

Bur. of Industry and Security, Comm.

§ 756.2

NOTE 1: 4403 heading in the Schedule B 2014 pertains to “wood in the rough, whether or not stripped of bark or sapwood, or roughly squared (not including lumber of heading 4407).”

NOTE 2: The 6-digit Harmonized System sub-heading 4403.10 and the 10-digit Harmonized System code 4407.10.0102 in Schedule B 2014 state that ‘treated’ means “treated with paint, stain, creosote or other preservatives.”

NOTE 3: The 4407 heading in the Schedule B 2014 refers to ‘lumber’ as “wood sawn or

chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6mm (.236 inch).”

NOTE 4: Section IX—Chapter 44 of Schedule B 2014, Statistical Note 3 states, “for the purpose of heading 4407, the term ‘rough’ includes wood that has been edged, resawn, crosscut or trimmed to smaller sizes but it does not include wood that has been dressed or surfaced by planing on one or more edges or faces or has been edge-glued or end-glued.”

[79 FR 34412, June 17, 2014]

SUPPLEMENT NO. 3 TO PART 754 [RESERVED]

PART 756—APPEALS AND JUDICIAL REVIEW

Sec.

756.1 Introduction.

756.2 Appeal from an administrative action.

756.3 Judicial review of agency action.

AUTHORITY: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

SOURCE: 61 FR 12851, Mar. 25, 1996, unless otherwise noted.

§ 756.1 Scope.

Section 756.2 describes the procedures applicable to appeals from administrative actions taken under the Export Administration Act (EAA) or the Export Administration Regulations (EAR). (In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C). Section 756.3 describes the procedures under which the Bureau of Industry and Security (BIS) can safeguard national security information when agency action is under judicial review.

[85 FR 63012, Oct. 6, 2020]

§ 756.2 Appeal from an administrative action.

(a) *Scope.* Any person directly and adversely affected by an administrative action taken by BIS may appeal to the Under Secretary for reconsideration of that administrative action. The following types of administrative actions are not subject to the appeals procedures described in this part:

(1) Issuance, amendment, revocation, or appeal of a regulation. (These re-

quests may be submitted to BIS at any time.)

(2) Denial or probation orders, civil penalties, sanctions, or other actions under parts 764 and 766 of the EAR, except that, any appeal from an action taken under § 766.25 and any appeal from an action taken in accordance with § 766.23 to make an action taken under § 766.25 applicable to a related person shall be subject to the appeals procedures described in this part.

(3) A decision on a request to remove or modify an Entity List entry made pursuant to § 744.16 of the EAR, a decision on a request to remove or modify an Unverified List entry made pursuant to § 744.15 of the EAR, or a request to remove or modify a Military End User entry made pursuant to § 744.21(b) of the EAR.

(4) A decision on whether License Exception Strategic Trade Authorization (STA) is available for “600 series” “end items” pursuant to § 740.20(g) of the EAR.

(b) *Review and appeal officials.* The Under Secretary may delegate to the Deputy Under Secretary for Industry and Security or to another BIS official the authority to review and decide the appeal. In addition, the Under Secretary may designate any employee of the Department of Commerce to be an appeals coordinator to assist in the review and processing of an appeal under this part. If such employee is not an employee of BIS, such designation may be made only with the concurrence of the head of the operating unit in which that employee is employed. The responsibilities of an appeals coordinator may include presiding over informal hearings.

(c) *Appeal procedures*—(1) *Filing*. An appeal under this part must be received by the Under Secretary for Industry and Security, Bureau of Industry and Security, U.S. Department of Commerce, Room 3898, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230 not later than 45 days after the date appearing on the written notice of administrative action.

(2) *Content of appeal*. The appeal must include a full written statement in support of appellant's position. The appeal must include a precise statement of why the appellant believes the administrative action has a direct and adverse effect and should be reversed or modified. The Under Secretary may request additional information that would be helpful in resolving the appeal, and may accept additional submissions. The Under Secretary will not ordinarily accept any submission filed more than 30 days after the filing of the appeal or of any requested submission.

(3) *Request for informal hearing*. In addition to the written statement submitted in support of an appeal, an appellant may request, in writing, at the time an appeal is filed, an opportunity for an informal hearing. The Under Secretary may grant or deny a request for an informal hearing. Any hearings will be held in the District of Columbia unless the Under Secretary determines, based upon good cause shown, that another location would be better.

(4) *Informal hearing procedures*—(i) *Presentations*. The Under Secretary shall provide an opportunity for the appellant to make an oral presentation based on the materials previously submitted by the appellant or made available by the Department in connection with the administrative action. The Under Secretary may require that any facts in controversy be covered by an affidavit or testimony given under oath or affirmation.

(ii) *Evidence*. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the Under Secretary to be relevant and material to the proceeding, and not unduly repetitious, will be received and considered.

(iii) *Procedural questions*. The Under Secretary has the authority to limit

the number of people attending the hearing, to impose any time or other limitations deemed reasonable, and to determine all procedural questions.

(iv) *Transcript*. A transcript of an informal hearing shall not be made, unless the Under Secretary determines that the national interest or other good cause warrants it, or the appellant requests a transcript. If the appellant requests a transcript, the appellant will be responsible for paying all expenses related to production of the transcript.

(v) *Report*. Any person designated by the Under Secretary to conduct an informal hearing shall submit a written report containing a summary of the hearing and recommend action to the Under Secretary.

(d) *Decisions*—(1) *Determination of appeals*. In addition to the documents specifically submitted in connection with the appeal, the Under Secretary shall consider any recommendations, reports, or relevant documents available to BIS in determining the appeal, but shall not be bound by any such recommendation, nor prevented from considering any other information, or consulting with any other person or groups, in making a determination. The Under Secretary may adopt any other procedures deemed necessary and reasonable for considering an appeal. The Under Secretary shall decide an appeal within a reasonable time after receipt of the appeal. The decision shall be issued to the appellant in writing and contain a statement of the reasons for the action.

(2) *Effect of the determination*. The decision of the Under Secretary shall be final.

(e) *Effect of appeal*. Acceptance and consideration of an appeal shall not affect any administrative action, pending or in effect, unless the Under Secretary, upon request by the appellant and with opportunity for response, grants a stay.

[61 FR 12851, Mar. 25, 1996, as amended at 62 FR 25467, May 9, 1997; 65 FR 14860, Mar. 20, 2000; 70 FR 8250, Feb. 18, 2005; 71 FR 34009, June 13, 2006; 85 FR 63012, Oct. 6, 2020; 85 FR 83804, Dec. 23, 2020]

§ 756.3 Judicial review of agency action.

(a) *Definition.* For purposes of this section, the term *agency action* has the same meaning given such term in 5 U.S.C. 551(13), *i.e.*, includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

(b) *Classified national security information.* In any judicial review of any agency action under the EAR, if such action was based in whole or in part on classified national security information as defined in Executive Order 13526 (December 29, 2009), such information may be submitted to the reviewing court *ex parte* and *in camera*. This paragraph (b) does not confer or imply any right to review in any tribunal, judicial or otherwise.

[85 FR 63012, Oct. 6, 2020]

PART 758—EXPORT CLEARANCE REQUIREMENTS AND AUTHORITIES

Sec.

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

758.2 Automated Export System (AES).

758.3 Responsibilities of parties to the transaction.

758.4 Use of export license.

758.5 Conformity of documents and unloading of items.

758.6 Destination control statement and other information furnished to consignees.

758.7 Authorities of the Bureau of Industry and Security, Office of Export Enforcement (OEE).

758.8 Return or unloading of cargo.

758.9 Other applicable laws and regulations.

758.10 Entry clearance requirements for temporary imports.

758.11 Export clearance requirements for firearms and related items.

AUTHORITY: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

SOURCE: 61 FR 12852, Mar. 25, 1996, unless otherwise noted.

§ 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 Bu-

reau 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 or E:2 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 9x515 or “600 series” items enumerated or otherwise described in paragraphs .a through .x of a 9x515 or “600 series” ECCN regardless of value or destination, including exports to Australia, Canada, and the United Kingdom;

(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 Australia, Canada, or the United Kingdom to a third destination, where the export would require EEI or license if shipped directly to the final

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destination from the United States (see 15 CFR 30.36(b)(2) of the FTR);

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

(8) For all exports of tangible items subject to the EAR where parties to the transaction, as described in § 748.5(d) through (f) of the EAR, are listed on the Unverified List (supplement no. 6 to part 744 of the EAR), regardless of value or destination; or

(9) For all exports, except for exports authorized under License Exception BAG, as set forth in § 740.14 of the EAR, of commodities controlled under ECCNs 0A501.a or .b, 0A506, or 0A507, shotguns with a barrel length less than 18 inches controlled under ECCNs 0A502 or 0A508, or ammunition controlled under ECCN 0A505 except for .c, regardless of value or destination, including exports to Australia, Canada, and the United Kingdom.

(10) For all exports of items on the Commerce Control List to the People's Republic of China, Russia, or Venezuela, regardless of value, unless the export may be made under the exemption listed under paragraph (c)(4) of this section.

NOTE 1 TO PARAGRAPH (b)(10): Paragraph (b)(10) applies to exports to Hong Kong, as this destination is considered a part of the People's Republic of China under the EAR, even if the AES requirements state that the destination filed in EEI is to be listed as Hong Kong.

(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;

NOTE 1 TO PARAGRAPH (c)(1): See the export clearance requirements for exports of firearms controlled under ECCNs 0A501.a or .b, 0A506, or 0A507, shotguns with a barrel length less than 18 inches controlled under ECCNs 0A502 or 0A508, or ammunition controlled under ECCN 0A505, authorized under

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License Exception BAG, as set forth in § 740.14 of the EAR.

(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)(1) 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 USPPPI and USPPPI identification blocks in routed transactions or any name change approved by BIS in writing in accordance with §750.7(c)(2) of the EAR; 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), unless the items are destined to China, Russia, or Venezuela. For items destined to China, Russia, or Venezuela, you must enter the correct ECCN on any required EEI filing regardless of reason for control.

(4) *Exports of firearms and related items.* This paragraph (g)(4) includes two separate requirements under paragraphs (g)(4)(i) and (ii) of this section that are used to better identify exports of certain firearms under the EAR. Paragraph (g)(4)(i) of this section is limited to certain EAR authorizations. Paragraph (g)(4)(ii) of this section applies to all EAR authorizations that require EEI filing in AES.

(i) *Identifying firearms by manufacturer, model, caliber, and serial number in the EEI filing in AES.* For any export authorized under License Exception TMP or a BIS license authorizing a temporary export of items controlled under ECCNs 0A501.a or .b, 0A506, or 0A507 or shotguns with a barrel length less than 18 inches controlled under ECCNs 0A502 or 0A508, in addition to any other required data for the associated EEI filing, you must report the manufacturer, model, caliber, and serial number of the exported items. The requirements of this paragraph (g)(4)(i)

also apply to any other export authorized under a BIS license that includes a condition or proviso on the license requiring the submission of this information specified in paragraph (g) of this section when the EEI is filed in AES.

(ii) *Identifying firearms and certain “parts,” “components,” devices, “accessories,” and “attachments” by “items” level classification or other control descriptor in the EEI filing in AES.* For any export of items controlled under ECCNs 0A501.a or .b, 0A506, 0A507, shotguns with a barrel length less than 18 inches controlled under ECCNs 0A502 or 0A508.a.1, or .a.2, or “parts,” “components,” devices, “accessories,” or “attachments” controlled under 0A509.a, .b, .c, or .d, in addition to any other required data for the associated EEI filing, the exporter must include the items paragraph classification or other control descriptor as specified in paragraphs (g)(4)(ii)(A) through (F) for ECCNs 0A501, 0A502, 0A506, 0A507, 0A508, or 0A509, as applicable, as the first text to appear in the Commodity description block in the EEI filing in AES. (See § 743.4 of the EAR for the use of this information for ECCNs 0A501.a or .b, 0A506.a or .b, and 0A507.a, or .b for conventional arms reporting).

(A) If exporting firearms controlled under 0A501, enter .a or .b, as applicable;

(B) If exporting shotguns with a barrel length less than 18 inches controlled under 0A502, enter .SB;

(C) If exporting semi-automatic rifles controlled under 0A506, enter .a or .b, as applicable;

(D) If exporting semi-automatic pistols controlled under 0A507, enter .a or .b, as applicable;

(E) If exporting semi-automatic shotguns controlled under 0A508, enter .a or .b, as applicable; or

(F) If exporting “parts,” “components,” devices, “accessories,” or “attachments” controlled under ECCN 0A509, enter .a, .b, .c, .d, or .e, as applicable.

NOTE 2 TO PARAGRAPH (g)(4): If a commodity described in paragraph (g)(4) of this section is exported under License Exception TMP under § 740.9(a)(6) of the EAR for inspection, test, calibration, or repair is not consumed or destroyed in the normal course of authorized temporary use abroad, the commodity must be disposed of or retained in

one of the ways specified in § 740.9(a)(14)(i), (ii), or (iii) of the EAR. For example, if a commodity described in this paragraph (g)(4) was destroyed while being repaired after being exported under § 740.9(a)(6), the commodity described in this paragraph (g)(4) would not be required to be returned. If the entity doing the repair returned a replacement of the commodity to the exporter from the United States, the import would not require an EAR authorization. The entity that exported the commodity described in this paragraph (g)(4) and the entity that received the commodity would need to document this as part of their recordkeeping related to this export and subsequent import to the United States.

(5) *Exports of .z items that meet or exceed the performance parameters of ECCN 3A090 or 4A090.* This paragraph (g)(5) imposes a requirement for identifying .z items by “items” level classification in the EEI filing in AES. For any export of .z items controlled under ECCNs 3A001, 4A003, 4A004, 4A005, 5A002, 5A004, 5A992, 5D002, or 5D992 in addition to any other required data for the associated EEI filing, you must include the items paragraph classification (*i.e.*, .z), when applicable, as the first text to appear in the Commodity description block in the EEI filing in AES.

(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 3 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).

[79 FR 4617, Jan. 29, 2014, as amended at 79 FR 32626, June 5, 2014; 79 FR 34221, June 16, 2014; 79 FR 48661, Aug. 18, 2014; 80 FR 3466, Jan. 23, 2015; 80 FR 43319, July 22, 2015; 83 FR 38021, Aug. 3, 2018; 85 FR 4178, Jan. 23, 2020; 85 FR 23465, Apr. 28, 2020; 85 FR 83792, Dec. 23, 2020; 86 FR 46595, Aug. 19, 2021; 88 FR 73497, Oct. 25, 2023; 89 FR 28601, Apr. 19, 2024; 89 FR 34709, Apr. 30, 2024]

§ 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) Cen-

sus 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 or E:2 (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 of 9x515 or "600 series" items.

(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.

[79 FR 4617, Jan. 29, 2014, as amended at 79 FR 27437, May 13, 2014; 80 FR 43319, July 22, 2015]

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§ 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.

(c) *Information sharing requirements.* In routed export transactions where the foreign principal party in interest assumes responsibility for determining and obtaining licensing authority, the U.S. principal party in interest must, upon request, provide the foreign principal party in interest and its forwarding or other agent with the correct Export Control Classification

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Number (ECCN), or with sufficient technical information to determine classification. In addition, the U.S. principal party in interest must provide the foreign principal party in interest or the foreign principal's agent any information that it knows will affect the determination of license authority, see § 758.1(g) of the EAR.

(d) *Power of attorney or other written authorization.* In routed export transactions, a forwarding or other agent that represents the foreign principal party in interest, or who applies for a license on behalf of the foreign principal party in interest, must obtain a power of attorney or other written authorization from the foreign principal party in interest to act on its behalf. See § 748.4(b)(2) and § 758.1(h) of the EAR.

[65 FR 42572, July 10, 2000, as amended at 79 FR 4619, Jan. 29, 2014]

§ 758.4 Use of export license.

(a) *License valid for shipment from any port.* An export license issued by BIS authorizes exports from any port of export in the United States unless the license states otherwise. Items that leave the United States at one port, cross adjacent foreign territory, and reenter the United States at another port before being exported to a foreign country, are treated as exports from the last U.S. port of export.

(b) *Shipments against expiring license.* Any item requiring a license that has not departed from the final U.S. port of export by midnight of the expiration date on an export license may not be exported under that license unless the shipment meets the requirements of paragraphs (b)(1) or (2) of this section.

(1) BIS grants an extension; or

(2) Prior to midnight on the date of expiration on the license, the items:

(i) Were laden aboard the vessel;

(ii) Were located on a pier ready for loading and not for storage, and were booked for a vessel that was at the pier ready for loading; or

(iii) The vessel was expected to be at the pier for loading before the license expired, but exceptional and unforeseen circumstances delayed it, and BIS or the U.S. Customs Service makes a judgment that undue hardship would

result if a license extension were required.

(c) *Reshipment of undelivered items.* If the consignee does not receive an export made under a license because the carrier failed to deliver it, the exporter may reship the same or an identical item, subject to the same limitations as to quantity and value as described on the license, to the same consignee and destination under the same license. If an item is to be reshipped to any person other than the original consignee, the shipment is considered a new export and requires a new license. Before reshipping, satisfactory evidence of the original export and of the delivery failure, together with a satisfactory explanation of the delivery failure, must be submitted by the exporter to the following address: Operations Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230.

(d) *Exports against license with approved name changes.* If you are exporting against a license with approved name changes under § 750.7(c)(2) of the EAR, prior to using that export license you are required to include in the respective name field in AES (e.g., in the USPPPI name field in AES), the new name followed by the original name in this format “[new name] f.k.a. [original name].” This reporting requirement would be completed by the authorized filer of the electronic export information (EEI) in AES. Although not required, the exporter may include a copy of the BIS written response approving the non-material name changes in accordance with § 750.7(c)(2) of the EAR. If the items have already been exported against the license by the time the name changes are approved, you are not required to report this additional information in AES, but you still must follow the record-keeping requirements in part 762 of the EAR.

[65 FR 42572, July 10, 2000, as amended at 78 FR 13470, Feb. 28, 2013; 79 FR 32626, June 5, 2014]

§ 758.5 Conformity of documents and unloading of items.

(a) *Purpose.* The purpose of this section is to prevent items licensed for ex-

port from being diverted while in transit or thereafter. It also sets forth the duties of the parties when the items are unloaded in a country other than that of the ultimate consignee or end user as stated on the export license.

(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).

(e) *Procedures for unscheduled unloading—(1) Unloading in country where no license is required.* When items are unloaded in a country to which the items could be exported without a license issued by BIS, no notification to BIS is required. However, any persons disposing of the items must continue to

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comply with the terms and conditions of any License Exception, and with any other relevant provisions of the EAR.

(2) *Unloading in a country where a license is required.* (i) When items are unloaded in a country to which the items would require a BIS license, no person may effect delivery or entry of the items into the commerce of the country where unloaded without prior written approval from BIS. The carrier, in ensuring that the items do not enter the commerce of the country, may have to place the items in custody, or under bond or other guaranty. In addition, the carrier must inform the exporter and BIS of the unscheduled unloading in a time frame that will enable the exporter to submit its report within 10 days from the date of unscheduled unloading. The exporter must within 10 days of the unscheduled unloading report the facts to and request authorization for disposition from BIS using either: mail, fax, or E-mail. The report to BIS must include:

(A) A copy of the manifest of the diverted cargo;

(B) Identification of the place of unloading;

(C) Statement that explains why the unloading was necessary; and

(D) A proposal for disposition of the items and a request for authorization for such disposition from BIS.

(ii) *Contact information.* U.S. Department of Commerce, Bureau of Industry and Security, Office of Exporter Services, Room 2099B, 14th and Pennsylvania Avenue, NW., Washington, DC 20230; phone number 202-482-0436; facsimile number 202-482-3322; and E-Mail address: rp2@bis.doc.gov.

[65 FR 42573, July 10, 2000, as amended at 72 FR 3946, Jan. 29, 2007; 78 FR 13470, Feb. 28, 2013; 78 FR 22726, Apr. 16, 2013; 79 FR 4619, Jan. 29, 2014]

§ 758.6 Destination control statement and other information furnished to consignees.

(a) The exporter must incorporate the following information as an integral part of the commercial invoice whenever items on the Commerce Control List are shipped (*i.e.*, exported in tangible form), unless the shipment (*i.e.*, the tangible export) may be made under License Exception BAG or GFT

(see part 740 of the EAR) or the item is designated as EAR99:

(1) The following statement: “These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations” and

(2) The ECCN(s) for any 3A001.z, 3A090, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, 5A992.z, 9x515 or “600 series” “items” being shipped (*i.e.*, exported in tangible form). For the seven ECCNs with a .z paragraph, the requirement to include the classification only applies to commodities specified under the .z paragraphs. If the commodity is specified under any other paragraph in one of those seven ECCNs, then the requirement under this paragraph is not applicable. For ECCN 3A090, identify the commodity as either 3A090.a, .b, or .c.

NOTE 1 TO PARAGRAPH (a): In paragraph (a)(1), the term ‘authorized’ includes exports, reexports and transfers (in-country) designated under No License Required (NLR).

NOTE 2 TO PARAGRAPH (a): The phrase ‘country of ultimate destination’ means the country specified on the commercial invoice where the ultimate consignee or end user will receive the items as an “export.”

NOTE 3 TO PARAGRAPH (a): The phrase ‘or as otherwise authorized by U.S. law and regulations’ is included because the EAR contain specific exemptions from licensing (*e.g.*, EAR license exceptions and NLR designations) and do not control the reexport of foreign-made items containing less than a de minimis amount of controlled content. See § 734.4 and supplement no. 2 to part 748.

(b) [Reserved]

[81 FR 54731, Aug. 17, 2016, as amended at 88 FR 73497, Oct. 25, 2023; 89 FR 96818, Dec. 5, 2024]

§ 758.7 Authorities of the Bureau of Industry and Security, Office of Export Enforcement (OEE).

(a) *Actions to assure compliance with export laws and regulations.* OEE officials and any other officials of the United States designated by OEE are authorized and directed to take appropriate action to enforce the authorities granted to the Secretary under the laws and regulations of the United States, including ECRA, 13 U.S.C. 305, 22 U.S.C. 401, 50 U.S.C. 1701 *et seq.*, the EAR, and the Foreign Trade Regulations (FTR) (15 CFR part 30). This includes, but is not limited to, assuring that:

(1) Exports, reexports, and transfers (in-country) without a license issued by BIS are either outside the scope of the license requirements of the EAR or authorized by a license exception and comply with the terms of the license exception;

(2) Exports, reexports, transfers (in-country) purporting to be authorized by licenses issued by BIS are, in fact, so authorized and the transaction complies with the terms of the license;

(3) Accurate EEI filings have been made for exports as required by this part, the FTR, and other federal regulations; and

(4) The activities of U.S. persons, wherever located, which are subject to a license requirement pursuant to §744.6 of the EAR, are authorized by and comply with the terms of a BIS license.

(b) *Types of actions.* In carrying out the authorities granted to, and exercised by, the Secretary pursuant to ECRA, 13 U.S.C. 305, 22 U.S.C. 401, 50 U.S.C. 1701 *et seq.*, the EAR, the FTR, and other applicable laws and regulations of the United States, including the authority to control the export, re-export, and transfer (in-country) of items, in any form, subject to the jurisdiction of the United States, whether by U.S. or foreign persons; control the activities of U.S. persons, wherever located, as described in §744.6 of the EAR; ensure compliance with export controls; monitor shipments and other means of transfer; conduct investigations; and issue orders, OEE officials and any other officials of the United States designated by OEE are author-

ized to take the types of enforcement actions described below.

(1) *Inspection, search, and detention of items*—(i) *Purpose of inspection, search, and detention.* All items subject to export laws and regulations administered or enforced by the Secretary that have been, are being, or are about to be exported, reexported, or transferred (in-country) are subject to inspection, search, and detention. The scope of inspection may include, but is not limited to, item identification; technical appraisal (analysis) or both; verifying the accuracy of the EEI filing, or if there is no EEI filing, the air waybill, bill of lading or other loading document covering the item about to be exported, reexported, or transferred (in-country); and verifying the value and quantity of such item.

(ii) *Place of inspection, search, and detention.* Inspection, search, and detention may take place at any location inside or outside of the United States, to include, but not limited to, the borders of the United States, all ports of exit, the premises of freight forwarders, bonded warehouses, foreign trade zones, and manufacturing, transportation, and storage facilities.

(iii) *Technical identification.* Where, in the judgment of the official making the inspection, the item cannot be properly identified, a sample may be taken for more detailed examination or for laboratory analysis.

(A) *Obtaining samples.* The sample will be obtained by the official making the inspection in accordance with the provisions for sampling imported merchandise. The size of the sample will be the minimum representative amount necessary for identification or analysis. This will depend on such factors as the physical condition of the material (whether solid, liquid, or gas) and the size and shape of the container.

(B) *Notification.* When a sample is taken, the exporter, reexporter, or transferor, or their agent(s), and the ultimate consignee will be notified by letter from an OEE official, documenting the port of export, reexport, or other place of inspection, date of sampling, BIS license number (if any) or other authorization, invoice number, quantity of sample taken, description of item, marks and packing case

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numbers, and manufacturer's number for the item. A copy of the letter will be placed in the container that had been opened by the inspecting official, and a copy will be retained by the inspecting official's office.

(C) *Disposal of samples.* Samples will be disposed of in accordance with the U.S. Customs and Border Protection procedure for imported commodities.

(2) *Inspection and production of books, records, and other information.* OEE officials are authorized to require any person subject to export laws and regulations administered or enforced by the Secretary, including, but not limited to, exporters, reexporters, transferors, or their agent(s), and owners and operators of carriers or their agents, as well as intermediate consignees, ultimate consignees, and end users, and their agent(s) to produce for inspection and copying any books, records and other information, including, but not limited to, invoices, orders, letters of credit, inspection reports, technical documentation, packing lists, shipping documents and instructions, and correspondence.

(3) *Questioning of individuals.* OEE officials are authorized to question any person, including, but not limited to, the owner or operator of a carrier and the carrier's agent(s), as well as the exporter, reexporter, transferor (in-country), or their agent(s).

(4) *Prohibiting lading.* OEE officials may prevent the lading of items on a conveyance.

(5) *Inspection, search, and detention of conveyance.* OEE officials are authorized to inspect, search, and detain any conveyance at any time to determine whether items have been, are being, or are about to be exported, reexported, or transferred (in-country). Inspection, search, and detention of a conveyance may take place at any location inside or outside of the United States, to include, but not limited to, the borders of the United States, all ports of exit, the premises of freight forwarders, bonded warehouses, foreign trade zones, and manufacturing, transportation, and storage facilities.

(6) *Seizure of property.* OEE officials are authorized to seize any property, tangible or intangible, when there is probable cause to believe that such

property is subject to administrative forfeiture (nonjudicial civil forfeiture or summary forfeiture), civil judicial forfeiture, or criminal forfeiture. Seizures of property subject to forfeiture may take place at any location inside or outside of the United States, to include, but not limited to, the borders of the United States, all ports of exit, the premises of freight forwarders, bonded warehouses, foreign trade zones, and manufacturing, transportation, and storage facilities.

(7) *Administrative forfeiture authority.* OEE is authorized to initiate administrative forfeiture (nonjudicial civil forfeiture or summary forfeiture) proceedings and forfeit property in accordance with the procedures set forth in 18 U.S.C. 981(d) and the Customs laws (19 U.S.C. 1602 *et seq.*).

(8) *Enforcement activity.* (i) All BIS actions taken to implement, administer, and enforce the authorities granted to the Secretary shall be conducted pursuant to the U.S. Constitution and all applicable laws and regulations, including judicially recognized exceptions to the requirement for a search warrant under the Fourth Amendment, for example, consent of the person to be searched, exigent circumstances, searches incident to a lawful arrest, and border searches.

(ii) BIS may enter into any such agreements (*e.g.*, memoranda of understanding) with other Federal agencies as deemed necessary by BIS to execute the authorities set forth in this part in a lawful and orderly manner.

(iii) BIS shall issue additional guidance as necessary to ensure the lawful and orderly execution of the Secretary's authorities.

(iv) Nothing in this section is intended to limit or abridge BIS law enforcement officers from exercising their lawful authority in carrying out their official duties.

[85 FR 73414, Nov. 18, 2020]

§ 758.8 Return or unloading of cargo.

(a) *Carrier.* As used in this section, the term "carrier" includes a connecting or on-forwarding carrier, as well as the owner, charterer, agent, master, or any other person in possession, control, or charge of the vessel,

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aircraft, vehicle, or other kind of conveyance, whether such person is located in the United States or in a foreign country.

(b) *Ordering return or unloading of shipment.* In order to ensure compliance with export laws and regulations administered or enforced by the Secretary, OEE officials, or any other official of the United States designated by OEE, may, with respect to a particular export, reexport, or transfer (in-country), order any carrier to return or unload the shipment. For the purpose of this section, furnishing a copy of the order to any person included within the definition of carrier will be sufficient notice of the order to the carrier. The carrier must, as ordered:

(1) Unload the shipment and make it available to OEE officials for search and inspection; or

(2) Return the shipment to the United States or cause it to be returned; or

(3) Unload the shipment at a port of call and take steps to assure that it is placed in custody under bond or other guaranty not to enter the commerce of any foreign country without the prior approval of BIS.

(c) *Requirements regarding shipment to be unloaded.* The provisions of §758.5(d) and (e) of this part, relating to reporting, notification to BIS, and the prohibition against unauthorized delivery or entry of the item into a foreign country shall apply also when items are unloaded at a port of call, as provided in paragraph (b)(3) of this section.

(d) *Notification.* Upon discovery by any person included within the term “carrier,” as defined in paragraph (a) of this section, that a violation of the export laws and regulations administered or enforced by the Secretary has occurred, is occurring, or is about to occur with respect to a shipment on board, or otherwise in the possession or control of the carrier, such person must immediately notify both:

(1) The Office of Export Enforcement at the following address: Room H-4508, U.S. Department of Commerce, 14th Street and Constitution Ave. NW, Washington, DC 20230, Telephone: (202) 482-1208, Facsimile: (202) 482-0964; and

(2) The person in actual possession or control of the shipment.

[85 FR 73415, Nov. 18, 2020]

§ 758.9 Other applicable laws and regulations.

The provisions of this part apply only to exports, reexports, and transfers (in-country), as well as the activities of U.S. persons described in §744.6 of the EAR, which are subject to the export laws and regulations administered or enforced by the Secretary. Nothing contained in this part shall relieve any person from complying with any other law of the United States or rules and regulations issued thereunder, including those governing EEI filings to AES, manifests, or any other applicable rules and regulations.

[85 FR 73415, Nov. 18, 2020]

§ 758.10 Entry clearance requirements for temporary imports.

(a) *Scope.* This section specifies the temporary import entry clearance requirements for firearms “subject to the EAR” that are on the United States Munitions Import List (USMIL, 27 CFR 447.21), except for firearms “subject to the EAR” that are temporarily brought into the United States by non-immigrant aliens under the provisions of Department of Justice regulations at 27 CFR part 478 (See §740.14(e) of the EAR for information on the export of these firearms “subject to the EAR”). These firearms are controlled in ECCNs 0A501.a or .b, 0A506 or 0A507, or shotguns with a barrel length less than 18 inches controlled in ECCNs 0A502 or 0A508. Items that are temporarily exported under the EAR must have met the export clearance requirements specified in §758.1.

(1) An authorization under the EAR is *not* required for the temporary import of “items” that are “subject to the EAR,” including for “items” “subject to the EAR” that are on the USMIL. Temporary imports of firearms described in this section must meet the entry clearance requirements specified in paragraph (b) of this section.

(2) Permanent imports are regulated by the Attorney General under the direction of the Department of Justice’s Bureau of Alcohol, Tobacco, Firearms