

States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any 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) shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)).

(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act ( ) U.S.C. 1601 *et seq.*), or Part B of title II of the Energy Policy and Conservation Act (42 U.S.C. 6271-76) to prohibit exports.

(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination, including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortage or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

(6) Administrative action under this subsection is not subject to sections 551 and 553 through 559 of title 5, United States Code.

#### MINERAL LANDS LEASING ACT

30 U.S.C. 185(u)

##### Limitations on Export

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following) and, in addition, before any crude oil subject this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: *Provided*, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential finding shall cease.

#### NAVAL PETROLEUM RESERVES PRODUCTION ACT

10 §7430(e)

Any petroleum produced from the naval petroleum reserves, except such petroleum which is either exchanged in similar quantities for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 *et seq.*) and, in addition, before any petroleum subject to this section may be exported under the limitations and licensing requirement and penalty and enforcement provisions of the Export Administration Act of 1979, the President must make and publish an express finding that such exports will not diminish the total quality or quantity of petroleum available to the United

States and that such exports are in the national interest and are in accord with the Export Administration Act of 1979.

#### OUTER CONTINENTAL SHELF LANDS ACT

43 U.S.C. 1354

(a) Application of Export Administration provisions.

Except as provided in subsection (d) of this section, any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969. Note that the Export Administration Act of 1969, referred to in paragraphs (a) and (b) of the Supplement, terminated on September 30, 1979, pursuant to the terms of that Act.

(b) Condition precedent to exportation; express finding by President of no increase in reliance on imported oil or gas.

Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.

(c) Report of findings by President to Congress; joint resolution of disagreement with findings of President.

The President shall submit reports to Congress containing findings made under this section, and after the date of receipt of such reports Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether export under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

(d) Exchange or temporary exportation of oil and gas for convenience or efficiency of transportation.

The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increase efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, or which is exchanged or exported pursuant to an existing international agreement.

### PART 756 APPEALS

Sec.

756.1 Introduction.

756.2 Appeal from an administrative action.

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 15, 1995 (60 FR 42767, August 17, 1995).

#### §756.1 Introduction.

(a) *Scope.* This part 756 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.) Any person directly and adversely affected by an administrative action taken by the Bureau of Export Administration (BXA) 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 756:

(1) Issuance, amendment, revocation, or appeal of a regulation. (These requests may be submitted to BXA at any time.)

(2) Denial or probation orders, civil penalties, sanctions, or other actions under parts 764 and 766 of the EAR.

(b) *Definitions.* [Reserved.]

#### §756.2 Appeal from an administrative action.

(a) *Review and appeal officials.* The Under Secretary may delegate to the Deputy Under Secretary for Export Administration or to another BXA official the authority to review and decide the appeal. In addition, the Under Secretary may designate any BXA official to be an appeals coordinator to assist in the review and processing of an appeal under this part. The responsibilities of an appeals coordinator may include presiding over informal hearings.

(b) *Appeal procedures.*

(1) *Filing.* An appeal under this part must be received by the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H-3886C, 14th Street and Pennsylvania Avenue, N.W.,

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.* When the Under Secretary designates another BXA official to conduct an informal hearing, that official 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.

## **PART 758**

### **EXPORT CLEARANCE REQUIREMENTS**

Sec.	
758.1	Export clearance requirements.
758.2	Use of export license.
758.3	Shipper's Export Declaration (SED).
758.4	Conformity of documents for shipments under export licenses.
758.5	General destination control requirements.
758.6	Destination control statement.
758.7	Authority of the Office of Export Enforcement, the Bureau of Export Administration, Customs offices and Postmasters in clearing shipments.
758.8	Return or unloading of cargo at direction of BXA, the Office of Export Enforcement or Customs Service.
758.9	Other applicable laws and regulations.

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 15, 1995 (60 FR 42767, August 17, 1995).

### **§758.1 Export clearance requirements.**

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Responsibility of licensee, exporter and agent.*

(1) If you are issued a BXA license, or you rely on a License Exception described in part 740 of the EAR, you are responsible for the proper use of that license or License Exception and for the performance of all of its terms and conditions.

(2) If you export without either a license issued by BXA or a License Exception, you are responsible for determining that the transaction is outside the scope of the EAR or the export is designated as "No License Required" as described in paragraph (a)(3) of this section.

(3)(i) *"No License Required".* Items that are listed on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) but that do not require a license by reason of the Country Chart contained in Supplement 1 to part 738 of the EAR, and items designated EAR99 (See §734.3(c) of the EAR entitled "Scope of the EAR") must be designated as "NLR", or "no license required", on your shipping documents in accordance with the provisions of this part.

(ii) *NLR notation.* Entering the symbol NLR is a representation to the U.S. Government that the items being exported are listed on the CCL but do not require a license by reason of the Country Chart or that they are within the scope of EAR99 (See §734.3(c) of the EAR entitled "Scope of the EAR"); that they do not require a license under General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), or Three (Foreign-produced Direct Product Reexports); that General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity; and that the items are subject to the EAR.

(4) *License Exception symbol.* Entering a License Exception symbol on an export control document is a representation to the U.S. Government that the transaction meets all of the terms and conditions of the License Exception cited. (See part 740 of the EAR for details regarding License Exceptions.)

(5) *Software and technology not subject to the EAR.* If you are exporting software or technology that is outside the scope of the EAR as described in §§734.7 through 734.11 of the EAR, you may use the symbol TSPA. Use of this symbol is optional; however, if you enter it on an export control document, you are making a representation to the U.S. Government that the technology or software is outside the scope of the EAR.

(b) *Forwarding agent.*

(1) *Authorizing a forwarding agent.* A forwarding agent is a person the exporter authorizes to perform services that facilitate the export described on the Shipper's Export Declaration (SED). The agent must be authorized to act on behalf of the exporter either for the specific transaction for which the agent is submitting the SED or under a general power of attorney. The Foreign Trade Statistics Regulations of the Bureau of the Census (15 CFR part 30) provide the specific requirements for obtaining authorization as a forwarding agent.

(2) *Forwarding agent as licensee.* If the forwarding agent is appointed at the suggestion of a foreign buyer, the seller may insist that the agent apply for the export license. See §748.5(a)(1) of the EAR which defines parties to a transaction.

(3) *Record and proof of agent's authority.* The power-of-attorney or other authorization from the exporter must be retained on file in the forwarding agent's office while the authorization is in force and for a period of five years after the last action taken by the forwarding agent under the authority. During this retention period, the forwarding agent must make its delegation of authority from the exporter available for inspection on demand, in accordance with the provisions of §762.6 of the EAR. This recordkeeping and inspection requirement also applies to any redelegation of the forwarding agent's authority and to any person to whom the forwarding agent redelegates its authority. (For further recordkeeping requirements see part 762 of the EAR).

(c) *Responsibility for compliance.* Acting through a forwarding agent, or other agent or delegation or redelegation of authority, does not relieve anyone of responsibility for compliance with the EAR. Forwarding agents, carriers and others who participate in transactions that are subject to the EAR are also responsible for complying with the EAR.

(d) *Exports by U.S. Mail.*

(1) *Exports made under a license issued by BXA.* Before making an export by U.S. Mail that is authorized by a license issued by BXA, you must enter the license number on the address side of the parcel and submit a properly executed SED to the post office at the place of mailing, when required by the