

will submit a written report containing a summary of the hearing and recommended action to the Under Secretary.

(c) *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 BXA 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.

(d) *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]

## PART 758—EXPORT CLEARANCE REQUIREMENTS

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AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

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

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

(a) *The Shipper's Export Declaration (SED) or Automated Export System (AES) record*. The SED (Form 7525-V, Form 7525-V-Alt, or Automated Export System record) is used by the Bureau of Census to collect trade statistics and by the Bureau of Export Administration for export control purposes. The SED or AES record 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 number, the description, quantity and value of the items exported; and the license authority for the export. The SED or the AES electronic equivalent is a statement to the United States Government that the transaction occurred as described.

(b) *When an SED or AES record is required*. Except when the export of items subject to the EAR is to take place electronically or in an otherwise intangible form, you must file an SED or AES record 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 Cuba, Iran, Iraq, Libya, North Korea, Serbia (except Kosovo), Sudan, or Syria, regardless of value (see 15 CFR 30.55(h) of the FTSR); and

(2) For all exports of items subject to the EAR that are authorized under a license, regardless of value, or destination;

(3) For all exports of commodities and mass market software subject to the EAR that are authorized under a License Exception or under NLR, when the value of the commodities or mass market software classified under a single Schedule B Number (or Harmonized Tariff Schedule number) is over \$2,500, except as exempted by the Foreign Trade Statistics Regulations (FTSR) in

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15 CFR part 30 and referenced in paragraph (c) of this section;

(4) For all exports of items subject to the EAR that will be transshipped through Canada to a third destination, where the export would require an SED or AES record or license if shipped directly to the final destination from the United States (see 15 CFR 30.58(c) of the FTSR).

NOTE TO PARAGRAPH (b): In addition to the Shipper's Export Declaration for exports, the Bureau of Census Foreign Trade Statistics Regulations provide for a specific Shipper's Export Declaration for In-Transit Goods (Form 7513). See 15 CFR 30.3 and 30.8 of the FTSR.

(c) *Exemptions.* A complete list of exemptions from the SED or AES filing requirement is set forth in the FTSR. Some of these FTSR exemptions have elements in common with certain EAR License Exceptions. An FTSR exemption may be narrower than a License Exception. The following references are provided in order to direct you to the FTSR exemptions that relate to EAR License Exceptions:

(1) License Exception Baggage (BAG), as set forth in § 740.14 of the EAR. See 15 CFR 30.56 of the FTSR;

(2) License Exception Gift Parcels and Humanitarian Donations (GFT), as set forth in § 740.12 of the EAR. See 15 CFR 30.55(g) of the FTSR;

(3) License Exception Aircraft and Vessels (AVS), as set forth in § 740.15 of the EAR. See 15 CFR 30.55(1) of the FTSR;

(4) License Exception Governments and International Organizations (GOV), as set forth in § 740.11 of the EAR. See 15 CFR 30.53 of the FTSR;

(5) License Exception Technology and Software Under Restriction (TSR), as set forth in § 740.6 of the EAR. See 15 CFR 30.55(n) of the FTSR; 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 30.56(b) of the FTSR.

(d) *Notation on export documents for exports exempt from SED or AES record requirements.* When an exemption from filing the Shipper's Export Declaration or Automated Export System record 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. This requirement is intended to parallel the Bureau of Census requirement, so that notations as to the basis for the SED exemption and the license authority are entered in the same place and manner (see 15 CFR 30.21 of the FTSR 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) *Signing the Shipper's Export Declaration or transmitting data via AES.* The person who signs the SED must be in the United States at the time of signing. The person who transmits data via AES must be a certified AES participant in accordance with 15 CFR 30.60 of the FTSR. The person that signs the SED or transmits data via AES, whether exporter or agent, is responsible for the truth, accuracy, and completeness of the SED or AES record, except insofar as that person can demonstrate that he or she reasonably relied on information furnished by others.

(f) *The SED or AES record is an export control document.* The SED or AES record is a statement to the U.S. Government. The SED or AES record 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 an SED or AES record is presented to the U.S. Government, the signer or filer of the SED or AES record represents the following:

(1) Export of the items described on the SED or AES record is authorized under the terms and conditions of a license issued by BXA; 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 SED or AES record are in conformity with the contents of any license issued by BXA, with the possible exception of the exporter block in routed transactions; and

(3) All information shown on the SED or AES record is true, accurate, and complete.

(g) *Export control information on the SED or AES record.* For each item on the SED or AES record, you must show the license authority (License number, License Exception, or No License Required (NLR)), 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 terms. If those terms are inadequate to meet Census Bureau requirements, the FTSR requires that you give enough additional detail to permit verification of the Schedule B Number (or Harmonized Tariff Schedule number). The FTSR also requires separate descriptions of items for each Schedule B classification (or Harmonized Tariff Schedule number). See 15 CFR 30.6 (separate SED or AES records), §30.7(1) (description of items) and §30.9 (separation of items on the SED) of the FTSR.

(1) *Exports under a license.* When exporting under the authority of a license, you must enter on the SED or AES record the license number and expiration date (the expiration date is only required on paper versions of the SED), the ECCN, and an item description identical to the item description on the license.

(2) *Exports under a License Exception.* You must enter on any required SED or AES record the ECCN and the correct License Exception symbol (*e.g.*, LVS, GBS, CIV) for the License Exception(s) under which you are exporting. Items temporarily in the United States meeting the provisions of License Exception TMP, under §740.9(b)(3), are excepted from this requirement. See also §740.1(d) of the EAR.

(3) *No License Required (NLR) exports.* You must enter on any required SED or AES record the “NLR” designation when the items to be exported are subject to the EAR but not listed on the Commerce Control List (*i.e.*, items are classified as EAR99), and when the items to be exported are listed on the CCL but do not require a license. In addition, you must enter the correct ECCN on any required SED or AES record for all items being exported

under the NLR provisions that have a reason for control other than anti-terrorism (AT). The designator “TSPA” may be used, but is not required, when the export consists of technology or software outside the scope of the EAR. See §734.7 through §734.11 of the EAR for TSPA information.

(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 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 BXA 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).

[65 FR 42570, July 10, 2000]

#### § 758.2 Automated Export System (AES).

The Census Bureau’s Foreign Trade Statistics Regulations (FTSR) (15 CFR