



This document is scheduled to be published in the Federal Register on 01/29/2014 and available online at <http://federalregister.gov/a/2014-01604>, and on FDsys.gov

Billing Code: 3510-33-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 736, 740, 744, 752, 754, 758, 766, 770, 772

[Docket No. 130829771-3771-01]

RIN: 0694-AF97

Export Administration Regulations: Editorial Clean-up of References to Foreign Trade Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final Rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to harmonize it with revisions made to the Census Bureau's Foreign Trade Regulations (FTR) by correcting citations, nomenclature, and procedures set forth in the EAR.

DATES: Effective Date of this rule is [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments on this rule may be via e-mail to publiccomments@bis.doc.gov or in hardcopy 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-AF97 in all comments and in the subject line of e-mail comments.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-2440 or by email at sharron.cook@bis.doc.gov.

SUPPLEMENTARY INFORMATION

Background

The Bureau of the Census (Census Bureau) amended its regulations, the Foreign Trade Regulations (FTR) 15 CFR Part 30, to implement a requirement for mandatory filing of export information through the Automated Export System (AES) or through *AESDirect* for all shipments where a Shipper's Export Declaration (SED) is required and to reflect new export reporting requirements, respectively on June 2, 2008 (73 FR 31555) and March 14, 2013 (78 FR 16366). These rules moved many requirements to different sections within the FTR and introduced new terminology, e.g., Electronic Export Information (EEI); they did not substantively change any of the requirements in the Export Administration Regulations (EAR). This rule revises many citation references in the EAR to the FTR, removes the term "Shipper's Export Declaration (SED)" and adds in its place "Electronic Export Information (EEI)," and makes other amendments to the EAR to harmonize it with the current FTR. This rule does not change any substantive portions of the EAR.

Section 732.5 Steps

The title of this section is changed from "Steps regarding Shipper's Export Declaration or Automated Export System record, Destination Control Statements, and recordkeeping" to

“Steps regarding Electronic Export Information (EEI) requirements, Destination Control Statement, and recordkeeping.” Paragraph (a) introductory paragraph “Step 27” title is revised from “Shipper’s Export Declaration (SED) or Automated Export System (AES) record” to read “Electronic Export Information (EEI) filing requirements.” All references to the SED are replaced with references to the EEI. The title of the Bureau of Census regulations is changed from “Foreign Trade Statistics Regulations (FTSR)” to “Foreign Trade Regulations (FTR).”

In paragraph (a)(1) the requirement text is updated to read, “You must report the correct license code that corresponds with your license authority (license or license exception) or designation (No License Required (NLR)) for your export on the EEI filing, as appropriate.” References are added to 15 CFR 30.6(b)(23) and Part III of Appendix B to 15 CFR Part 30 of the FTR. Also, a sentence is added to remind exporters that by reporting a code/symbol for a license exception on an EEI filing they are certifying that their transaction meets the criteria of that license exception. Additionally, it notifies exporters that AES checks certain license exception criteria against the data entered on the EEI, and that if the data conflicts with eligibility criteria of the license exception it will result in a fatal error in the AES system.

Paragraph (a)(1)(i) is redesignated as (a)(2) and the title is changed from “License number and expiration date” to “License number,” because the expiration date is no longer required. AES automatically checks whether the license has expired. A reference to 15 CFR 30.6(b)(5) of the FTR is added to this paragraph.

Paragraph (a)(1)(ii) is removed, as the requirement for entering the license exception authority is already addressed in paragraph (a)(1).

Paragraph (a)(1)(iii) is removed, as the requirement for entering the license code for the designation NLR is included in paragraph (a)(1). The requirements for entering license code

for NLR on the EEI and proper use of NLR are set forth in § 758.1(g)(3) of the EAR and do not need to be repeated here.

Paragraph (a)(2) “item description” is redesignated as (a)(3) and terminology and citation references are updated to harmonize with the FTR.

Paragraph (a)(3) “Entering the ECCN” is redesignated as (a)(4) and terminology and citation references are updated to harmonize with the FTR. In addition, this rule clarifies that “EAR99” must be entered in the Export Control Classification Number (ECCN) block of the EEI filing for items that are not classified under an ECCN for all licensed and license exception exports, and NLR exports of items having a reason for control other than or in addition to anti-terrorism (AT).

Supplement No. 2 to Part 736 – Administrative Orders

Paragraph (a)(3) is amended by removing the reference to the SED in paragraph (a)(3)(iv) and adding a new paragraph (a)(3)(v) to the definition of the terms “practice before BIS” and “appear before BIS.” These terms will now also include “reporting on behalf of another to the Census Bureau Electronic Export Information to the Automated Export System.”

Part 740 – License Exceptions

Section 740.1 is amended by revising paragraph (d). The Title is changed from “Shippers Export Declaration or Automated Export System Record” to “Electronic Export Information (EEI) filing.” This rule updates reference citations to the FTR and terminology to harmonize with the FTR.

Section 740.13 “License Exception TSU” is amended by revising footnote 3 to paragraph (d)(1) to correct FTR references and terminology.

Section 740.15 “License Exception AVS” is amended by revising paragraphs (c)(1)(iv) and (c)(2)(iv) to correct FTR references and terminology.

Section 744.7 Restrictions on certain exports to and for the use of certain foreign vessels or aircraft.

Section 744.7 is amended by revising paragraphs (b)(1)(iv) and (b)(2)(iv) to correct FTR references and terminology.

Part 752 Special Comprehensive License

Section 752.7 is amended by revising paragraph (b)(1) to replace Shipper’s Export Declaration with Electronic Export Information (EEI).

Section 752.15 is amended by revising paragraph (a) to correct terminology in order to harmonize with the FTR.

Part 754 Short Supply

Section 754.4 is amended by revising paragraph (c)(4) to correct FTR references and terminology.

Supplement No. 2 to Part 754 is amended by revising footnote 1 to correct terminology in order to harmonize with the FTR.

Part 758 – Export Clearance

Section 758.1 is revised to update FTR citations and terminology. Text that only pertained to FTR has been removed, e.g., the Note to paragraph (b) concerning FTR requirements for “in transit goods.”

In § 758.1(g)(1), the requirement to input the expiration date of the license is removed, because once the license number is entered, AES will check the expiration date of the license against the data BIS transmits to the AES system.

In § 758.1(g)(3), this rule removes the option to enter “TSPA” for exports consisting of technology or software outside the scope of the EAR. BIS no longer has any need to collect data on this subset of NLR exports; therefore, the symbol “TSPA” is no longer necessary. This rule also clarifies that the NLR designator is to be used only when no license is required for the export.

Section 758.2 Automated Export System (AES)

This section has been completely rewritten, in order to update the status and procedures for postdeparture filing (i.e., Option 4) in AES, to conform to the FTR.

Section 758.3 Responsibilities of parties to the transaction.

The Note to paragraph (b) is removed, because the FTR no longer has a definition for exporter.

Section 758.5 Conformity of documents and unloading of items.

Section 758.5 is amended by revising paragraphs (b), (c)(1), (c)(2)(i), (c)(2)(ii), and (d) to correct FTR references and terminology.

Section 758.7 Authority of the Office of Export Enforcement, the Bureau of Industry and Security, Customs offices and Postmasters in clearing shipments.

Section 758.7 is amended by revising paragraph (b)(1)(i) to correct FTR references and terminology.

Supplement No. 1 to Part 766 “Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases”

Supplement No. 1 to part 766 “Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases” is amended by revising paragraphs (III) (A) “Related Violations,” (III)(B)(8) “Mitigating Factors,” and (III)(B)(4) “Aggravating Factors,” to correct FTR references and terminology.

Section 770.2 Interpretations

Section 770.2 is amended by revising paragraphs (e)(2)(ii) and (f), to correct FTR references and terminology.

Part 772 Definitions of terms used in the EAR

Section 772.1 is amended by revising the definitions for the terms “Automated Export System (AES),” “export control document,” “exporter,” and “NLR” to correct FTR references and terminology. For the term “exporter” the last sentence that stated the FTR’s definition for the term exporter, which differed from the definition of the term in the EAR, is removed. The newly revised FTR does not define the term “exporter;” therefore, that last sentence no longer applies and is removed by this rule.

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 been designated a “not significant regulatory action,” under section 3(f) of Executive Order 12866.
2. The Department finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. The revisions made by this rule are administrative, not substantive, in nature and merely update the EAR to reflect changes to

regulations referenced therein. The rule does not affect the rights and obligations of the public. Because these revisions are not substantive changes to the EAR, it is unnecessary to provide prior notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. As stated above, these revisions do not alter any rights or obligations, but merely correct citations, nomenclature, and procedures set forth in the EAR so that those references are harmonized with revisions that have been made to the FTR. The waiver is necessary to avoid undue public confusion. As a result, no benefit would be gained by delaying this rule's effectiveness for 30 days. This final rule is exempt from the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) because no general notice of proposed rulemaking was required for this rule.

List of Subjects

15 CFR Parts 732, 740, 752, and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements

15 CFR Parts 736, 770 and 772

Exports

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism

15 CFR Part 754

Agricultural commodities, Exports, Forests and forest products, Horses, Petroleum,

Reporting and recordkeeping requirements

15 CFR Part 766

Administrative practice and procedure, confidential business information, Exports, Law enforcement, Penalties

Accordingly, Parts 732, 736, 740, 744, 752, 754, 758, 766, 770, and 772 of the Export Administration Regulations (15 CFR parts 730-774) are amended as follows:

Part 732 - [AMENDED]

1. The authority citation for 15 CFR Part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 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 8, 2013, 78 FR 49107 (August 12, 2013). 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; 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. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 7, 2013, 78 FR 27301 (May 9, 2013); Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

2. Section 732.5 is amended by revising the section heading and paragraph (a) to read as follows:

§ 732.5 Steps regarding Electronic Export Information (EEI) requirements, Destination Control Statements, and recordkeeping.

(a) *Step 27: Electronic Export Information (EEI) filing requirements.* Exporters or agents authorized to file EEI to the Automated Export System (AES), should review § 758.1 of the EAR to determine when the EAR requires EEI to be filed and what EEI data elements the EAR requires to be included. More detailed information about EEI filing procedures and requirements may be found in the Bureau of Census Foreign Trade Regulations (FTR) at 15 CFR Part 30. Reexporters and firms exporting from abroad may skip Steps 27 through 29 and proceed directly to § 732.6 of the EAR.

(1) *License code/license exception code (license code).* You must report the correct license code that corresponds with your license authority (license or license exception) or designation (No License Required (NLR)) for your export on the EEI filing, as appropriate. See § 758.1(g) of the EAR and 15 CFR 30.6(a)(23) and Part III of Appendix B to 15 CFR Part 30 of the FTR. Generally, conflicts of data elements with license exception criteria, e.g., ECCN or destination, will result in a fatal error in the AES system. By reporting a license code for a license exception on an EEI filing you are certifying that your transaction meets the criteria of that license exception. By reporting a license code of NLR you are certifying that no license is required for your export.

(2) *License number.* If you are exporting under the authority of a license, you must report the license number on the EEI filing. See 15 CFR 30.6(b)(5) of the FTR.

(3) *Item description.* You must report an item description identical to the item description on the license when a license is required, or report an item description sufficient in detail to permit review by the U.S. Government and verification of the Schedule B Number or the Harmonized Tariff Schedule of the United States (HTS) for license exception exports or exports for which No License is Required (NLR). See § 758.1(g) of the EAR; and 15 CFR 30.6(a)(13) of the FTR.

(4) *Entering the ECCN.* You must report the correct Export Control Classification Number (ECCN) or “EAR99” for items that are not classified under an ECCN on the EEI filing for all licensed and license exception exports, and “No License Required” (NLR) exports of items having a reason for control other than or in addition to anti-terrorism (AT). The only exception to this requirement would be the return of unwanted foreign origin items, meeting the provisions of License Exception TMP, under § 740.9(b)(3) of the EAR. See § 758.1(g) of the EAR and 15 CFR 30.6(b)(6) of the FTR.

Part 736 - [AMENDED]

3. The authority citation for 15 CFR Part 736 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. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; 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. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 7, 2013, 78 FR 27301 (May 9, 2013); Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

4. Supplement No. 2 to Part 736 is amended by:

- a. Removing the phrase “Shipper’s Export Declarations also are” from “Administrative Order One” and adding in its place “Electronic Export Information (EEI) filings via the Automated Export System (AES) are also”; and
- b. Revising paragraph (a)(3) of Administrative Order Two to read as follows:

Supplement No. 2 to Part 736—Administrative Orders

Administrative Order Two ***

(a) ***

(3) *Definition.* As used in this Administration Order, the terms “practice before BIS” and “appear before BIS” include:

(i) The submission on behalf of another of applications for export licenses or other documents required to be filed with BIS, or the execution of the same;

(ii) Conferences or other communications on behalf of another with officers or employees of BIS for the purpose of soliciting or expediting approval by BIS of applications for export

licenses or other documents, or with respect to quotas, allocations, requirements or other export control actions, pertaining to matters within the jurisdiction of BIS;

(iii) Participating on behalf of another in any proceeding pending before BIS;

(iv) Submission on behalf of another of a license or other export control document to U.S. Customs and Border Protection (CBP); and

(v) Reporting on behalf of another Electronic Export Information via the Automated Export System (AES) to CBP.

Part 740 - [AMENDED]

5. 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 8, 2013, 78 FR 49107 (August 12, 2013).

5A. Section 740.1 is amended by revising paragraph (d) to read as follows:

§ 740.1 Introduction.

(d) *Electronic Export Information (EEI) filing.* You must enter on any required EEI filing the correct License Code that corresponds to the appropriate license exception symbol (e.g., LVS,

GBS, CIV) and the correct Export Control Classification Number (ECCN) (e.g., 4A003, 5A002) for all exports of items under a license exception. Items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3), are excepted from this requirement. See § 758.1 of the EAR and 15 CFR Part 30 of the FTR for EEI requirements.

6. Section 740.13 is amended by revising footnote 3 to paragraph (d)(1) to read as follows:

§ 740.13 Technology and software—unrestricted (TSU).

(d) ***

(1) ***

³ Pursuant to 15 CFR § 30.37(f) of the Foreign Trade Regulations (FTR), Electronic Export Information (EEI) via the Automated Export System (AES) is required for mass-market software.

7. Section 740.15 is amended by revising paragraphs (c)(1)(iv) and (c)(2)(iv), to read as follows:

§ 740.15 Aircraft and vessels (AVS).

(c) ***

(1) ***

(iv) Shipped as cargo for which Electronic Export Information (EEI) is filed to the Automated Export System (AES) in accordance with the requirements of the Foreign Trade Regulations (FTR) (15 CFR Part 30), except EEI is not required to be filed when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their own use, see 15 CFR 30.37(o) of the FTR.

(2) ***

(iv) Shipped as cargo for which Electronic Export Information (EEI) is filed to the Automated Export System (AES) record is filed in accordance with the requirements of the Foreign Trade Regulations (FTR) (15 CFR Part 30), except EEI is not required to be filed when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations, see 15 CFR 30.37(o) of the FTR.

Part 744 - [AMENDED]

8. 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 January 17, 2013, 78 FR 4303 (January 22, 2013) Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

9. Section 744.7 is amended by revising paragraphs (b)(1)(iv) and (b)(2)(iv) to read as follows:

§ 744.7 Restrictions on certain exports to and for the use of certain foreign vessels or aircraft.

(b) ***

(1) ***

(iv) Shipped as cargo for which Electronic Export Information (EEI) is filed to the Automated Export System (AES) in accordance with the requirements of the Foreign Trade Regulations (FTR) (15 CFR Part 30), except EEI is not required to be filed when any of the

commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their own use, see 15 CFR 30.37(o) of the FTR.

(2) ***

(iv) Shipped as cargo for which Electronic Export Information (EEI) is filed to the Automated Export System (AES) in accordance with the requirements of the Foreign Trade Regulations (FTR) (15 CFR Part 30), except EEI is not required to be filed when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations, see 15 CFR 30.37(o) of the FTR.

Part 752 - [AMENDED]

10. The authority citation for 15 CFR Part 752 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

11. Section 752.7 is amended by revising paragraph (b)(1) to read as follows:

§ 752.7 Direct shipment to customers.

(b) ***

(1) Exports by an SCL holder. The SCL holder may make a direct shipment by entering on the Electronic Export Information (EEI) the name and address of the customer as ultimate consignee and adding the notation “by order of (name and address of consignee requesting the direct shipment).” The notation must appear below the item description in the commodity description field and must cite the SCL number followed by the three digit number of the consignee requesting the “by order of” shipment.

12. Section 752.15 is amended by revising paragraph (a) to read as follows:

§ 752.15 Export clearance.

(a) *Electronic Export Information (EEI)*. The EEI filing to the Automated Export System (AES) covering an export made under an SCL must be prepared in accordance with requirements of the Foreign Trade Regulations (15 CFR Part 30) and § 758.1 of the EAR.

(1) *Item descriptions*. Item descriptions on the EEI must indicate specifically the ECCN and item description conforming to the applicable CCL description and incorporating any additional information where required by Schedule B (e.g., type, size, name of specific item, etc.).

(2) *Value of shipments*. There is no value limitation on shipments under the SCL; however, you must indicate the value of each shipment on EEI.

(3) *SCL number*. The EEI must include the Special Comprehensive License (SCL) number in the License Number field and the name of the SCL’s approved consignee in the Ultimate Consignee field to whom the shipment is authorized.

Part 754 - [AMENDED]

13. The authority citation for 15 CFR Part 754 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); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

14. Section 754.2 is amended by revising paragraphs (h)(2) and (i)(3), to read as follows:

§ 754.2 Crude oil.

(h) ***

(2) A person exporting crude oil pursuant to this License Exception must enter on any required Electronic Export Information (EEI) filing to the Automated Export System (AES) the correct license code that corresponds to “SS-SPR.”

(i) ***

(3) A person exporting crude oil pursuant to this License Exception must enter on any required Electronic Export Information (EEI) filing to the Automated Export System (AES) the correct license code that corresponds to “SS-SAMPLE.”

15. Section 754.4 is amended by revising paragraph (c)(4) to read as follows:

§ 754.4 Unprocessed western red cedar.

(c) ***

(4) A person exporting any item pursuant to this license exception must enter on any required Electronic Export Information (EEI) filing to the Automated Export System (AES) the correct license code that corresponds to “SS-WRC.”

16. Supplement No. 2 to Part 754 is amended by revising footnote 1 to read as follows:

Supplement No. 2 to Part 754—Unprocessed Western Red Cedar

¹ Schedule B Numbers are provided only as a guide to proper completion of the Electronic Export Information (EEI) filing to the Automated Export System (AES).

Part 758 - [AMENDED]

17. 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 8, 2013, 78 FR 49107 (August 12, 2013).

18. Sections 758.1 and 758.2 are revised to read as follows:

§ 758.1 The Electronic Export Information (EEI) filing to the Automated Export System (AES).

(a) The *Electronic Export Information (EEI) filing to the Automated Export System (AES)*. The EEI is used by the Bureau of Census to collect trade statistics and by the Bureau of Industry and Security for export control purposes. The EEI collects basic information such as the names and addresses of the parties to a transaction; the Export Control Classification Number (ECCN) (when required), the Schedule B number or Harmonized Tariff Schedule of the United States (HTS) number, the description, quantity and value of the items exported; and the license authority for the export. The EEI is a statement to the United States Government that the transaction occurred as described.

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

(1) For all exports of items subject to the EAR that are destined to a country in Country Group E:1 of Supplement No. 1 to Part 740 of the EAR regardless of value;

(2) For all exports subject to the EAR that require submission of a license application, regardless of value or destination;

(3) For all exports of “600 series” items enumerated in paragraphs .a through .x of a “600 series” ECCN regardless of value or destination, including exports to Canada;

(4) For all exports under license exception Strategic Trade Authorization (STA);

(5) For all exports of commodities and mass market software subject to the EAR when the value of the commodities or mass market software classified under a single Schedule B Number (or HTS) is over \$2,500, except as exempted by the Foreign Trade Regulations (FTR) in 15 CFR Part 30 and referenced in paragraph (c) of this section;

(6) For all exports of items subject to the EAR that will be transshipped through Canada to a third destination, where the export would require EEI or license if shipped directly to the final destination from the United States (see 15 CFR 30.36(b)(2) of the FTR); or

(7) For all items exported under authorization Validated End-User (VEU).

(c) *Exemptions.* A complete list of exemptions from the EEI filing requirement is set forth in the 15 CFR 30.35 through 30.40 of the FTR. Some of these FTR exemptions have elements in common with certain EAR license exceptions. An FTR exemption may be narrower than an EAR license exception. The following references are provided in order to direct you to the FTR exemptions that relate to EAR license exceptions:

(1) License Exception Baggage (BAG), as set forth in § 740.14 of the EAR. See 15 CFR 30.37(x) of the FTR;

(2) License Exception Gift Parcels and Humanitarian Donations (GFT), as set forth in § 740.12 of the EAR. See 15 CFR 30.37(h) of the FTR;

(3) License Exception Aircraft and Vessels (AVS), as set forth in § 740.15 of the EAR. See 15 CFR 30.37(o) (5) of the FTR;

(4) License Exception Governments and International Organizations (GOV), as set forth in § 740.11 of the EAR. See 15 CFR 30.39 and 30.40 of the FTR;

(5) License Exception Technology and Software Under Restriction (TSR), as set forth in § 740.6 of the EAR. See 15 CFR 30.37(f) of the FTR; or

(6) License Exception Temporary Imports, Exports, and Reexports (TMP) “tools of trade”, as set forth in § 740.9(a)(2)(i) of the EAR. See 15 CFR 30.37(b) of the FTR.

(d) *Notation on export documents for exports exempt from EEI filing requirements.* When an exemption from filing the EEI applies, the export authority (license exception or NLR) of all the items must be entered on the loading document (e.g., Cargo Declaration, manifest, bill of lading, (master) air waybill) by the person responsible for preparing the document, see 15 CFR 30.35 of the FTR. This requirement is intended to parallel the Bureau of Census requirement, so that notations as to the basis for the EEI exemption and the license authority are entered in the same place and manner (see 15 CFR 30.45(e) and (f) of the FTR for detailed requirements). The loading document must be available for inspection by government officials, along with the items, prior to lading on the carrier.

(e) *Filing the Electronic Export Information (EEI) to the AES.* The person who files the EEI to the AES must be in the United States at the time of filing. The person who transmits the EEI to the AES must be a certified AES participant in accordance with 15 CFR 30.5 of the FTR. The person who transmits EEI to the AES, whether exporter (U.S. principal party in interest) or agent, is responsible for the truth, accuracy, and completeness of the EEI, except insofar as that person can demonstrate that he or she reasonably relied on information furnished by others.

(f) *The EEI is an export control document.* The EEI is a statement to the United States Government. The EEI is an export control document as defined in Part 772 of the EAR. False statements made thereon may be a violation of § 764.2(g) of the EAR. When EEI is filed to the AES, the filer of the EEI represents the following:

(1) Export of the items described on the EEI filing is authorized under the terms and conditions of a license issued by BIS; is in accordance with the terms and conditions of a license exception; is authorized under “NLR” as no license is required for the shipment; or is not subject to the EAR;

(2) Statements on the EEI filing are in conformity with the contents of any license issued by BIS, with the possible exception of the exporter block in routed transactions; and

(3) All information shown on the EEI filing is true, accurate, and complete.

(g) *Export control information on the EEI filing in AES.* For each item on the EEI filing, you must report the license authority (license number, License Exception symbol, or No License Required (NLR) designator), the Export Control Classification Number (ECCN) (when required), and the item description in the designated blocks. The item description must be stated in Commerce Control List (CCL) terms. If those terms are inadequate to meet the Bureau of Census requirements, the FTR requires that you give enough additional detail to

permit verification of the Schedule B Number (or Harmonized Tariff Schedule of the United States (HTS) number). See 15 CFR Part 30, Appendix B, Part III of the FTR for license codes.

(1) *Exports under a license.* When exporting under the authority of a license, you must report on the EEI filing to the AES the license code that corresponds to the license, license number, the ECCN, and an item description identical to the item description on the license.

(2) *Exports under a license exception.* You must report on any required EEI filing to the AES the ECCN and the correct License Exception symbol (e.g., LVS, GBS, CIV) for the License Exception(s) and the license code/license exception code that corresponds to the license exception under which you are exporting. Items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3), are exempted from entering the ECCN. See also § 740.1(d) of the EAR.

(3) *No License Required (NLR) exports.* You must report on any required EEI filing to the AES the correct license code/license exception code when using the “NLR” designation for the items that are subject to the EAR but not listed on the Commerce Control List (CCL) (i.e., items are designated as EAR99) (FTR license code “C33”), and when the items to be exported are listed on the CCL but are not subject to a license requirement. In addition, you must enter the correct ECCN on any required EEI filing for all items being exported under the NLR provisions that have a reason for control other than or in addition to anti-terrorism (AT).

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

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

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

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

Note to paragraph (h)(1): The Bureau of Census Foreign Trade Regulations impose additional requirements for a power of attorney or other written authorization. See 15 CFR 30.3(f) of the FTR.

(2) This requirement for a power of attorney or other written authorization is a legal requirement aimed at ensuring that the parties to a transaction negotiate and understand their responsibilities. The absence of a power of attorney or other written authorization does not

prevent BIS from using other evidence to establish the existence of an agency relationship for purposes of imposing liability.

(i) *Filing the Electronic Export Information (EEI)*. The EEI must be filed with the United States Government in the manner prescribed by the Bureau of Census Foreign Trade Regulations (15 CFR Part 30).

§ 758.2 Automated Export System (AES).

The Bureau of the Census' Foreign Trade Regulations (FTR) (15 CFR Part 30) contain provisions for filing Electronic Export Information (EEI) using the Automated Export System (AES). In order to use AES, you must apply directly to the Bureau of the Census (Census Bureau) for certification and approval (see 15 CFR 30.5(a) of the FTR). Two electronic filing options (predeparture and postdeparture) are available for transmitting EEI. Predeparture filing requires that all information be reported in AES prior to export (15 CFR 30.4(a) and (b) of the FTR). Postdeparture filing is available only for approved companies (approved by the Census Bureau, U.S. Customs and Border Protection, and BIS) and requires no information to be transmitted prior to export with complete information reported postdeparture no later than five (5) calendar days after the date of exportation (15 CFR 30.4(c) of the FTR).

(a) *Census Bureau's postdeparture application process*. Exporters, or agents applying on behalf of an exporter, may apply for postdeparture privileges by submitting a Letter of Intent to

the Bureau of Census (Census Bureau) in accordance with 15 CFR 30.5(a) of the FTR. The Census Bureau will distribute the Letter of Intent to BIS and other agencies participating in the postdeparture approval process. Any agency may notify the Census Bureau that an applicant has failed to meet its acceptance standards, and the Census Bureau will provide a denial letter to the applicant naming the denying agency. If the Census Bureau receives neither notification of denial, nor a request for an extension from the agency within 30 days of the date of referral of the letter of intent to the agency, the applicant is deemed to be approved by that agency. (15 CFR 30.5(c) of the FTR).

(b) *BIS postdeparture evaluation criteria.* BIS will consider the grounds for denial of postdeparture filing status set forth in 15 CFR 30.5(c)(1) of the FTR, as well as the additional grounds for denial set forth in this paragraph.

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

(2) Any party to the export transaction is contained on BIS's Denied Party, Entity Lists, [SDN], or Unverified List;

(3) Exports are destined to a country in Country Group E:1 (Supplement No.1 to Part 740 of the EAR);

(4) Exports are made under License Exception Strategic Trade Authorization (STA); are made under authorization Validated End User (VEU); or are “600 series” items; or

(5) Exports containing items that require a BIS license or have an ECCN controlled for reasons other than Anti-Terrorism only or Encryption Items.

(c) *Contacts for assistance.* (1) For additional information on the AES in general, please contact the Foreign Trade Division, U.S. Census Bureau, (800) 549-0595, ext. 1.

(2) For information about BIS's postdeparture approval process for items subject to the EAR, contact: Director, Office of Technology Evaluation, Bureau of Industry and Security, (202) 482-4933, facsimile: (202) 482-5361.

§ 758.3 [Amended]

19. Section 758.3 is amended by removing the Note to paragraph (b).

20. Section 758.5 is amended by revising paragraphs (b), (c)(1), (c)(2), and (d), to read as follows:

§ 758.5 Conformity of documents and unloading of items.

(b) *Conformity of documents.* When a license is issued by BIS, the information entered on related export control documents (e.g., Electronic Export Information (EEI) filing, bill of lading or air waybill) must be consistent with the license.

(c) *Issuance of the bill of lading or air waybill.* (1) *Ports in the country of the ultimate consignee or end user.* No person may issue a bill of lading or air waybill that provides for delivery of licensed items to any foreign port located outside the country of an intermediate consignee, ultimate consignee, or end user named on the BIS license and in the EEI filing.

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

(ii) *Unlicensed items.* For shipments of items that do not require a license, the exporter may designate optional ports of unloading in EEI filing and on other export control documents, so long as the optional ports are in countries to which the items could also have been exported without a license.

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

21. Section 758.7 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 758.7 Authority of the Office of Export Enforcement, the Bureau of Industry and Security, Customs offices and Postmasters in clearing shipments.

(b) ***

(1) ***

(i) *Purpose of inspection.* All items declared for export are subject to inspection for the purpose of verifying the items specified in the Electronic Export Information (EEI) filing, or if there is no EEI filing, the bill of lading or other loading document covering the items about to be exported, and the value and quantity thereof, and to assure observance of the other provisions of the Export Administration Regulations. This authority applies to all exports within the scope of the Export Administration Act or Export Administration Regulations whether or not such exports require a license issued by BIS. The inspection may include, but is not limited to, item identification, technical appraisal (analysis), or both.

Part 766 - [AMENDED]

22. The authority citation for 15 CFR Part 766 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 8, 2013, 78 FR 49107 (August 12, 2013).

23. Supplement No. 1 to Part 766 is amended by revising the “Related Violations” paragraph in section III.A., revising paragraph 8. under the heading “Mitigating Factors” in section III.B., and revising paragraph 4. under the heading “Aggravating Factors” in section III.B. to read as follows:

Supplement No. 1 to Part 766—Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases

III. How BIS Determines What Sanctions Are Appropriate in a Settlement

A. ***

Related Violations: Frequently, a single export transaction can give rise to multiple violations. For example, an exporter who mis-classifies an item on the Commerce Control List may, as a result of that error, export the item without the required export license and file Electronic Export Information (EEI) to the Automated Export System (AES) that both misstates the applicable Export Control Classification Number (ECCN) and erroneously identifies the export as qualifying for the designation “NLR” (no license required). In so doing, the exporter commits three violations: one violation of § 764.2(a) of the EAR for the unauthorized export and two violations of § 764.2(g) for the two false statements on the EEI filing to the AES. It is within the discretion of BIS to charge three separate violations and settle the case for a penalty that is less than would be appropriate for three unrelated violations under otherwise similar

circumstances, or to charge fewer than three violations and pursue settlement in accordance with that charging decision. In exercising such discretion, BIS typically looks to factors such as whether the violations resulted from knowing or willful conduct, willful blindness to the requirements of the EAR, or gross negligence; whether they stemmed from the same underlying error or omission; and whether they resulted in distinguishable or separate harm.

B. Specific Mitigating and Aggravating Factors:

Mitigating Factors

8. The violation was not likely to involve harm of the nature that the applicable provisions of the EAA, EAR or other authority (e.g., a license condition) were intended to protect against; for example, a false statement on an Electronic Export Information (EEI) filing to the Automated Export System (AES) that an export was “NLR,” when in fact a license requirement was applicable, but a license exception was available.

Aggravating Factors

4. The violation was likely to involve harm of the nature that the applicable provisions of the EAA, EAR or other authority (e.g., a license condition) are principally intended to protect

against, e.g., a false statement on an Electronic Export Information (EEI) filing to the Automated Export System (AES) that an export was destined for a non-embargoed country, when in fact it was destined for an embargoed country.

Part 770 - [AMENDED]

24. The authority citation for 15 CFR Part 770 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 8, 2013, 78 FR 49107 (August 12, 2013).

25. Section 770.2 is amended by revising paragraphs (e)(2)(ii) and (f), to read as follows:

§ 770.2 Item interpretations.

(e) ***

(2) ***

(ii) When preparing the Electronic Export Information (EEI) on the Automated Export System (AES), a system being shipped complete (i.e., machine and control unit), should be reported under the Schedule B number for each machine. When either a control unit or a machine is shipped separately, it should be reported under the Schedule B number appropriate for the individual item being exported.

(f) Interpretation 6: “Parts,” “accessories,” and equipment exported as scrap. “Parts,” “accessories,” or equipment that are being shipped as scrap should be described on the EEI filing to the AES in sufficient detail to be identified under the proper ECCN. When commodities declared as “parts,” “accessories,” or equipment are shipped in bulk, or are otherwise not packaged, packed, or sorted in accordance with normal trade practices, the Customs Officer may require evidence that the shipment is not scrap. Such evidence may include, but is not limited to, bills of sale, orders and correspondence indicating whether the commodities are scrap or are being exported for use as “parts,” “accessories,” or equipment.

Part 772 - [AMENDED]

26. The authority citation for 15 CFR Part 772 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 8, 2013, 78 FR 49107 (August 12, 2013).

27. Section 772.1 is amended by revising the following definitions “Automated Export System (AES)”, “export control document”, “exporter”, and “NLR”, to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

Automated Export System (AES). AES is a nationwide system operational at all ports and for

all methods of transportation through which export shipment data required by multiple agencies is filed electronically to U.S. Customs and Border Protection, using the efficiencies of Electronic Data Interchange (EDI). AES allows the export information to be collected electronically and edited immediately. For more information about AES, visit the Bureau of Census Web site at: <http://www.census.gov/foreign-trade/aes/index.html> or see 15 CFR Part 30 the Foreign Trade Regulations

Export control document. A license; application for license; any and all documents submitted in accordance with the requirements of the EAR in support of, or in relation to, a license application; application for International Import Certificate; Delivery Verification Certificate or similar evidence of delivery; Electronic Export Information (EEI) on the Automated Export System (AES) presented in connection with shipments to any country; a Dock Receipt or bill of lading issued by any carrier in connection with any export subject to the EAR and any and all documents prepared and submitted by exporters and agents pursuant to the export clearance requirements of Part 758 of the EAR; a U.S. exporter's report of request received for information, certification, or other action indicating a restrictive trade practice or boycott imposed by a foreign country against a country friendly to the United States, submitted to the U.S. Department of Commerce in accordance with the provisions of Part 760 of the EAR; Customs Form 7512, Transportation Entry and Manifest of Goods, Subject to Customs Inspection and Permit, when used for Transportation and Exportation (T.& E.) or Immediate Exportation (I.E.); and any other document issued by a U.S. Government agency as evidence of the existence of a license for the purpose of loading onto an exporting carrier or otherwise facilitating or effecting an export from the United States or any reexport of any item requiring

a license.

Exporter. The person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States.

NLR. NLR (“no license required”) is a symbol entered on the Electronic Export Information filing on the Automated Export System certifying that no license is required.

DATED: January 21, 2014

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Assistant Secretary for Export Administration

[FR Doc. 2014-01604 Filed 01/28/2014 at 8:45 am; Publication Date: 01/29/2014]