removing the phrase "Part 758, and §748.4" and adding in its place "§§ 744.15(b) and 748.4 and Part 758" in the "Reference in the EAR" column of 0694-0122 row;

b. Removing the Title "Procedure for parties on the Entity List to Request Removal or Modification of their Listing" and adding in its place "Procedure for parties on the Entity List or the Unverified List to Request Removal or Modification of their Listing" in the Title Column of the 0694-0134 row; and

c. Removing the reference "§ 744.16" and adding in its place "§§ 744.15 and 744.16" in the Reference in the EAR column of the 0694-0134 row.

Part 740 - [AMENDED]

3. The authority citation for 15 CFR Part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

4. Section 740.2 is amended by adding paragraph (a)(17) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(17) A party to the transaction, as described in § 748.5 of the EAR, is listed on the Unverified List in Supplement No. 6 to Part 744, see § 744.15 of the EAR.

* * * * *

Part 744 - [AMENDED]

5. The authority citation for 15 CFR Part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of September 11, 2012, 77 FR 56519 (September, 12, 2012) ; Notice of November 1, 2012, 77 FR 66513 (November 5, 2012); Notice of January 17, 2013, 78 FR 4303 (January 22, 2013).

6. Part 744 is amended by adding § 744.15 to read as follows:

§ 744.15 Restrictions on Exports, Reexports and Transfers (in-country) to Persons Listed on the Unverified List.

(a) *General requirement.* In addition to the requirements set forth elsewhere in the EAR, exports, reexports, or transfers (in-country) of item(s) subject to the EAR involving parties to the transaction who are listed on the Unverified List may be made only in accordance with paragraph (b) of this section. The names and addresses of foreign persons subject to end-user controls based on the criteria described in paragraph (c) of this section are identified in the Unverified List found in Supplement No. 6 to this part. Requirements found elsewhere in the EAR also apply, including but not limited to any license requirements, the record filing

requirements pursuant to § 758.1(b)(8), and the restrictions on license exceptions described in § 740.2(a)(17).

(b) *UVL Statement.* Before proceeding with any export, reexport, or transfer (in-country) subject to the EAR that is not subject to a license requirement, involving a person listed on the Unverified List as a party described in §748.5 of the EAR, an exporter, reexporter, or transferor (in-country) must obtain a UVL statement from such person, according to the provisions set forth in this section. The statement must be retained in accordance with Part 762 of the EAR.

(1) One UVL statement may be used for multiple shipments of the same items between the same parties, so long as the party names, the description(s) of the items and the ECCNs are correct. If one UVL statement is used for multiple shipments, the exporter, reexporter, and transferor (in-country) must maintain a log or other record that identifies each shipment made pursuant to this section and the specific UVL statement that is associated with each shipment. The log or record must be retained in accordance with Part 762 of the EAR.

(2) The UVL statement must be in writing, signed by an individual of sufficient authority to legally bind the UVL party, and state the following:

(i) Name of UVL party; complete physical address (simply listing a post office is insufficient); telephone number; fax number; e-mail address; Web site (if available); and name of individual signing the UVL statement.

(ii) Agrees not to use the item(s) for any use prohibited by the United States Export Administration Regulations (EAR), 15 C.F.R. Parts 730-772, and agrees not to reexport or transfer (in-country) the item(s) to any destination, use or user prohibited by the EAR.

(iii) Declares that the end use, end user, and country of ultimate destination of the item(s) subject to the EAR are as follows: [INSERT END USE, END USER, AND COUNTRY OF ULTIMATE DESTINATION].

(iv) Agrees to cooperate with end-use checks, including a Pre-License Check or a Post-Shipment Verification, conducted by or on behalf of the Bureau of Industry and Security, U.S. Department of Commerce, for any item subject to the EAR in transactions to which they were a party in the last five years. This cooperation includes facilitating the timely conduct of the check and providing full and accurate information concerning the disposition of items subject to the EAR.

(v) Agrees to provide copies of this document and all other export, reexport or transfer (in-country) records required to be retained in Part 762 of the EAR.

(vi) Certifies that the individual signing the UVL Statement has sufficient authority to legally bind the party.

(c) *Criteria for revising the Unverified List.* (1) Foreign persons who are parties to an export, reexport, and transfer (in-country) subject to the EAR may be added to the Unverified List if BIS or federal officials acting on BIS's behalf cannot verify the *bona fides* (i.e., legitimacy and reliability relating to the end use and end user of items subject to the EAR) of such persons because an end-use check, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for reasons outside of the U.S. Government's control. The examples in paragraphs (c)(1)(i) through (iii) of this section provide an illustrative list of those circumstances.

- (i) During the conduct of an end-use check, the subject of the check is unable to demonstrate the disposition of items subject to the EAR.
 - (ii) The existence or authenticity of the subject of an end-use check cannot be verified (e.g., the subject of the check cannot be located or contacted).
 - (iii) Lack of cooperation by the host government authority prevents an end-use check from being conducted.
- (2) BIS may remove a person from the Unverified List when BIS is able to verify the *bona fides* of the listed person as an end user, consignee, or other party to exports, reexports, or transfers (in-country) involving items subject to the EAR by completing a PLC or PSV. In the limited circumstance involving a PLC or PSV that cannot be completed due to lack of host government cooperation, an alternative *bona fides* verification process may be determined by BIS to be sufficient. Such a determination is separate from those made by BIS pursuant to § 744.11(b) of the EAR, and should be requested through paragraph (d) of this section.
- (d) *Procedure for requesting removal of a person on the Unverified List.* Any person listed on the Unverified List may request that its listing be amended or removed.
- (1) All such requests, including reasons therefor and information that would verify the *bona fides*, i.e., legitimacy and reliability of the person listed on the Unverified List as an end user, consignee or other party to exports, reexports, and transfers (in-country) of items subject to the EAR, must be in writing and sent to: Director, Office of Enforcement Analysis, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Room 4065, Washington, D.C. 20230, via fax to (202) 482-0971, or by e-mail to [insert e-mail address].

(2) The Deputy Assistant Secretary for Export Enforcement will review such requests and will convey the decision on the request to the requester in writing based on an assessment of the listed person's *bona fides* as a party to exports, reexports, and transfers (in-country) subject to the EAR. That decision will be the final agency action on the request.

7. Part 744 is amended by adding Supplement No. 6 to read as follows:

Supplement No. 6 to Part 744 – Unverified List

Exports, reexports, and transfers (in-country) involving parties to the transaction who are listed in this supplement are subject to the restrictions outlined in § 744.15 of the EAR.

<u>Country</u>	<u>Listed Person and Address</u>	<u>Federal Register Citation and Date of Publication</u>
Reserved	Reserved	Reserved

Part 756 – [AMENDED]

8. The authority citation for 15 CFR Part 756 continues to read as follows:

Authority: 50 U.S.C. app 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

9. Section 756.1 is amended by revising paragraph (a)(3) to read as follows:

§ 756.1 Introduction.

(a) * * *

(3) A decision on a request to remove or modify an Entity List entry made pursuant to § 744.16 of the EAR or a decision on a request to remove an Unverified List entry made pursuant to § 744.15 of the EAR.

Part 758 - [AMENDED]

10. The authority citation for 15 CFR Part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

11. Section 758.1 is amended by adding paragraph (b)(8) to read as follows:

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

(b) * * *

(8) For all exports of items subject to the EAR where parties to the transaction, as described in § 748.5(d)-(f) of the EAR, are listed on the Unverified List (Supplement 6 to Part 744 of the EAR), regardless of value or destination.

Part 762 - [AMENDED]

12. The authority citation for 15 CFR Part 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

13. Section 762.2 is amended by revising paragraph (b)(13) to read as follows:

§ 762.2 Records to be retained.

(b) * * *

(13) §744.15(b), UVL statement as well as any logs or records created for multiple shipments;

* * * * *

Dated: September 3, 2013.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[Billing Code: 3510-33-P]

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