

## § 758.7

## 15 CFR Ch. VII (1–1–14 Edition)

air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad.

[78 FR 22726, Apr. 16, 2013]

### **§ 758.7 Authority of the Office of Export Enforcement, the Bureau of Industry and Security, Customs offices and Postmasters in clearing shipments.**

(a) *Actions to assure compliance with the EAR.* Officials of BIS, the Office of Export Enforcement, the U.S. Customs Service and postmasters, including post office officials, are authorized and directed to take appropriate action to assure compliance with the EAR. This includes assuring that:

(1) Exports without a license issued by BIS are either outside the scope of the license requirements of the Export Administration Regulations or authorized by a License Exception; and

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

(b) *Types of actions.* The officials designated in paragraph (a) of this section are authorized to take the following types of actions:

#### (1) *Inspection of items—*

(i) *Purpose of inspection.* All items declared for export are subject to inspection for the purpose of verifying the items specified in the SED or AES record, or if there is no SED or AES record, the bill of lading or other loading document covering the items about to be exported, and the value and quantity thereof, and to assure observance of the other provisions of the Export Administration Regulations. This authority applies to all exports within the scope of the Export Administration Act or Export Administration Regulations whether or not such exports require a license issued by BIS. The inspection may include, but is not limited to, item identification, technical appraisal (analysis), or both.

(ii) *Place of inspection.* Inspection shall be made at the place of lading or where officials authorized to make those inspections are stationed for that purpose.

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

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

(B) *Notification to exporter and consignee.* When a sample is taken, the exporter (or the exporter's agent) and the ultimate consignee will be notified by letter from one of the official designated in paragraph (a) of this section, showing the port of export, date of sampling, export license number (if any) or other authorization, invoice number quantity of sample taken, description of item, marks and packing case numbers, and manufacturer's number for the item. The original letter will be sent to the exporter or the exporter's agent, the duplicate will be placed in the container that had been opened, and the triplicate will be retained by the inspecting office.

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

(2) *Inspection of documents—(i) General.* Officials designated in paragraph (a) of this section are authorized to require exporters or their agents, and owners and operators of exporting carriers or their agents, to produce for inspection or copying: invoices, orders, letters of credit, inspection reports, packing lists, shipping documents and instructions, correspondence, and any other relevant documents, as well as furnish other information bearing upon a particular shipment being exported or intended to be exported.

(ii) *Cartridge and shell case scrap.* When cartridge or shell cases are being exported as scrap (whether or not they have been heated, flame-treated, mangled, crushed, or cut) from the United

States, the U.S. Customs Service is authorized to require the exporter to furnish information bearing on the identity and relationships of all parties to the transaction and produce a copy of the bid offer by the armed services in order to assure that the terms of the Export Administration Regulations are being met and that the material being shipped is scrap.

(3) *Questioning of individuals.* Officials designated in paragraph (a) of this section are authorized to question the owner or operator of an exporting carrier and the carrier's agent(s), as well as the exporter and the exporter's agent(s), concerning a particular shipment exported or intended to be exported.

(4) *Prohibiting lading.* Officials designated in paragraph (a) of this section are authorized to prevent the lading of items on an exporting carrier whenever those officials have reasonable cause to believe that the export or removal from the United States is contrary to the Export Administration Regulations.

(5) *Inspection of exporting carrier.* The U.S. Customs Service is authorized to inspect and search any exporting carrier at any time to determine whether items are intended to be, or are being, exported or removed from the United States contrary to the Export Administration Regulations. Officials of the Office of Export Enforcement may conduct such inspections with the concurrence of the U.S. Customs Service.

(6) *Seizure and detention.* Customs officers are authorized, under Title 22 of the United States Code, section 401, *et seq.*, to seize and detain any items whenever an attempt is made to export such items in violation of the Export Administration Regulations, or whenever they know or have probable cause to believe that the items are intended to be, are being, or have been exported in violation of the EAR. In addition to the authority of Customs officers to seize and detain items, both Customs officials and officials of the Office of Export Enforcement are authorized to detain any shipment held for review of the AES record, or if there is no AES record, the bill of lading or other loading document covering the items about to be exported, or for physical inspec-

tion of the items, whenever such action is deemed to be necessary to assure compliance with the EAR.

(7) *Preventing departure of carrier.* The U.S. Customs Service is authorized under Title 22 of the U. S. Code, section 401, *et seq.*, to seize and detain, either before or after clearance, any vessel or vehicle or air carrier that has been or is being used in exporting or attempting to export any item intended to be, being, or having been exported in violation of the EAR.

(8) *ordering the unloading.* The U.S. Customs Service is authorized to unload, or to order the unloading of, items from any exporting carrier, whenever the U.S. Customs Service has reasonable cause to believe such items are intended to be, or are being, exported or removed from the United States contrary to the EAR.

(9) *ordering the return of items.* If, after notice that an inspection of a shipment is to be made, a carrier departs without affording the U.S. Customs Service, Office of Export Enforcement, or BIS personnel an adequate opportunity to examine the shipment, the owner or operator of the exporting carrier and the exporting carrier's agent(s) may be ordered to return items exported on such exporting carrier and make them available for inspection.

(10) *Designating time and place for clearance.* The U.S. Customs Service is authorized to designate times and places at which U.S. exports may move by land transportation to countries contiguous to the United States.

[61 FR 12852, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997; 68 FR 50474, Aug. 21, 2003; 78 FR 13470, Feb. 28, 2013]

**§ 758.8 Return or unloading of cargo at direction of BIS, the Office of Export Enforcement or Customs Service.**

(a) *Exporting carrier.* As used in this section, the term "exporting carrier" includes a connecting or on-forwarding carrier, as well as the owner, charterer, agent, master, or any other person in charge of the vessel, aircraft, or other kind of carrier, whether such person is located in the United States or in a foreign country.

(b) *ordering return or unloading of shipment.* Where there are reasonable