apply for the license on behalf of the principal.

NOTE TO PARAGRAPH (h)(1): The Bureau of Census Foreign Trade Statistics Regulations impose additional requirements for a power of attorney or other written authorization. See 15 CFR 30.4(e) of the FTSR.

(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) Submission of the SED or AES record. The SED or AES record must be submitted to the U.S. Government in the manner prescribed by the Bureau of Census Foreign Trade Statistics Regulations (15 CFR part 30).

§ 758.2 Automated Export System (AES).

The Census Bureau’s Foreign Trade Statistics Regulations (FTSR) (15 CFR Part 30) contain provisions for filing Shipper's Export Declarations (SEDs) electronically using the Automated Export System (AES). In order to use AES, you must apply directly to the Census Bureau for certification and approval through a Letter of Intent (see 15 CFR 30.60(b) and Appendix A to part 30 of the FTSR). Three AES filing options are available for transmitting shipper’s export data. Option 1 is the standard paper filing of the SED, while the other two options are electronic. Option 2 requires the electronic filing of all information required for export prior to export (15 CFR 30.61(a) and 30.63); Option 4 is available only for approved filers (approval by Census Bureau, Bureau of Customs and Border Protection, BIS and other agencies) and requires no information to be transmitted prior to export, with complete information transmitted within 10 working days of exportation (15 CFR 30.61(b) and 30.62).

(a) Census’ Option 4 application process. Exporters, or agents applying on behalf of an exporter, may apply for Option 4 filing privileges by submitting a Letter of Intent to the Census Bureau in accordance with 15 CFR 30.60(b) and 30.62 of the FTSR. The Census Bureau will distribute the Letter of Intent to BIS and other agencies participating in the Option 4 approval process. Any agency may notify Census 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. See 15 CFR 30.62(b) of the FTSR.

(b) BIS Option 4 application process. When AES filers wish to use Option 4 for exports of items that require a BIS license, those filers must seek separate approval directly from BIS by completing a questionnaire and certification. (Separate BIS approval is not required for the use of Option 4 in connection with exports that do not require a BIS license.) The questionnaire and certification should be mailed to: U.S. Department of Commerce, Bureau of Industry and Security, The Office of Enforcement Analysis, 14th & Pennsylvania Avenue, N.W., Room 4065, Washington, D.C. 20230.

(1) Questionnaire. The following questions must be answered based on your experiences over the past five years. If the answer to either of the questions is “yes”, it must be followed with a full explanation. Answering “yes” to either of the questions will not automatically prevent your participation in Option 4. BIS will consider the facts of each case and any remedial action you have taken to determine whether your reliability is sufficient to participate in this program.

(i) Have you been charged with, convicted of, or penalized for, any violation of the EAR or any statute described in §766.25 of the EAR?

(ii) Have you been notified by any government official of competent authority that you are under investigation for any violation of the EAR or
§ 758.3 Responsibilities of parties to the transaction.

All parties that participate in transactions subject to the EAR must comply with the EAR. Parties are free to structure transactions as they wish, and to delegate functions and tasks as they deem necessary, as long as the transaction complies with the EAR. However, acting through a forwarding or other agent, or delegating or redelegating authority, does not in and of itself relieve anyone of responsibility for compliance with the EAR.

(a) Export transactions. The U.S. principal party in interest is the exporter, except in certain routed transactions. The exporter must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization. The exporter may hire forwarding or other agents to perform various tasks, but doing so does not necessarily relieve the exporter of compliance responsibilities.

(b) Routed export transactions. All provisions of the EAR, including the end-use and end-user controls found in part 744 of the EAR, and the General Prohibitions found in part 736 of the EAR, apply to routed export transactions. The U.S. principal party in interest is the exporter and must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization, unless the U.S. principal party in interest obtains from the foreign principal party in interest a writing wherein the foreign principal party in interest expressly assumes responsibility for determining licensing requirements and obtaining license authority, making the U.S. agent of the foreign principal party in interest the exporter for EAR purposes. One writing may cover multiple transactions between the same principals. See §748.4(a)(3) of the EAR.