

Bureau of Industry and Security

BIS 2019 | ANNUAL CONFERENCE
ON EXPORT CONTROLS
July 9-11 | Washington, D.C.



Freight Forwarders and Routed Transactions



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TRADE COMMUNITY PERSPECTIVE



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Gerry Horner

Trade Regulations Branch

Governments and Trade Management Division
U.S. Census Bureau

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Routed Export Transaction

[FTR 30.3(e)]

**FPPI authorizes a U.S. agent to facilitate the export of items from
the United States and to prepare and file the EEI**



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Routed Export Transaction Background

- **Advance Notice of Proposed Rulemaking (ANPRM)**
 - Published on October 6, 2017
 - 60 day public comment period ended on December 5, 2017
 - The Census Bureau's Trade Regulations Branch (TRB) received a total of 53 comments regarding definitions and reporting requirements of routed export transactions
 - Worked concurrently with the Bureau of Industry and Security (BIS)

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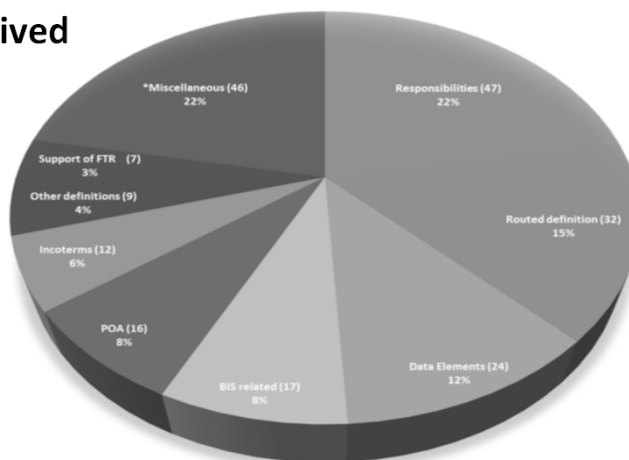


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Routed Export Transaction Comments

- **Total of 53 Comments Received**
 - 210 individual comments
- **Common Themes:**
 - Party responsibilities
 - Definition of Routed
 - Data Elements
 - BIS related
 - Power of Attorney
 - Incoterms



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Goal and Purposes

- **Clarify the Requirements Governing Routed Export Transactions**
 - Fulfilling Missions of Both Census Bureau and Bureau of Industry and Security (BIS)
 - Aligning the FTR with the EAR
 - Revising and Adding Key Terms
 - Providing Clear Responsibilities of Parties
 - Improving communication between the US Principal Party in Interest (USPPI), Foreign Principal Party in Interest (FPPI), and agents in Routed Export Transactions

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Trade Regulations Branch (TRB)

**Phone:** 1-800-549-0595 (Option 3)**Fax:** 301-763-8835**Email:** itmd.askregs@census.gov**Website:** census.gov/trade**Blog:** globalreach.blogs.census.gov

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Questions?



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Sharron Cook, Senior Export Policy Analyst
Office of Exporter Services/Regulatory Policy Division



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Background

- February 6, 2014 (79 FR 7105) Proposed rule
 - BIS received 12 comments
- October 6, 2017 (82 FR 46739) Advanced Notice of Proposed Rulemaking
 - Census received 53 comments
- All of the slides in this presentation set forth comments and suggestions received
 - Not what will be in the next proposed rule

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Routed Export Transaction

- BIS proposed to:
 - Remove the term “routed export transaction” from the EAR, including the definition of this term in § 772.1
 - Create a new term to define the export transactions currently identified and permitted under § 758.3(b) of the EAR.
 - “foreign principal controlled export transaction” (FPCET)

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Routed Export Transaction

- Comment: The type of transaction that currently exists in § 758.3(b) is a subset of routed export transactions
 - Suggests that instead of removing “routed export transaction” from § 772.1, BIS should add a new definition describing this specific type of routed export transaction.

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Power of Attorney (POA)

- Comment: Remove the power of attorney (POA) requirement
- BIS observations
 - FTR – POA for filing EEI
 - EAR – POA for submitting a license application
- BIS thoughts:
 - If there is another document that clearly states responsibilities and authorization, this would be feasible.
 - Incoterms do not fulfill this requirement.

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U.S. Agent

- Comment: The U.S. forwarding or other agent in a routed export transaction may be unaware or unwilling to take on the responsibilities of the USPPI.
- Comment: the agent of the FPPI may not have adequate technical knowledge of the item being shipped

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U.S. Agent

- Several Comments: the proposed changes to §758.3 did not adequately describe the duties of the FPPI's agent or how this individual would become involved in the export transaction.
- Comment: The FPPI could essentially force exporting responsibilities upon the forwarding agent, regardless of whether the agent agreed to do so.
- Consensus among commenters: that the EAR needs to ensure that all parties agree to participate in the transaction and to provide required information among participants.

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Information Sharing

- Comment: In a routed export transaction, the FPPI must assume responsibility for the licensing requirements, unless the USPPI agrees to assume responsibility.
 - The commenter argues that if the FPPI and the agent refuse licensing responsibilities, then they will not be obligated to share information with the USPPI.

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Information Sharing

- BIS observation: There have been many problems with USPPI getting the AES information from the U.S. agent.
 - The USPPI is required to keep AES information under the EAR recordkeeping requirements
- Should the ECCN be shared instead of technical information for classification?
 - Precedence - License Exception STA already requires the sharing of the ECCN with the FPPI

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Part 772 Definitions

- Comment: addition of the term “Foreign Principal Party in Interest” and a revision to the definition “principal party in interest.”
 - Also: addition of the terms ‘export,’ ‘USPPI,’ and ‘FPPI.’
- Comment: adding ‘electronic writing’ to §758.3(b)(1) and components required in the writing.

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Liability

- Comment: empowering the FPPI or FPPI’s agent to make the license determination and still allow the use of the USPPI’s employer identification number (EIN) risks making the USPPI culpable for the actions taken by the FPPI or the FPPI’s agent.

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Responsibilities

- Comment: Several commenters wanted BIS to clarify the responsibilities of parties in a “routed export transaction” based on Incoterms, such as ExWorks (Incoterm code EXW) or Free Carrier (Incoterm code FCA).
- BIS thoughts: Incoterms have no governmental regulatory basis, and as such lack the force of law.

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Status

- Both Census and BIS plan to publish proposed rules together.
- BIS rule is with the BIS lawyers, still needs DOC lawyers review, then to OMB
- OMB plan to review both rules together
- Possible Summer/Fall publication

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