

in a change of identity of the U.S.-item (e.g., U.S.-origin semiconductor devices are included in a foreign origin test instrument). Under Block 9, Additional Information, describe the new end-product more specifically and state how and to what extent the U.S.-origin items will be used. Complete and attach Form BXA-752-A, Reexport Territories.

(c) Complete this Block if your company is requesting authorization to reexport items for service and/or repair. Complete and attach Form BXA-752-A. If you plan to reexport to end-users that require prior approval by BXA, also complete and attach Form BXA-748P-B, End-User Appendix.

(d) Complete this Block if your company plans to retransfer/resell within the country of import. State the end-use of your customers. If you plan to retransfer to end-users that require prior approval by BXA, complete and attach Form BXA-748P-B, End-User Appendix.

(e) Complete this Block if your company plans to reexport. Complete and attach Form BXA-752-A. If you plan to reexport to end-users that require prior approval by BXA, also complete and attach Form BXA-748P-B, End-User Appendix.

(f) This item should be completed for "other" activities that are not defined in Blocks 8(a) through (e). Describe the proposed activities fully in a letter attached to this Form, and complete and attach Form BXA-752-A, indicating countries to which the products derived from these activities are proposed export.

Block 9: *Additional Information*. In addition to any information that supports other Blocks, indicate whether your company is an active consignee under any other license issued by BXA. Indicate the license and consignee numbers.

Block 10: *Signature of Official of Ultimate Consignee*. Include an original signature. The authority to sign form BXA-752 may not be delegated to any person whose authority to sign is not inherent in his/her official position with the company. The signing official must include their official title with the signature. All copies must be co-signed by the applicant in Block 11 and submitted with the application to BXA.

SUPPLEMENT NO. 4 TO PART 752—INSTRUCTIONS FOR COMPLETING FORM BXA-752-A REEXPORT TERRITORIES

All information must be legibly typed within the lines for each block or box.

Block 1: *Application Control No.* Insert the application control number from the relevant form BXA-748P.

Block 2: *SCL License No.* Leave blank for new SCL applications. For changes to existing SCLs, include the original SCL number.

Block 3: *Consignee No.* Leave blank for new SCL applications. For changes to existing

SCLs, include the consignee number that was provided on the original license.

Block 4: *Continuation of BXA-752 Question No.* Mark an "X" in the box next to each country you want to select. Countries that are not eligible for the SCL are not included on this form. If the country that is not listed on this form becomes eligible to receive items under the SCL, you may request that country by marking an "X" in the "other" box and including the country name.

SUPPLEMENT NO. 5 TO PART 752—INSTRUCTIONS FOR COMPLETING FORM BXA-748P-B END-USER APPENDIX

All information must be legibly typed within the lines for each block or box.

Block 1: *Application Control No.* Insert the application control number from the relevant Form BXA-748P.

Block 19: *End-user*. Enter each end-user's complete name, street address, city, country, postal code and telephone or facsimile number. P.O. Boxes are not acceptable.

Block 21: *Continuation of Specific End-Use Information*. Include any additional information that may help BXA in reviewing and making a determination on your application, such as the special safeguards that will be implemented to prevent diversion.

Block 24: *Continuation of Additional Information*. Enter additional data pertinent to the transaction as required by part 752 of the EAR.

PART 754—SHORT SUPPLY CONTROLS

Sec.

754.1 Introduction.

754.2 Crude oil.

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SUPPLEMENT NO. 1 TO PART 754—PETROLEUM AND PETROLEUM PRODUCTS

SUPPLEMENT NO. 2 TO PART 754—UNPROCESSED WESTERN RED CEDAR

SUPPLEMENT NO. 3 TO PART 754—STATUTORY PROVISIONS DEALING WITH EXPORTS OF CRUDE OIL

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); Sec. 201, Pub. L. 104-58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O.

§ 754.1

12924, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

SOURCE: 61 FR 12844, Mar. 25, 1996, unless otherwise noted.

§ 754.1 Introduction.

(a) *Scope.* In this part, references to the Export Administration Regulations (EAR) are references to 15 CFR chapter VII, subchapter C. This part implements the provisions of section 7, "Short Supply Controls," of the Export Administration Act (EAA) and similar provisions in other laws that are not based on national security and foreign policy grounds.

(b) *Contents.* Specifically, this part deals with the following:

(1) It sets forth the license requirements and licensing policies for commodities that contain the symbol "SS" in the "Reason for Control" part of "License Requirements" section of the applicable Export Control Classification Number (ECCN) identified on the Commerce Control List (Supplement No. 1 to part 774 of the EAR). In appropriate cases, it also provides for License Exceptions from the short supply licensing requirements described in this part. The license requirements and policies that are described in this part cover the following:

(i) Crude oil described by ECCN 1C981 (Crude petroleum, including reconstituted crude petroleum, tar sands, and crude shale oil listed in Supplement No. 1 to this part). For specific licensing requirements for these items, see § 754.2 of this part.

(ii) Petroleum products other than 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 described by the following ECCNs. For specific licensing requirements for these items, see § 754.3 of this part.

(A) ECCN 1C980 (Inorganic chemicals);

(B) ECCN 1C982 (Other petroleum products);

(C) ECCN 1C983 (Natural gas liquids and other natural gas derivatives); and

(D) ECCN 1C984 (Manufactured gas and synthetic natural gas (except when

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commingled with natural gas and thus subject to export authorization from the Department of Energy).

(iii) Unprocessed western red cedar described 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). For specific licensing requirements for these items, see § 754.4 of this part.

(iv) Horses exported by sea for slaughter covered by ECCN 0A980 (Horses for export by sea). For specific licensing requirements, see § 754.5 of this part.

(2) It incorporates statutory provisions for the registration of U.S. agricultural commodities for exemption from short supply limitations on export (see § 754.6 of this part); and

(3) It incorporates statutory provisions for the filing and review of petitions seeking the imposition of monitoring or controls on recyclable metallic materials and procedures for related public hearings (see § 754.7 of this part).

(c) *Reexports.* Reexports of items controlled by this part require a license only if such a requirement is specifically set forth in this part or is set forth on the license authorizing the export from the United States.

(d) *Additional requirements for embargoed destinations.* For exports involving embargoed destinations, you must satisfy the requirements of this part and also of part 746 of the EAR (Embargoes and Other Special Controls).

§ 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) BXA will approve applications to export crude oil for the following kinds of transactions if BXA 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 BXA, 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) BXA 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 BXA

determines that the proposed export is consistent with the national interest and the purposes of the Energy Policy and Conservation Act (EPCA). Although BXA will consider all applications for approval, generally, the following kinds of transactions will be among those that BXA 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 approve 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 move-

ments across waters between the U.S. and Canada may be excluded from this requirement. The Bureau of Export Administration 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 BXA 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 BXA 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 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) BXA 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

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.

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 BXA, 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) BXA will approve license applications subject to the following conditions:

(i) You must provide BXA 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 BXA 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 BXA-748 to the following address: Office of Exporter Services, ATTN: Short Supply Program—Petroleum, Bureau of Export Administration, 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 BXA 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;

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

(i) BXA will issue licenses for approved applications in the order in which the applications are received (date-time stamped upon receipt by

BXA), 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) BXA will approve only one application per month for each company and its affiliates.

(iii) BXA 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 BXA 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) BXA 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) BXA 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 BXA by January 15 of the carry-forward year.

(vi) BXA 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) BXA 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 BXA with a certified statement confirming the date and quantity of California heavy crude oil exported.

(ii) Must submit to BXA, 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 BXA.

(7) BXA will allow a 10 percent tolerance on the unshipped balance based upon the volume of barrels it has authorized. BXA 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 BXA.

(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) the letter code "SS-SPR."

(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) the letter code "SS-SAMPLE".

(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.

(2) *Shipper's Export Declaration.* In addition to the requirements of paragraph (j)(1) of this section, for each export under License Exceptions TAPS, the exporter must file with BXA a Shipper's Export Declaration (SED) covering the export not later than 21 days after the export has occurred. The SED shall be sent to the following address: Manager, Short Supply Program, Department of Commerce, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, Room 2075, Washington, D.C. 20230.

(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]

§ 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 (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) BXA 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) BXA will consider, on a case-by-case basis, applications for licenses to export unprocessed western red cedar harvested from Federal or State lands under harvest contracts entered into prior to October 1, 1979.

(3) BXA will approve license applications for unprocessed western red cedar timber harvested from public lands in Alaska, private lands, and Indian lands. Applications must be submitted in accordance with the procedures set forth in paragraph (a) of this section. See paragraph (c) of this section for the availability of a License Exception.

(c) *License Exception for western red cedar (WRC).* (1) Subject to the requirements described in paragraph (c) of this section, License Exception WRC may be used to export without a license unprocessed western red cedar timber harvested from Federal, State and other public lands in Alaska, all private lands, and, lands held in trust for recognized Indian tribes by Federal or State agencies.

(2) Exporters who use License Exception WRC must obtain and retain on file the following documents:

(i) A statement by the exporter (or other appropriate documentation) indicating that the unprocessed western

red cedar timber exported under this License Exception was not harvested from State or Federal lands outside the State of Alaska, and did not become available for export through substitution of commodities so harvested or produced. If the exporter did not harvest or produce the timber, the records or statement must identify the harvester or producer and must be accompanied by an identical statement from the harvester or producer. If any intermediate party or parties held title to the timber between harvesting and purchase, the exporter must also obtain such a statement, or equivalent documentation, from the intermediate party or parties and retain it on file.

(ii) A certificate of inspection issued by a third party log scaling and grading organization, approved by the United States Forest Service, that:

(A) Specifies the quantity in cubic meters or board feet, scribner rule, of unprocessed western red cedar timber to be exported; and

(B) Lists each type of brand, tag, and/or paint marking that appears on any log or unprocessed lumber in the export shipment or, alternatively, on the logs from which the unprocessed timber was produced.

(3) 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 WRC.

(4) A person exporting any item pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) the letter code "SS-WRC".

(d) *License Applications.* (1) Applicants requesting to export unprocessed western red cedar must submit a properly completed Form BXA-748P, Multipurpose License Form, other documents as may be required by BXA, and a signed statement from an authorized representative of the exporter, reading as follows:

I, (Name) (Title) of (Exporter) HEREBY CERTIFY that to the best of my knowledge and belief the (Quantity) (cubic meters or board feet scribner) of unprocessed western red cedar timber that (Exporter) proposes to export was not harvested from State or Federal lands under contracts entered into after October 1, 1979,

(Signature)

(Date)

(2) For Items [16] and [18] on Form BXA-748P, "Various" may be entered when there is more than one purchaser or ultimate consignee.

(3) For each Form BXA-748P submitted, and for each export shipment made under a license, the exporter must assemble and retain for the period described in part 762 of the EAR, and produce or make available for inspection, the following:

(i) A signed statement(s) by the harvester or producer, and each subsequent party having held title to the commodities, that the commodities in question were harvested under a contract to harvest unprocessed western red cedar from State or Federal lands, entered into before October 1, 1979; and

(ii) A copy of the Shipper's Export Declaration.

(4) A shipping tolerance of 5 percent in cubic feet or board feet scribner is allowed on the un-shipped balance of a commodity listed on a license. This tolerance applies only to the final quantity remaining un-shipped on a license against which more than one shipment is made and not to the original quantity authorized by such license. See § 750.11 of the EAR for an explanation of shipping tolerances.

(e) *Definitions.* When used in this section, the following terms have the meaning indicated:

(1) *Unprocessed western red cedar* means western red cedar (*Thuja plicata*) timber, logs, cants, flitches, and processed lumber containing wane on one or more sides, as defined in ECCN 1C988, that has not been processed into:

(i) Lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better grades, with a maximum cross section of 2,000 square centimeters (310 square inches) for any individual piece of processed western red cedar (WRC) being exported, regardless of grade;

(ii) Chips, pulp, and pulp products;

(iii) Veneer and plywood;

(iv) Poles, posts, or pilings cut or treated with preservative for use as

§ 754.5

such and not intended to be further processed; and

(v) Shakes and shingles.

(2) *Federal and State lands* means Federal and State lands, excluding lands in the State of Alaska and lands held in trust by any Federal or State official or agency for a recognized Indian tribe or for any member of such tribe.

(3) *Contract harvester* means any person who, on October 1, 1979, had an outstanding contractual commitment to harvest western red cedar timber from State and Federal lands and who can show by previous business practice or other means that the contractual commitment was made with the intent of exporting or selling for export in unprocessed form all or part of the commodities to be harvested.

(4) *Producer* means any person engaged in a process that transforms an unprocessed western red cedar commodity (e.g., western red cedar timber) into another unprocessed western red cedar commodity (e.g., cants) primarily through a saw mill.

§ 754.5 Horses for export by sea.

(a) *License requirement.* As indicated by the letters "SS" in the "Reason for Control" paragraph of the "License Requirements" section of ECCN 0A980 on the CCL (Supplement No. 1 to part 774 of the EAR) a license is required for the export of horses exported by sea to all destinations, including Canada.

(b) *License policy.* (1) License applications for the export of horses by sea for the purposes of slaughter will be denied.

(2) Other license applications will be approved if BXA, in consultation with the Department of Agriculture, determines that the horses are not intended for slaughter. You must provide a statement in the additional information section of the Form BXA-748P, certifying that no horse under consignment is being exported for the purpose of slaughter.

(3) Each application for export may cover only one consignment of horses.

15 CFR Ch. VII (1-1-97 Edition)

§ 754.6 Registration of U.S. agricultural commodities for exemption from short supply limitations on export.

(a) *Scope.* Under the provisions of section 7(g) of the Export Administration Act of 1979 (EAA), agricultural commodities of U.S. origin purchased by or for use in a foreign country and stored in the United States for export at a later date may be registered with BXA for exemption from any quantitative limitations on export that may subsequently be imposed under section 7 of the EAA for reasons of short supply.

(b) *Applications for registration.* Applications to register agricultural commodities must be submitted by a person or firm subject to the jurisdiction of the United States who is acting as a duly authorized agent for the foreign purchaser.

(c) *Mailing address.* Submit applications pursuant to the provisions of section 7(g) of the EAA to: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20230.

§ 754.7 Petitions for the imposition of monitoring or controls on recyclable metallic materials; Public hearings.

(a) *Scope.* Section 7(c) of the Export Administration Act of 1979 (EAA) provides for the filing and review of petitions seeking the imposition of monitoring or controls on recyclable metallic materials.

(b) *Eligibility for filing petitions.* Any entity, including a trade association, firm or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes metallic materials capable of being recycled with respect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, has or may have a significant adverse effect on the national economy or any sector thereof, may submit a written petition to BXA requesting the monitoring of exports, or the imposition of export controls, or both, with respect to such materials.

(c) *Public hearings.* The petitioner may also request a public hearing. Public hearings may also be requested by an entity, including a trade association, firm, or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which

processes, produces or exports the metallic materials which are the subject of a petition.

(d) *Mailing address.* Submit petitions pursuant to section 7(c) of the EAA to: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20230.

SUPPLEMENT NO. 1 TO PART 754—PETROLEUM AND PETROLEUM PRODUCTS

This supplement provides relevant Schedule B numbers and a commodity description of the items controlled by ECCNs 1C980, 1C981, 1C982, 1C983, and 1C984.

| Schedule B No. | Commodity description ¹ |
|---------------------------|---|
| Crude Oil | |
| 2709.0710 | Crude petroleum (including reconstituted crude petroleum), tar sands and crude shale oil. |
| 2710.0710 | Petroleum, partly refined for further refining. |
| Petroleum Products | |
| 2804.29.0010 | Helium. |
| 2804.10.0000 | Hydrogen. |
| 2814.20.0000 | Ammonia, aqueous. |
| 2811.21.0000 | Carbon dioxide and carbon monoxide. |
| 2710.00.0550 | Distillate fuel oils, having a Saybolt Universal viscosity at 100 °F. of less than 45 seconds. |
| 2710.00.1007 | Distillate fuel oils (No. 4 type) having a Saybolt Universal viscosity at 100 °F. of 45 seconds or more, but not more than 125 seconds. |
| 2710.00.1050 | Fuel oils, having a Saybolt Universal viscosity at 100 °F. of more than 125 seconds. |
| 2711.11.0000 | Natural gas, methane and mixtures thereof (including liquefied natural gas and synthetic or substitute natural gas). ² |
| 2711.14.0000 | Ethane with a minimum purity of 95 liquid volume percent. |
| 2711.12.0000 | Propane with a minimum purity of 90 liquid volume percent. |
| 2711.13.0000 | Butane with a minimum purity of 90 liquid volume percent. |
| 2711.19.0000 | Other natural gases (including mixtures), n.s.p.f. and manufactured gas. |
| 2710.00.1510 | Gasoline, motor fuel (including aviation). |
| 2710.00.1520 | Jet fuel, naphtha-type. |
| 2710.00.1530 | Jet fuel, kerosene-type. |
| 2710.00.1550 | Other motor fuel (including tractor fuel and stationary turbine fuel). |
| 2710.00.2000 | Kerosene derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel). |
| 2710.00.2500 | Naphthas derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel). |
| 2710.00.5030 | Mineral oil of medicinal grade derived from petroleum, shale oil or both. |
| 3819.00.0000 | Hydraulic fluids, including automatic transmission fluids. |
| 2710.00.3010 | Aviation engine lubricating oil, except jet engine lubricating oil. |
| 2710.00.3020 | Jet engine lubricating oil 475.4520 Automotive, diesel, and marine engine lubricating oil. |
| 2710.00.3030 | Turbine lubricating oil, including marine. |
| 2710.00.3040 | Automotive gear oils. |
| 2710.00.3050 | Steam cylinder oils. |
| 2710.00.5045 | Insulating or transformer oils. |
| 2710.00.3070 | Quenching or cutting oils. |
| 2710.00.3080 | Lubricating oils, n.s.p.f., except white mineral oil. |
| 2710.00.3700 | Greases. |
| 2710.00 | Carbon black feedstock oil. |
| 2712.10.0000 | Petroleum jelly and petrolatum, all grades. |
| 2710.00.5040 | White mineral oil, except medicinal grade. |
| 2710.00.5060 | Other non-lubricating and non-fuel petroleum oils, n.s.p.f. |
| 2814.10.0000 | Ammonia, anhydrous. |
| 2712.20.0000 | Paraffin wax, crystalline, fully refined. |
| 2712.90.0000 | Paraffin wax, crystalline, except fully refined. |
| 2712.90.0000 | Paraffin wax, all others (including microcrystalline wax). |
| 2517.30.0000 | Paving mixtures, bituminous, based on asphalt and petroleum. |
| 2713.12.0000 | Petroleum coke, calcined. |
| 2714 | Petroleum asphalt. |
| 2713.11.0000 | Petroleum coke, except calcined. |

¹ The commodity descriptions provided in this supplement for the most part reflect those found in the U.S. Department of Commerce, Bureau of the Census, (1990 Edition) Statistical Classification of Domestic and Foreign Commodities Exported from the United States (1990 Ed., as revised through Jan. 1994). In some instances the descriptions are expanded or modified to ensure proper identification of products subject to export restriction. The descriptions in this supplement, rather than Schedule B Number, determine the commodity included in the definition of "Petroleum" under the Naval Petroleum Reserves Production Act.

² Natural gas and liquefied natural gas (LNG), and synthetic natural gas commingled with natural gas (Schedule B Nos. 2711.11.0000, 2711.14.0000, and 2711.19.0000) require export authorization from the U.S. Department of Energy.

SUPPLEMENT NO. 2 TO PART 754—UNPROCESSED WESTERN RED CEDAR

This supplement provides relevant Schedule B numbers and a commodity description of the items controlled by ECCN 1C988.

| Schedule B No. 1 ¹ | Commodity description | Unit of quantity ² |
|-------------------------------|--|-------------------------------|
| 200.3516 | Western red cedar (<i>Thuja plicata</i>) logs and timber | MBF |
| 202.2820 | Western red cedar lumber; rough, containing wane | MBF |
| 202.2840 | Western red cedar lumber; dressed or worked, containing wane | MBF |

¹ Schedule B Numbers are provided only as a guide to proper completion of the Shipper's Export Declaration, Form No. 7525 V.

² For export licensing purposes, report commodities on Form BXA-748P in units of quantity indicated.

SUPPLEMENT NO. 3 TO PART 754—STATUTORY PROVISIONS DEALING WITH EXPORTS OF CRUDE OIL

[The statutory material published in this supplement is for the information of the reader only. See the U.S. Code for the official text of this material.]

Public Law 104-58

SEC. 201. EXPORTS OF ALASKAN NORTH SLOPE OIL.

Section 28 of the Mineral Leasing Act (30 U.S.C. 185(s)) is amended by amending subsection(s) to read as follows:

“EXPORTS OF ALASKAN NORTH SLOPE OIL

(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this Act or any other provision of laws (including any regulation) applicable to the export 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), such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of the date of enactment of this subsection. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider—

(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;

(B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of the date of the enactment of this subsection; and

(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause

sustained material adverse employment effects in the United 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 quan-

ties 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 quantity 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 administration 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