

§ 754.2 Crude oil.

(a) *License requirement.* As indicated by the SS notation in the “License Requirements” section of ECCN 1C981 on the CCL (Supplement No. 1 to part 774 of the EAR), a license is required for the export of crude oil to all destinations, including Canada. See paragraph (h) of this section for a License Exception permitting the export of certain oil from the Strategic Petroleum Reserves, paragraph (i) of this section for a License Exception for certain shipments of samples, and paragraph (j) of this section for a License Exception for exports of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652). “Crude oil” is defined as a mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and which has not been processed through a crude oil distillation tower. Included are reconstituted crude petroleum, and lease condensate and liquid hydrocarbons produced from tar sands, gilsonite, and oil shale. Drip gases are also included, but topped crude oil, residual oil, and other finished and unfinished oils are excluded.

(b) *License policy.* (1) BIS will approve applications to export crude oil for the following kinds of transactions if BIS determines that the export is consistent with the specific requirements pertinent to that export:

(i) Exports from Alaska’s Cook Inlet (see paragraph (d) of this section);

(ii) Exports to Canada for consumption or use therein (see paragraph (e) of this section);

(iii) Exports in connection with refining or exchange of strategic petroleum reserve oil (see paragraph (f) of this section);

(iv) Exports of heavy California crude oil up to an average volume not to exceed 25 MB/D (see paragraph (g) of this section);

(v) Exports that are consistent with international agreements as described in the statutes listed in paragraph (c) of this section;

(vi) Exports that are consistent with findings made by the President under an applicable statute, including the

statutes described in paragraph (c) of this section; and

(vii) Exports of foreign origin crude oil where, based on written documentation satisfactory to BIS, the exporter can demonstrate that the oil is not of U.S. origin and has not been commingled with oil of U.S. origin. See paragraph (h) of this section for the provisions of License Exception SPR permitting exports of certain crude oil from the Strategic Petroleum Reserve.

(2) BIS will review other applications to export crude oil on a case-by-case basis and, except as provided in paragraph (c) of this section, generally will approve such applications if BIS determines that the proposed export is consistent with the national interest and the purposes of the Energy Policy and Conservation Act (EPCA). Although BIS will consider all applications for approval, generally, the following kinds of transactions will be among those that BIS will determine to be in the national interest and consistent with the purposes of EPCA.

(i) The export is part of an overall transaction:

(A) That will result directly in the importation into the United States of an equal or greater quantity and an equal or better quality of crude oil or of a quantity and quality of petroleum products listed in Supplement No. 1 to this part that is not less than the quantity and quality of commodities that would be derived from the refining of the crude oil for which an export license is sought;

(B) That will take place only under contracts that may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened; and

(C) In which the applicant can demonstrate that, for compelling economic or technological reasons that are beyond the control of the applicant, the crude oil cannot reasonably be marketed in the United States.

(ii) Exports involving temporary exports or exchanges that are consistent with the exceptions from the restrictions of the statutes listed in paragraph (c) of this section.

(c) *Additional statutory controls.* (1) The following statutes provide controls on the export of domestically produced

crude oil based on its place of origin or mode of transport. If such other statutory controls apply, an export may only be approved if the President makes the findings required by the applicable law.

(i) Section 201 of Public Law 104-58, entitled "Exports of Alaskan North Slope Oil," provides for exports of domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) ("TAPS crude oil"). The President made a determination on April 28, 1996.

(ii) The Mineral Leasing Act of 1920 restricts exports of domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 28(u) of that Act (30 U.S.C. 185(u)) ("MLA").

(iii) The Outer Continental Shelf Lands Act restricts exports of crude oil produced from the outer Continental Shelf (29 U.S.C. 1354) ("OCSLA").

(iv) The Naval Petroleum Reserves Production Act restricts the export of crude oil produced from the naval petroleum reserves (10 U.S.C. 7430) ("NPRPA").

(2) Supplement No. 3 to this part describes the relevant statutory provisions. In cases where a particular statute applies, a Presidential finding is necessary before the export can be authorized. You should note that in certain cases it is possible that more than one statute could apply to a particular export of crude oil.

(d) *Exports from Alaska's Cook Inlet.* The licensing policy is to approve applications for exports of crude oil that was derived from the state-owned submerged lands of Alaska's Cook Inlet and has not been, or will not be, transported by a pipeline over a federal right-of-way subject to the MLA or the Trans-Alaska Pipeline Authorization Act.¹

(e) *Exports to Canada for consumption or use therein.* (1) Except for TAPS crude oil, the licensing policy is to ap-

prove applications for exports of crude oil to Canada for consumption or use therein.

(2) The licensing policy for TAPS crude oil is to approve applications for an average of no more than 50,000 barrels of oil per day for consumption or use in Canada, subject to the following procedures and conditions:

(i) Any ocean transportation of the commodity will be made by vessels documented for United States coastwise trade under 46 U.S.C. 12106. Only barge voyages between the State of Washington and Vancouver, British Columbia, and comparable barge movements across waters between the U.S. and Canada may be excluded from this requirement. The Bureau of Industry and Security will determine, in consultation with the Maritime Administration, whether such transportation is "ocean" transportation; and

(ii) Authorization to export TAPS crude oil will be granted on a quarterly basis. Applications will be accepted by BIS no earlier than two months prior to the beginning of the calendar quarter in question, but must be received no later than the 25th day of the second month preceding the calendar quarter. For example, for the calendar quarter beginning April 1 and ending June 30, applications will be accepted beginning February 1, but must be received no later than February 25.

(iii) The quantity stated on each application must be the total number of barrels for the quarter, not a per-day rate. This quantity must not exceed 50,000 barrels times the number of calendar days in the quarter.

(iv) Each application must include support documents providing evidence that the applicant has either:

(A) Title to the quantity of barrels stated in the application; or

(B) A contract to purchase the quantity of barrels stated in the application.

(v) The quantity of barrels authorized on each license for export during the calendar quarter will be determined by the BIS as a prorated amount based on:

(A) The quantity requested on each license application; and

(B) The total number of barrels that may be exported by all license holders

¹On November 6, 1985, the Secretary of Commerce determined that the export of crude oil derived from State waters in Alaska's Cook Inlet is consistent with the national interest and the purposes of the Energy Policy and Conservation Act.

during the quarter (50,000 barrels per day multiplied by the number of calendar days during the quarter).

(vi) Applicants may combine their licensed quantities for as many as four consecutive calendar quarters into one or more shipments, provided that the validity period of none of the affected licenses has expired.

(vii) BIS will carry forward any portion of the 50,000 barrels per day quota that has not been allocated during a calendar quarter, except that no un-allocated portions will be carried over to a new calendar year. The un-allocated volume for a calendar quarter will be added, until expended, to the quotas available for each quarter through the end of the calendar year.

(f) *Refining or exchange of Strategic Petroleum Reserve Oil.* (1) Exports of crude oil withdrawn from the Strategic Petroleum Reserve (SPR) will be approved if BIS, in consultation with the Department of Energy, determines that such exports will directly result in the importation into the United States of refined petroleum products that are needed in the United States and that otherwise would not be available for importation without the export of the crude oil from the SPR.

(2) Licenses may be granted to export, for refining or exchange outside of the United States, SPR crude oil that will be sold and delivered, pursuant to a drawdown and distribution of the SPR, in connection with an arrangement for importing refined petroleum products into the United States.

(3) BIS will approve license applications subject to the following conditions:

(i) You must provide BIS evidence of the following:

(A) A title to the quantity of barrels of SPR crude stated in the application; or

(B) A contract to purchase, for importation, into the United States the quantity of barrels of SPR crude stated in the application.

(ii) The following documentation must be submitted to BIS no later than fourteen days following the date that the refined petroleum products are imported in the U.S. in exchange for the export of SPR crude:

(A) Evidence that the exporter of the SPR crude has title to or a contract to purchase refined petroleum product;

(B) A copy of the shipping manifest that identifies the refined petroleum products; and

(C) A copy of the entry documentation required by the U.S. Customs Service that show the refined petroleum products were imported into the United States, or a copy of the delivery receipt when the refined petroleum products are for delivery to the U.S. military outside of the United States.

(4) You must complete both the export of the SPR crude and the import of the refined petroleum products no later than 30 days following the issuance of the export license, except in the case of delivery to the U.S. military outside of the United States, in which case the delivery of the refined petroleum products must be completed no later than the end of the term of the contract with the Department of Defense.

(g) *Exports of certain California crude oil.* The export of California heavy crude oil having a gravity of 20.0 degrees API or lower, at an average volume not to exceed 25 MB/D, will be authorized as follows.

(1) Applicants must submit their applications on Form BIS-748 to the following address: Office of Exporter Services, ATTN: Short Supply Program—Petroleum, Bureau of Industry and Security, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

(2) The quantity stated on each application must be the total number of barrels proposed to be exported under the license—not a per-day rate. This quantity must not exceed 25 percent of the annual authorized export quota. Potential applicants may inquire of BIS as to the amount of the annual authorized export quota available.

(3) Each application shall be accompanied by a certification by the applicant that the California heavy crude oil:

(i) Has a gravity of 20.0 degrees API or lower;

(ii) Was produced within the state of California, including its submerged state lands;

§ 754.2

15 CFR Ch. VII (1-1-04 Edition)

(iii) Was not produced or derived from a U.S. Naval Petroleum Reserve; and

(iv) Was not produced from submerged lands of the U.S. Outer Continental Shelf.

(4) Each license application must be based on an order, and be accompanied by documentary evidence of such an order (e.g., a letter of intent).

(5) BIS will adhere to the following procedures for licensing exports of California heavy crude oil:

(i) BIS will issue licenses for approved applications in the order in which the applications are received (date-time stamped upon receipt by BIS), with the total quantity authorized for any one license not to exceed 25 percent of the annual authorized volume of California heavy crude oil.

(ii) BIS will approve only one application per month for each company and its affiliates.

(iii) BIS will consider the following factors (among others) when determining what action should be taken on individual license applications:

(A) The number of licenses to export California heavy crude oil that have been issued to the applicant or its affiliates during the then-current calendar year;

(B) The number of applications pending in BIS that have been submitted by applicants who have not previously been issued licenses under this section to export California heavy crude oil during the then-current calendar year; and

(C) The percentage of the total amount of California heavy crude oil authorized under other export licenses previously issued to the applicant pursuant to this section that has actually been exported by the applicant.

(iv) BIS will approve applications contingent upon the licensee providing documentation meeting the requirements of both paragraphs (g)(5)(iv)(A) and (B) of this section prior to any export under the license:

(A) Documentation showing that the applicant has or will acquire title to the quantity of barrels stated in the application. Such documentation shall be either:

(1) An accepted contract or bill of sale for the quantity of barrels stated in the application; or

(2) A contract to purchase the quantity of barrels stated in the application, which may be contingent upon issuance of an export license to the applicant.

(B) Documentation showing that the applicant has a contract to export the quantity of barrels stated in the application. The contract may be contingent upon issuance of the export license to the applicant.

(v) BIS will carry forward any portion of the 25 MB/D quota that has not been licensed, except that no unallocated portions will be carried forward more than 90 days into a new calendar year. Applications to export against any carry-forward must be filed with BIS by January 15 of the carry-forward year.

(vi) BIS will return to the available authorized export quota any portion of the 25 MB/D per day quota that has been licensed, but not shipped, during the 90-day validity period of the license.

(vii) BIS will not carry over to the next calendar year pending applications from the previous year.

(6) License holders:

(i) Have 90 calendar days from the date the license was issued to export the quantity of California heavy crude oil authorized on the license. Within 30 days of any export under the license, the exporter must provide BIS with a certified statement confirming the date and quantity of California heavy crude oil exported.

(ii) Must submit to BIS, prior to any export under the license, the documentation required by paragraph (g)(5)(iv) of this section.

(iii) May combine authorized quantities into one or more shipments, provided that the validity period of none of the affected licenses has expired.

(iv) Are prohibited from transferring the license to another party without prior written authorization from BIS.

(7) BIS will allow a 10 percent tolerance on the unshipped balance based upon the volume of barrels it has authorized. BIS will allow a 25 percent shipping tolerance on the total dollar value of the license. See § 750.11 of the

EAR for an explanation of shipping tolerances.

(h) *License Exception for certain shipments from the Strategic Petroleum Reserves (SPR)*. Subject to the requirements set forth in this paragraph, License Exception SPR may be used to export without a license foreign origin crude oil imported and owned by a foreign government or its representative which is imported for storage in, and stored in, the United States Strategic Petroleum Reserves pursuant to an appropriate agreement with the U.S. Government or an agency thereof. If such foreign origin oil is commingled with other oil in the SPR, such export is authorized under License Exception SPR only if the crude oil being exported is of the same quantity and of comparable quality as the foreign origin crude oil that was imported for storage in the SPR and the Department of Energy certifies this fact to BIS.

(1) The requirements and restrictions described in §§ 740.1 and 740.2 of the EAR that apply to all License Exceptions also apply to the use of License Exception SPR.

(2) A person exporting crude oil pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the letter code "SS-SPR" or the equivalent code as set forth in Appendix C to 15 CFR part 30.

(i) *License Exception for certain sample shipments*. Subject to the requirements set forth in this paragraph, License Exception SS-SAMPLE may be used to export crude oil for analytic and testing purposes.

(1) An exporter may ship up to 10 barrels of crude oil to any one end-user annually, up to an annual cumulative limit of 100 barrels per exporter.

(2) The requirements and restrictions described in §§ 740.1 and 740.2 of the EAR that apply to all License Exceptions also apply to the use of License Exception SPR.

(3) A person exporting crude oil pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the letter code "SS-SAMPLE" or the equivalent

code as set forth in Appendix C to 15 CFR part 30.

(j) *License Exception for exports of TAPS Crude Oil*. (1) License Exception TAPS may be used to export oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (TAPS), provided the following conditions are met:

(i) The TAPS oil is transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802));

(ii) All tankers involved in the TAPS export trade use the same route that they do for shipments to Hawaii until they reach a point 300 miles due south of Cape Hinchinbrook Light and then turn toward Asian destinations. After reaching that point, tankers in the TAPS oil export trade must remain outside of the 200 nautical mile Exclusive Economic Zone, as defined in 16 U.S.C. 1802(6). Tankers returning from foreign ports to Valdez, Alaska must abide by the same restrictions, in reverse, on their return route. This condition shall not be construed to limit any statutory, treaty or Common Law rights and duties imposed upon and enjoyed by tankers in the TAPS oil export trade, including, but not limited to, *force majeure* and maritime search and rescue rules; and

(iii) The owner or operator of a tanker exporting TAPS oil shall:

(A) Adopt a mandatory program of deep water ballast exchange (i.e., at least 2,000 meters water depth). Exceptions can be made at the discretion of the captain only in order to ensure the safety of the vessel and crew. Records must be maintained in accordance with paragraph (j)(3) of this section.

(B) Be equipped with satellite-based communications systems that will enable the Coast Guard independently to determine the tanker's location; and

(C) Maintain a Critical Area Inspection Plan for each tanker in the TAPS oil export trade in accordance with the U.S. Coast Guard's Navigation and Inspection Circular No. 15-91 as amended, which shall include an annual internal survey of the vessel's cargo block tanks.

§ 754.3

(2) *Shipper's Export Declaration or Automated Export System.* In addition to the requirements of paragraph (j)(1) of this section, for each export under License Exceptions TAPS, the exporter must file with BIS a Shipper's Export Declaration (SED) or Automated Export System (AES) record covering the export not later than 21 days after the export has occurred. The SED or AES record shall be sent to the following address: Director, Deemed Exports and Short Supply Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, PO Box 273, U.S. Department of Commerce, Washington, DC 20044.

(3) *Recordkeeping requirements for deep water ballast exchange.* (i) As required by paragraph (j)(1)(iii)(A) of this section, the master of each vessel carrying TAPS oil under the provisions of this section shall keep records that include the following information, and provide such information to the Captain of the Port (COTP), U.S. Coast Guard, upon request:

(A) The vessel's name, port of registry, and official number or call sign;

(B) The name of the vessel's owner(s);

(C) Whether ballast water is being carried;

(D) The original location and salinity, if known, of ballast water taken on, before an exchange;

(E) The location, date, and time of any ballast water exchange; and

(F) The signature of the master attesting to the accuracy of the information provided and certifying compliance with the requirements of this paragraph.

(ii) The COTP or other appropriate federal agency representatives may take samples of ballast water to assess the compliance with, and the effectiveness of, the requirements of paragraph (j)(3)(i) of this section.

[61 FR 12844, Mar. 25, 1996, as amended at 61 FR 27257, May 31, 1996; 68 FR 50473; Aug. 21, 2003]

§ 754.3 Petroleum products not including crude oil.

(a) *License requirement.* As indicated by the letters "SS" in the "Reason for Control" paragraph in the "License Requirements" section of ECCNs 1C980, 1C982, 1C983, and 1C984 on the CCL

15 CFR Ch. VII (1-1-04 Edition)

(Supplement No. 1 to part 774 of the EAR), a license is required to all destinations, including Canada, for the export of petroleum products, excluding crude oil, listed in Supplement No. 1 to this part, that were produced or derived from the Naval Petroleum Reserves (NPR) or became available for export as a result of an exchange of any NPR produced or derived commodities.

(b) *License policy.* (1) Applications for the export of petroleum products listed in Supplement No. 1 to this part that were produced or derived from the Naval Petroleum Reserves, or that became available for export as a result of an exchange for a Naval Petroleum Reserves produced or derived commodity, other than crude oil, will be denied, unless the President makes a finding required by the Naval Petroleum Reserves Production Act (10 U.S.C. 7430).

(2) Applications that involve temporary exports or exchanges excepted from that Act will be approved.

§ 754.4 Unprocessed western red cedar.

(a) *License requirement.* As indicated by the letters "SS" in the "Reason for Control" paragraph in the "License Requirements" section of ECCN 1C988 on the CCL (Supplement No. 1 to part 774 of the EAR), a license is required to all destinations, including Canada, for the export of unprocessed western red cedar covered by ECCN 1C988 (Western red cedar (*Thuja plicata*) logs and timber, and rough, dressed and worked lumber containing wane listed in Supplement No. 2 to this part). See paragraph (c) of this section for License Exceptions for timber harvested from public lands in the State of Alaska, private lands, or Indian lands, and see paragraph (d) of this section for relevant definitions.

(b) *Licensing policy.* (1) BIS will generally deny applications for licenses to export unprocessed western red cedar harvested from Federal or State lands under harvest contracts entered into after September 30, 1979.

(2) BIS will consider, on a case-by-case basis, applications for licenses to export unprocessed western red cedar harvested from Federal or State lands