

shipment value. In instances where a shipment contains a mixture of individual Schedule B commodity numbers valued \$2,500 or less and individual Schedule B commodity numbers valued over \$2,500, only those commodity numbers valued \$2,500 or more need be reported on a Shipper's Export Declaration.

\* \* \* \* \*

Dated: July 29, 1998.

**James F. Holmes**

*Acting Director, Bureau of the Census*

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**DEPARTMENT OF COMMERCE**

**Bureau of Export Administration**

**15 CFR Part 758**

[Docket No. 980730200-8200-01]

RIN 0694-AB71

**Shipper's Export Declaration Requirements for Exports Valued Less Than \$2,500**

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

**ACTION:** Final rule.

**SUMMARY:** To further the Bureau of Export Administration's efforts in harmonizing the Export Administration Regulations (EAR) with the Bureau of the Census Foreign Trade Statistics Regulations, this final rule amends the EAR by revising the Shipper's Export Declaration (SED) provisions to expand the country scope of the \$2,500 exemption for filing an SED with the Bureau of the Census. This final rule also clarifies that the Harmonized Tariff Schedule number may be used in lieu of the Schedule B number on the Shipper's Export Declaration. This final rule will not significantly affect the paperwork burden on U.S. industry.

**DATES:** This rule is effective August 27, 1998.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to further its efforts in harmonizing the EAR with the Bureau of the Census Foreign Trade Statistics Regulations (FTSR). Specifically, this rule amends § 758.1(e)(1)(i)(A) of the EAR by revising

the Shipper's Export Declaration (SED) requirements for exports of items valued at \$2,500 or less. With this change, no SED is required for any shipment, other than a shipment made under a license issued by BXA or shipments to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, if the shipment is valued at \$2,500 or less per Schedule B Number. Conforming amendments to the FTSR will be published in the **Federal Register** by the Bureau of the Census.

This rule also amends §§ 758.1 and 758.3 of the EAR by replacing the phrase "or other number acceptable to the Foreign Trade Division, Bureau of the Census" with the phrase "or Harmonized Tariff Schedule number." This will clarify an existing policy of the Bureau of the Census to allow exporters to use either the Schedule B number or the Harmonized Tariff Schedule number when preparing the SED.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 13, 1998 (63 FR 44121, August 17, 1998).

**Rulemaking Requirements**

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0607-0152.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of

proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

**List of Subjects in 15 CFR Part 758**

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

Accordingly, part 758 of the Export Administration Regulations (15 CFR Parts 730-799) is amended as follows:

1. 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. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 13, 1997 (62 FR 43629, August 15, 1997).

**PART 758—[AMENDED]**

2. Section 758.1 is amended by revising the paragraph (e)(1)(i)(A) to read as follows:

**§ 758.1 Export clearance requirements**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) Any shipment, other than a shipment made under a license issued by BXA or shipments to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria if the shipment is valued at \$2,500 or less per Schedule B Number. The Schedule B number of an item is shown in the current edition of the Schedule B, *Statistical Classification of Domestic and Foreign Commodities Exported from the United States*. As used in this paragraph (e), "shipment" means all items classified under a single Schedule B number (or Harmonized Tariff Schedule number if the Schedule B number is not available), shipped on the same carrier, from one exporter to one importer. The Foreign Trade Statistics Regulations of the Bureau of the Census (15 CFR part 30) shall govern the valuation of items when determining whether a shipment meets the \$2,500 threshold of this paragraph.

\* \* \* \* \*

**§ 758.3 [Amended]**

3. Section 758.3 is amended by revising the parenthetical phrase "(or other number acceptable to the Foreign Trade Division, Bureau of the Census)" to read "(or Harmonized Tariff Schedule number)" in the following places:

- § 758.3(f)(1)  
 § 758.3(g)(1)  
 § 758.3(g)(2)(i)  
 § 758.3(g)(2)(ii)—2 references  
 § 758.3(g)(3)  
 § 758.3(h)(1)

Dated: August 18, 1998

**R. Roger Majak,**

*Assistant Secretary for Export Administration.*

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**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 1**

**Orders Eligible for Post-execution Allocation**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") has amended Commission Regulation 1.35(a-1) to allow bunched orders for eligible customers to be placed on a contract market without specific customer account identification either at the time of order placement or at the time of report of execution. Specifically, the amendment exempts from the customer account identification requirements of Regulation 1.35(a-1)(1), (2)(i), and (4) bunched futures and/or option orders placed by eligible account managers on behalf of eligible customer accounts. The amendment permits bunched orders entered on behalf of these accounts to be allocated no later than the end of the day on which the order is executed.

**EFFECTIVE DATE:** October 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** I. Michael Greenberger, Director; Alan L. Seifert, Deputy Director; John C. Lawton, Associate Director; Duane C. Andersen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418-5430.

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**I. Background**

**A. Current Regulatory Requirements**

The Commission's Regulations 1.35(a-1) recordkeeping requirements, in effect since March 24, 1972, specify that customer orders must be recorded promptly and include customer account identification at the time of order entry and the time of report of execution. Specifically, Commission Regulation 1.35(a-1)(1) requires that each futures commission merchant ("FCM") and each introducing broker ("IB") receiving a customer's order immediately prepare a written record of that order, which includes an account identifier for that customer. Regulation 1.35(a-1)(2)(i) requires that each member of a contract market who receives a customer's order on the floor of a contract market that is not in writing immediately prepare a written record of that order, including the appropriate customer account identification. Regulation 1.35(a-1)(4) requires, among other things, that each member of a contract market reporting the execution of a customer's order from the floor of a contract market include the account identification on a written record of that order.

**B. Prior Regulatory Action**

On June 8, 1992, the Commission published for public comment a proposed amendment to Chicago Mercantile Exchange ("CME") Rule 536 ("1992 proposal").<sup>1</sup> The amendment would have exempted from CME customer account designation requirements certain orders placed by a limited group of investment managers on behalf of specified institutional accounts. The orders would have been required to be allocated prior to the end of the day. The Commission received 31 comments, which were addressed in the Commission's subsequent proposed amendment to Regulation 1.35, discussed below.<sup>2</sup>

On May 3, 1993, the Commission published for public comment proposed amendments to Regulation 1.35(a-1) designed to accommodate the CME proposal ("1993 proposal")<sup>3</sup> and the related comments thereon. In addition to amending Regulations 1.35(a-1)(1), (2), and (4), the Commission proposed to add paragraphs 1.35(a-1)(5) and (6). Paragraph (5), which addressed the placement of bunched orders and the use of predetermined allocation formulas, was superseded by the Commission's Notice of Interpretation and Approval Order, published May 9, 1997.<sup>4</sup> This Order approved the National Futures Association ("NFA") Interpretative Notice to NFA Compliance Rule 2-10 Relating to the Allocation of Block Orders for Multiple Accounts which established standards and procedures for allocating orders pursuant to predetermined allocation schemes.<sup>5</sup>

Paragraph (6) was the Commission's followup to CME's 1992 proposal. Paragraph (6) proposed allowing the placement of certain bunched "intermarket" orders without customer account identification and permitting the allocation of those orders at the end of the day. The Commission stated that the proposed regulation would encourage and facilitate institutional participation in the futures markets subject to customer protection requirements that were consistent with the sophistication of the institutional

<sup>1</sup> 57 FR 24251 (June 8, 1992).

<sup>2</sup> Twenty-six of the comments evidenced support for the proposed rule amendment, four were opposed to the amendment, and one recommended caution.

<sup>3</sup> "Account Identification for Orders Submitted on Behalf of Multiple Customer Accounts," 58 FR 26274 (May 3, 1993).

<sup>4</sup> 62 FR 25470 (May 9, 1997).

<sup>5</sup> The Order also provided additional Commission guidance regarding bunched orders and allocation procedures. The guidance provided therein has since been published as Appendix C to Part One of the Commission's regulations.