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Title 15 —Commerce and Foreign Trade

Subtitle B —Regulations Relating to Commerce and Foreign Trade

Chapter VII —Bureau of Industry and Security, Department of Commerce

Subchapter C —Export Administration Regulations

Part 764 Enforcement and Protective Measures

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Supplement No. 1 to Part 764

Standard Terms of Orders Denying Export Privileges

PART 764—ENFORCEMENT AND PROTECTIVE MEASURES

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4611-4613; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

Source: 61 FR 12902, Mar. 25, 1996, unless otherwise noted.

§ 764.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part specifies conduct that constitutes a violation of the ECRA and/or the EAR and the sanctions that may be imposed for such violations. Antiboycott violations are described in part 760 of the EAR, and the violations and sanctions specified in part 764 also apply to conduct relating to part 760, unless otherwise stated. This part describes administrative sanctions that may be imposed by BIS. This part also describes criminal sanctions that may be imposed by a United States court and other sanctions that are neither administrative nor criminal pursuant to sections 11A, B, and C of the Export Administration Act EAA and other statutes. Information is provided on how to report and disclose violations. Finally, this part identifies protective administrative measures that BIS may take in the exercise of its regulatory authority.

[85 FR 73416, Nov. 18, 2020]

§ 764.2 Violations.

- (a) **Engaging in prohibited conduct.** No person may engage in any transaction or take any other action prohibited by or contrary to, or refrain from engaging in any transaction or take any other action required by ECRA, the EAR, or any order, license or authorization issued thereunder.
- (b) **Causing, aiding, or abetting a violation.** No person may cause or aid, abet, counsel, command, induce, procure, permit, or approve the doing of any act prohibited, or the omission of any act required, by ECRA, the EAR, or any order, license or authorization issued thereunder.
- (c) **Solicitation and attempt.** No person may solicit or attempt a violation of ECRA, the EAR, or any order, license, or authorization issued thereunder.
- (d) **Conspiracy.** No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of ECRA, the EAR, or any order, license, or authorization issued thereunder.
- (e) **Acting with knowledge of a violation.** No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, or conduct negotiations to facilitate such activities with respect to, any item that has been, is being, or is about to be exported, reexported, or transferred (in-country), or that is otherwise subject to the EAR, with knowledge that a violation of ECRA, the EAR, or any order, license, or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item.
- (f) [Reserved]
- (g) **Misrepresentation and concealment of facts.**
 - (1) No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to BIS or an official of any other United States agency, or indirectly through any other person:
 - (i) In the course of an investigation or other action subject to the EAR; or
 - (ii) In connection with the preparation, submission, issuance, use, or maintenance of any “export control document” or any report filed or required to be filed pursuant to the EAR; or
 - (iii) For the purpose of or in connection with effecting an export, reexport, transfer (in-country) or other activity subject to the EAR.
 - (2) All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify BIS, and any other relevant agency, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention has occurred or may occur in the future.
- (h) **Evasion.** No person may engage in any transaction or take any other action with intent to evade the provisions of ECRA, the EAR, or any order, license or authorization issued thereunder.
- (i) **Failure to comply with reporting, recordkeeping requirements.** No person may fail or refuse to comply with any reporting or recordkeeping requirement of ECRA, the EAR, or of any order, license, or authorization issued thereunder.

- (j) **License alteration.** Except as specifically authorized in the EAR or in writing by BIS, no person may alter any license, authorization, export control document, or order issued under ECRA or the EAR.
- (k) **Acting contrary to the terms of a denial order.** No person may take any action that is prohibited by a denial order or a temporary denial order issued by BIS to prevent imminent violations of ECRA, the EAR, or any order, license or authorization issued thereunder.

[85 FR 73416, Nov. 18, 2020]

§ 764.3 Sanctions.

- (a) **Administrative.** Violations of ECRA, the EAR, or any order, license or authorization issued thereunder are subject to the administrative sanctions described in this section and to any other liability, sanction, or penalty available under law. The protective administrative measures that are described in § 764.6 of this part are distinct from administrative sanctions.
 - (1) **Civil monetary penalty.**
 - (i) A civil monetary penalty not to exceed the amount set forth in ECRA may be imposed for each violation, and in the event that any provision of the EAR is continued or revised by IEEPA or any other authority, the maximum monetary civil penalty for each violation shall be that provided by such other authority.
 - (ii) The payment of any civil penalty may be made a condition, for a period not exceeding two years after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed.
 - (iii) The payment of any civil penalty may be deferred or suspended in whole or in part during any probation period that may be imposed. Such deferral or suspension shall not bar the collection of the penalty if the conditions of the deferral, suspension, or probation are not fulfilled.
 - (2) **Denial of export privileges.** An order may be issued that restricts the ability of the named persons to engage in exports, reexports, and transfers (in-country) involving items subject to the EAR, or that restricts access by named persons to items subject to the EAR. An order denying export privileges may be imposed either as a sanction for a violation of ECRA, the EAR, or any other statute set forth at 50 U.S.C. 4819(e)(1)(B); or as a protective administrative measure described in § 764.6(c) or (d) of this part. An order denying export privileges may suspend or revoke any or all outstanding licenses issued under the EAR to a person named in the denial order or in which such person has an interest; may deny or restrict exports, reexports, and transfers (in-country) by or to such person of any item subject to the EAR; and may restrict dealings in which that person may benefit from any export, reexport, or transfer (in-country) of such items. The standard terms of a denial order are set forth in supplement no. 1 to this part. A non-standard denial order, narrower in scope, may be issued. Authorization to engage in actions otherwise prohibited by a denial order may be given by the Office of Exporter Services, in consultation with the Office of Export Enforcement, upon a written request by a person named in the denial order or by a person seeking permission to deal with a named person. Submit such requests to: Bureau of Industry and Security, Office of Exporter Services, Room 2099b, U.S. Department of Commerce, 14th Street and Pennsylvania Ave. NW, Washington, DC 20230.

(3) **Exclusion from practice.** Any person acting as an attorney, accountant, consultant, freight forwarder, or in any other representative capacity for any license application or other matter before BIS may be excluded by order from any or all such activities before BIS.

(b) **Criminal.** Whoever willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids and abets in the commission of, an unlawful act described in 50 U.S.C. 4819(a) shall be fined not more than \$1,000,000; and in the case of the individual, shall be imprisoned for not more than 20 years, or both.

(c) **Other sanctions.** Conduct that violates ECRA, the EAR, or any order, license, or authorization issued thereunder, and other conduct specified in sections 11A, B, and C of the EAA may be subject to sanctions or other measures in addition to criminal and administrative sanctions under ECRA or the EAR. These include, but are not limited to, the following:

(1) **Statutory sanctions.** Statutorily-mandated sanctions may be imposed on account of specified conduct related to weapons proliferation. Such statutory sanctions are not civil or criminal penalties, but restrict imports and procurement (See section 11A of the EAA, Multilateral Export Control Violations, and section 11C of the EAA, Chemical and Biological Weapons Proliferation), or restrict export licenses (See section 11B of the EAA, Missile Proliferation Violations, and the Iran-Iraq Arms Non-Proliferation Act of 1992).

(2) **Other sanctions and measures –**

(i) **Seizure and forfeiture.** Any property seized pursuant to export laws and regulations administered or enforced by the Secretary is subject to forfeiture. (50 U.S.C. 4819(d) and 4820(j); 22 U.S.C. 401; and 13 U.S.C. 305).

(ii) **Actions by other agencies.**

(A) The Department of State may not issue licenses or approvals for the export or reexport of defense articles and defense services controlled under the Arms Export Control Act to persons convicted of criminal offenses specified at 22 U.S.C. 2778(g)(1)(A), or to persons denied export privileges by BIS or another agency; and may deny such licenses or approvals where the applicant is indicted for, or any party to the export is convicted of, those specified criminal offenses. (22 CFR 126.7(a) and 127.11(a)).

(B) The Department of Defense, among other agencies, may suspend the right of any person to contract with the United States Government based on export control violations. (Federal Acquisition Regulations at 48 CFR 9.407-2).

[85 FR 73417, Nov. 18, 2020]

§ 764.4 Reporting of violations.

(a) **Where to report.** If a person learns that an export control violation of the EAR has occurred or may occur, that person may notify:

Office of Export Enforcement, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H-4520, Washington, D.C. 20230, Tel: (202) 482-1208, Facsimile: (202) 482-0964

or, for violations of part 760 of the EAR:

Office of Antiboycott Compliance, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H-6099C, Washington, D.C. 20230, Tel: (202) 482-2381, Facsimile: (202) 482-0913.

- (b) **Failure to report violations.** Failure to report potential violations may result in the unwarranted issuance of licenses or exports without the required licenses to the detriment of the interests of the United States.
- (c) **Reporting requirement distinguished.** The reporting provisions in paragraph (a) of this section are not "reporting requirements" within the meaning of § 764.2(i) of this part.
- (d) **Formerly embargoed destinations.** Reporting requirements for activities within the scope of § 764.2(e) that involve items subject to the EAR which may have been illegally exported or reexported to Libya prior to the lifting of the comprehensive embargo on Libya are found in § 764.7 of the EAR.

[61 FR 12902, Mar. 25, 1996, as amended at 70 FR 14391, Mar. 22, 2005]

§ 764.5 Voluntary self-disclosure.

- (a) **General policy.** BIS strongly encourages disclosure to the Office of Export Enforcement (OEE) if you believe that you may have violated the EAR, or any order, license or authorization issued thereunder. As described in supplement no. 1 to part 766, voluntary self-disclosure is a mitigating factor, and a firm's deliberate decision not to disclose significant apparent violations is an aggravating factor in determining what administrative sanctions, if any, will be sought by OEE. A deliberate decision not to disclose occurs when a firm uncovers a significant apparent violation that it has committed but then chooses not to file a VSD.
- (b) **Limitations.**
 - (1) The provisions of this section do not apply to disclosures of violations relating to part 760 of the EAR.
 - (2) The provisions of this section apply only when information is provided to OEE for its review in determining whether to take administrative action under part 766 of the EAR for violations of the export control provisions of the EAR.
 - (3) The provisions of this section apply only when information is received by OEE for review prior to the time that OEE, or any other agency of the United States Government, has learned the same or substantially similar information from another source and has commenced an investigation or inquiry in connection with that information.
 - (4) While voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by OEE, it is a factor that is considered together with all other factors in a case. The weight given to voluntary self-disclosure is solely within the discretion of OEE, and the mitigating effect of voluntary self-disclosure may be outweighed by aggravating factors. Voluntary self-disclosure does not prevent transactions from being referred to the Department of Justice for criminal prosecution. In such a case, OEE would notify the Department of Justice of the voluntary self-disclosure, but the consideration of that factor is within the discretion of the Department of Justice.
 - (5) A firm will not be deemed to have made a disclosure under this section unless the individual making the disclosure did so with the full knowledge and authorization of the firm's senior management.

- (6) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) ***Voluntary self-disclosures involving minor or technical violations –***

- (1) ***General.*** Any person wanting to voluntarily disclose a minor or technical violation should submit an abbreviated narrative report, as described in paragraph (c)(2) of this section. A minor or technical violation is one that does not contain any aggravating factors present as defined in section III(A) of supplement no. 1 to part 766. Examples of minor or technical violations include, but are not limited to, immaterial Electronic Export Information (EEI) filing errors, inadvertent record keeping violations resulting from failed file retrieval or retention mechanisms (e.g., physical damage caused by flood or fire and/or electronic corruption due to malware, virus, or outage), incorrect use of one license exception where other license exceptions were available, etc.

- (2) ***Abbreviated narrative report.*** The abbreviated narrative report should be submitted by email to bis_vsd_intake@bis.doc.gov or in writing to the address in paragraph (d)(7) of this section. The email subject line should include the word “abbreviated” if it is an abbreviated VSD.:

- (i) The notification should include:

- (A) The name of the person making the disclosure and should designate a contact person regarding the abbreviated narrative report and provide that contact person's current business street address, email address, and telephone number; and
- (B) A description of the general nature and extent of the violations (including, but not limited to, the destination and parties involved in any transaction, and the number, classification, and value of any items involved). Parties may itemize the various minor or technical violations in list or spreadsheet form.

- (ii) The Director of OEE at their discretion may request a full narrative report pursuant to paragraph (d)(3) of this section if OEE suspects the presence of aggravating factors which will be due in 180 days from the date of the OEE Director's request.

- (3) ***Bundling of minor/technical violations.*** Parties may bundle multiple minor or technical violations into one overarching submission, if the violations occurred within the preceding quarter. Parties may submit such minor or technical violations into a single VSD submission on a quarterly basis using the abbreviated narrative account process identified in paragraph (c)(2) of this section.

(d) ***Voluntary self-disclosures involving significant violations –***

- (1) ***General.*** Any person wanting to voluntarily disclose a significant violation should, in the manner outlined in paragraph (c)(2) of this section, initially notify OEE as soon as possible after violations are discovered, and then conduct a thorough review of all export-related transactions where violations are suspected. A significant violation is one that involves one or more aggravating factors as defined in section III(A) of supplement no. 1 to part 766. Those unsure of whether their possible disclosure relates to a minor or technical violation, or a significant violation, should follow the procedure in paragraph (d)(2) of this section for a significant violation.

- (2) ***Initial notification –***

- (i) ***Manner and content of initial notification.*** The initial notification should be submitted by email to bis_vsd_intake@bis.doc.gov or in writing to the address in paragraph (d)(7) of this section. The notification should include the name of the person making the disclosure and a brief description of the suspected violations and should designate a contact person regarding the initial notification and provide that contact person's current business street address, email address, and telephone number. The notification should describe the general nature and extent of the violations. OEE recognizes that there may be situations where it will not be practical to make an initial notification in writing. For example, written notification may not be practical if a shipment leaves the United States without the required license, yet there is still an opportunity to prevent acquisition of the items by unauthorized persons. In such situations, OEE should be contacted promptly at the office listed in paragraph (d)(7) of this section.
- (ii) ***Initial notification date.*** For purposes of calculating when a complete narrative account must be submitted under paragraph (d)(2)(iii) of this section, the initial notification date is the date the notification is received by OEE. OEE will notify the disclosing party in writing of the date that it receives the initial notification. At OEE's discretion, such writing from OEE may be on paper, or in an email message or facsimile transmission from OEE, or by any other method for the transmission of written communications. Where it is not practical to make an initial notification in writing, the person making the notification should confirm the oral notification in writing as soon as possible.
- (iii) ***Timely completion of narrative accounts.*** The full narrative account required by paragraph (d)(3) of this section must be received by OEE within 180 days of the initial notification date for purposes of paragraph (b)(3) of this section, absent an extension from the Director of OEE. If the person making the initial notification subsequently completes and submits to OEE the narrative account required by paragraph (d)(3) of this section such that OEE receives it within 180 days of the initial notification date, or within the additional time, if any, granted by the Director of OEE pursuant to paragraph (d)(2)(iv) of this section, the disclosure, including violations disclosed in the narrative account that were not expressly mentioned in the initial notification, will be deemed to have been made on the initial notification date for purposes of paragraph (b)(3) of this section if the initial notification was made in compliance with paragraphs (d)(1) and (2) of this section. Failure to meet the deadline (either the initial 180-day deadline or an extended deadline granted by the Director of OEE) would not be an additional violation of the EAR, but such failure may reduce or eliminate the mitigating impact of the voluntary disclosure under supplement no. 1 to this part. For purposes of determining whether the deadline has been met under this paragraph, a complete narrative account must contain all of the pertinent information called for in paragraphs (d)(3) through (5) of this section, and the voluntary self-disclosure must otherwise meet the requirements of this section.
- (iv) ***Deadline extensions.*** The Director of OEE may extend the 180-day deadline upon a determination in his or her discretion that U.S. Government interests would be served by an extension or that the person making the initial notification has shown that more than 180 days is reasonably needed to complete the narrative account.
 - (A) ***Conditions for extension.*** The Director of OEE in his or her discretion may place conditions on the approval of an extension. For example, the Director of OEE may require that the disclosing person agree to toll the statute of limitations with respect to violations disclosed in the initial notification or discovered during the review for or preparation of the narrative account, and/or require the disclosing person to undertake specified interim remedial compliance measures.

(B) **Contents of request.**

(1) In most instances 180 days should be adequate to complete the narrative account. Requests to extend the 180-day deadline set forth in paragraph (d)(2)(iii) of this section will be determined by the Director of OEE pursuant to his or her authority under this paragraph (d)(2)(iv) based upon his consideration and evaluation of U.S. Government interests and the facts and circumstances surrounding the request and any related investigations. Such requests should show specifically that the person making the request:

- (i) Began its review promptly after discovery of the violations;
- (ii) Has been conducting its review and preparation of the narrative account as expeditiously as can be expected, consistent with the need for completeness and accuracy;
- (iii) Reasonably needs the requested extension despite having begun its review promptly after discovery of the violations and having conducted its review and preparation of the narrative account as expeditiously as can be expected consistent with the need for completeness and accuracy; and
- (iv) Has considered whether interim compliance or other corrective measures may be needed and has undertaken such measures as appropriate to prevent recurring or additional violations.

(2) Such requests also should set out a proposed timeline for completion and submission of the narrative account that is reasonable under the applicable facts and circumstances and should also designate a contact person regarding the request and provide that contact person's current business street address, email address, and telephone number. Requests may also include additional information that the person making the request reasonably believes is pertinent to the request under the applicable facts and circumstances.

(C) **Timing of requests.** Requests for an extension should be made before the 180-day deadline and as soon as possible once a disclosing person determines that it will be unable to meet the deadline or the extended deadline where an extension previously has been granted, and possesses the information needed to prepare an extension request in accordance with paragraph (d)(2)(iv)(B) of this section. Requests for extension that are not received before the deadline for completing the narrative account has passed will not be considered. Parties who request an extension shortly before the deadline incur the risk that the Director of OEE will be unable to consider the request, determine whether or not to grant the extension, and communicate his or her decision before the deadline, and that any subsequently submitted narrative account will be considered untimely under paragraph (d)(2)(iii) of this section.

(3) **Full narrative.** After the initial notification, a thorough review should be conducted of export-related transactions where violations with potentially aggravating factors are suspected (as defined in section III(A) of supplement no. 1 to part 766). OEE recommends that the review cover a period of five years prior to the date of the initial notification. If your review goes back less than five years, you risk failing to discover violations that may later become the subject of an investigation. Any violations not voluntarily disclosed do not receive consideration under this section. However, the failure to make such disclosures will not be treated as a separate violation unless some other

section of the EAR or other provision of law requires disclosure. Upon completion of the review, OEE should be furnished with a narrative account that sufficiently describes the suspected violations so that their nature and gravity can be assessed. The narrative account should also describe the nature of the review conducted and measures that may have been taken to minimize the likelihood that violations will occur in the future. The narrative account should include:

- (i) The kind of violation involved, for example, a shipment without the required license or dealing with a party denied export privileges;
- (ii) An explanation of when and how the violations occurred;
- (iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations;
- (iv) License numbers;
- (v) The description, quantity, value in U.S. dollars and ECCN or other classification of the items involved; and
- (vi) A description of any mitigating circumstances.

(4) **Supporting documentation.**

- (i) The narrative account should be accompanied by copies of documents that explain and support it, including:
 - (A) Licensing documents such as licenses, license applications, import certificates and end-user statements;
 - (B) Shipping documents such as Shipper's Export Declarations, air waybills, bills of lading and packing lists; and
 - (C) Other documents such as letters, facsimiles, telexes and other evidence of written or oral communications, internal memoranda, purchase orders, invoices, letters of credit and brochures.
- (ii) Any relevant documents not attached to the narrative account must be retained by the person making the disclosure until OEE requests them, or until a final decision on the disclosed information has been made. After a final decision, the documents should be maintained in accordance with the recordkeeping rules in part 762 of the EAR (15 CFR part 762).

(5) **Certification.** A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a corporation or other organization should be signed by an official of the corporation or other organization with the authority to do so. § 764.2(g), relating to false or misleading representations, applies in connection with the disclosure of information under this section.

(6) **Oral presentations.** OEE believes that oral presentations are generally not necessary to augment the written narrative account and supporting documentation. If the person making the disclosure believes otherwise, a request for a meeting should be included with the disclosure.

- (7) **Where to make voluntary self-disclosures.** The information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure may be submitted by email to bis_vsd_intake@bis.doc.gov or mailed to: Director, Office of Export Enforcement, 1401 Constitution Ave., Room H4514, Washington, DC 20230, Tel: (202) 482-5036.

(e) **Dual-track processing of Voluntary Self-Disclosures by the Office of Export Enforcement.**

- (1) For VSDs that involve minor or technical infractions, including abbreviated VSDs, OEE will generally resolve the VSD within 60 days of a final VSD submission with one of the actions in paragraphs (e)(1)(i) and (ii) of this section.
- (i) Inform the person making the disclosure that, based on the facts disclosed, it plans to take no action; or
 - (ii) Issue a warning letter.
- (2) For VSDs that indicate significant violations, OEE will conduct an investigation, and as quickly as the facts and circumstances of a given case permit, OEE may take any of the following actions:
- (i) Inform the person making the disclosure that, based on the facts disclosed, it plans to take no action;
 - (ii) Issue a warning letter;
 - (iii) Issue a proposed charging letter pursuant to § 766.18 of the EAR and attempt to settle the matter;
 - (iv) Issue a charging letter pursuant to § 766.3 of the EAR if a settlement is not reached; and/or
 - (v) Refer the matter to the Department of Justice for criminal prosecution.

- (f) **Criteria.** Supplement no. 1 to part 766 describes how BIS typically exercises its discretion regarding whether to pursue an administrative enforcement case under part 766 and what administrative sanctions to seek in settling such a case.

(g) **Treatment of unlawfully exported items.**

- (1) Any person taking certain actions with knowledge that a violation of ECRA or the EAR has occurred has violated § 764.2(e).
- (i) Any person who has made a voluntary self-disclosure knows that a violation may have occurred. Therefore, at the time that a voluntary self-disclosure is made, the person making the disclosure may request permission from BIS to engage in the activities described in § 764.2(e) that would otherwise be prohibited.
 - (ii) Any person may also notify the Director of OEE that a violation has occurred and request permission from BIS to engage in the activities described in § 764.2(e) that would otherwise be prohibited.
 - (iii) Actions to return to the United States an item that has been unlawfully exported and disclosed under this section only require notification to the Director of OEE. Items subject to a violation that have been returned to the United States do not require further authorization under this paragraph (g) for future activities, provided that those future activities comply with any applicable EAR requirements.

- (2) How to submit a request under paragraphs (g)(1)(i) through (iii) of this section: A request should be submitted on letterhead, signed, and sent to the Director of the Office of Exporter

Services at emcd@bis.doc.gov with a copy sent to bis_vsd_intake@bis.doc.gov. The request should be specific and detail the following information: nature of the violation including when and how the violations occurred; description, quantity, value in U.S. dollars and ECCN or other classification of the items involved; license numbers, if applicable; identities and addresses of all individuals and organizations subject to the request, the scope of the request specifying the § 764.2(e) activities, including end-use, and point of contact. A copy of the initial or final VSD or notification made to the Director of OEE should be attached to the request.

- (3) If a request submitted pursuant to paragraph (g)(1)(i) or (ii) of this section is granted by the Office of Exporter Services in consultation with OEE, future activities with respect to those items that would otherwise violate § 764.2(e) will not constitute violations.

Note 1 to paragraph (g)(3): Even if permission is granted, the person making a voluntary self-disclosure pursuant to paragraph (g)(1)(i) of this section is not absolved from liability for any violations disclosed nor relieved of the obligation to obtain any required reexport authorizations.

- (4) **Reexports and transfers (in-country).** To reexport or transfer (in-country) items that are the subject of a voluntary self-disclosure or notification, and that have been exported contrary to the provisions of ECRA or the EAR, authorization may be requested from BIS in accordance with the provisions of part 748 of the EAR (15 CFR part 748). If the applicant who submitted the reexport or transfer authorization knows that the items are the subject of a voluntary self-disclosure or notification, the request should state that a voluntary self-disclosure or notification was made in connection with the export of the items for which authorization is sought and a copy of the voluntary self-disclosure or notification should be included with the license application.

Note 2 to paragraph (g)(4): If the items are otherwise eligible for reexport or transfer under a license exception or the No License Required (NLR) designation, a request under this paragraph (g) may be submitted to obtain permission for the use of the license exception or NLR designation for such reexport or transfer, provided the transaction otherwise meets the terms and conditions of the license exception or NLR designation.

- (5) **Automated Export System (AES) filing errors.** Disclosures and notifications of AES filing errors reported to OEE under paragraphs (g)(1)(i) and (ii) of this section, where no other violation of the EAR only require notification to OEE and do not require authorization under this paragraph (g) to engage in activities subject to the EAR. The AES filing must be corrected with the Census Bureau before proceeding with such activities provided the activities meet any applicable EAR requirements. If another violation, such as failure to obtain a required license, has occurred in addition to the AES filing error, authorization under this paragraph (g) is required.

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997; 69 FR 7870, Feb. 20, 2004; 70 FR 22250, Apr. 29, 2005; 78 FR 48605, Aug. 9, 2013; 89 FR 75482, Sept. 16, 2024]

§ 764.6 Protective administrative measures.

- (a) **License Exception limitation.** As provided in § 740.2(b) of the EAR, all License Exceptions are subject to revision, suspension, or revocation.
- (b) **Revocation or suspension of licenses.** As provided in § 750.8 of the EAR, all licenses are subject to revision, suspension, or revocation.
- (c) **Temporary denial orders.** BIS may, in accordance with § 766.24 of the EAR, issue an order temporarily denying export privileges when such an order is necessary in the public interest to prevent the occurrence of an imminent violation.
- (d) **Denial based on criminal conviction.** BIS may, in accordance with § 766.25 of the EAR, issue an order denying the export privileges of any person who has been convicted of an offense specified in § 11(h) of the EAA.

§ 764.7 Activities involving items that may have been illegally exported or reexported to Libya.

- (a) **Introduction.** As set forth in § 764.2(e) of this part, and restated in General Prohibition Ten at § 736.2(b)(10) of the EAR, no person (including a non-U.S. Third Party) may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, finance, forward, or otherwise service, in whole or in part, any item subject to the EAR with knowledge that a violation has occurred, or will occur, in connection with the item. This section addresses the application of § 764.2(e) of this part to activities involving items subject to the EAR that may have been illegally exported or reexported to Libya before the comprehensive embargo on Libya ended (April 29, 2004) (“installed base” items).
- (b) **Libya —**
 - (1) **Activities involving installed base items in Libya for which no license is required.** Subject to the reporting requirement set forth in paragraph (b)(1)(ii) of this section, activities within the scope of § 764.2(e) of this part involving installed base items described in paragraph (b)(1)(i) of this section that are located in Libya and that were exported or reexported before April 29, 2004 do not require a license from BIS.
 - (i) **Scope.** An installed base item is within the scope of paragraph (b)(1) of this section if:
 - (A) It is not on the Commerce Control List in supplement no. 1 to part 774 of the EAR;
 - (B) It is on the Commerce Control List, but is authorized for export or reexport pursuant to a License Exception to Libya; or
 - (C) It is on the Commerce Control List and controlled only for AT reasons or for NS and AT reasons only, and is not listed on the Wassenaar Arrangement's Sensitive List (Annex 1) or Very Sensitive List (Annex 2) posted on the Wassenaar Arrangement's Web site (www.wassenaar.org) at the Control Lists web page.

Note 1 to paragraph (b)(1)(i): An item being exported or reexported to Libya may require a license based on the classification of the item to be exported or reexported regardless of whether the item will be used in connection with an installed base item. See paragraph (b)(4) of this section.

Note 2 to paragraph (b)(1)(i): Not all items listed on the Wassenaar Arrangement's Annex 1, Sensitive List, and Annex 2, Very Sensitive List, fall under the export licensing jurisdiction of the Department of Commerce. Please refer to the Commerce Control List for additional jurisdictional information related to those items. Also, if you do not have access to the internet to review the Wassenaar Arrangement's Sensitive List and Very Sensitive List, please contact the Office of Exporter Services, Division of Exporter Counseling for assistance at telephone number (202) 482-4811.

- (ii) **Reporting requirement.** Any person engaging in activity described in paragraph (b)(1) of this section must submit to BIS's Office of Export Enforcement (OEE) a report including all known material facts with respect to how the installed base item arrived in Libya. The report must be submitted to OEE at the address identified in § 764.4(a) of the EAR within ninety (90) days of the first activity relating to the installed base item in Libya. A report may address more than one activity and/or more than one installed base item. An additional report must be submitted if any new material information regarding the export or reexport to Libya of the installed base item is discovered.
- (2) **Licensing procedure for activities involving installed base items in Libya –**
 - (i) **License requirement.** Any person seeking to undertake activities within the scope of § 764.2(e) of the EAR with respect to any installed base item located in Libya and not described in paragraph (b)(1)(i) of this section must obtain a license from BIS prior to engaging in any such activities. License applications should be submitted in accordance with §§ 748.1, 748.4 and 748.6 of the EAR, and should fully describe the relevant activity within the scope of § 764.2(e) of this part which is the basis of the application. License applications should include all known material facts as to how the installed base item originally was exported or reexported to Libya. This section also applies if you know that an item to be exported or reexported to a third party will be used on an installed base item not described in paragraph (b)(1)(i) of this section.
 - (ii) **Licensing policy.** BIS will review license applications submitted pursuant to paragraph (b)(2)(i) of this section on a case-by-case basis. Favorable consideration will be given for those applications related to civil end-uses in Libya. Applications related to military, police, intelligence, or other sensitive end-uses in Libya will be subject to a general policy of denial.
- (3) **Exclusion.** The provisions of this section are not applicable to any activities within the scope of § 764.2(e) of the EAR undertaken with respect to an installed base item in Libya by a person who was party to the original illegal export or reexport of the related installed base item to Libya. Such persons should voluntarily self-disclose violations pursuant to the procedures set forth in § 764.5 of this part, which in some cases may allow activities related to unlawfully exported or reexported items to be undertaken based on permission from BIS.
- (4) **Relationship to other Libya license requirements.** Notwithstanding this section, a license may be required pursuant to another provision of the EAR to engage in activity involving Libya. If a license is required pursuant to another section of the EAR, and the transaction also involves activity within the scope of § 764.2(e) of this part related to an installed base item in Libya, this information should be

specified on the license application. Such applications must also include all known information as to how the installed base item originally arrived in Libya. If granted, the license for the proposed transaction will also authorize the related activity within the scope of § 764.2(e) of this part.

[70 FR 14391, Mar. 22, 2005, as amended at 71 FR 51719, Aug. 31, 2006; 73 FR 49331, Aug. 21, 2008]

§ 764.8 Voluntary self-disclosures for boycott violations.

This section sets forth procedures for disclosing violations of part 760 of the EAR—Restrictive Trade Practices or Boycotts and violations of part 762—Recordkeeping—with respect to records related to part 760. In this section, these provisions are referred to collectively as the “antiboycott provisions.” This section also describes BIS's policy regarding such disclosures.

- (a) **General policy.** BIS strongly encourages disclosure to the Office of Antiboycott Compliance (OAC) if you believe that you may have violated the antiboycott provisions. Voluntary self-disclosures are a mitigating factor with respect to any enforcement action that OAC might take.
- (b) **Limitations.**
 - (1) This section does not apply to disclosures of violations relating to provisions of the EAR other than the antiboycott provisions. Section 764.5 of this part describes how to prepare disclosures of violations of the EAR other than the antiboycott provisions.
 - (2) The provisions of this section apply only when information is provided to OAC for its review in determining whether to take administrative action under parts 764 and 766 of the EAR for violations of the antiboycott provisions.
 - (3) **Timing.** The provisions of this section apply only if OAC receives the voluntary self-disclosure as described in paragraph (c)(2) of this section before it commences an investigation or inquiry in connection with the same or substantially similar information it received from another source.
 - (i) **Mandatory reports.** For purposes of this section, OAC's receipt of a report required to be filed under § 760.5 of the EAR that discloses that a person took an action prohibited by part 760 of the EAR constitutes the receipt of information from another source.
 - (ii) **Requests for advice.** For purposes of this section, a violation that is revealed to OAC by a person who is seeking advice, either by telephone or e-mail, about the antiboycott provisions does not constitute the receipt of information from another source. Such revelation also does not constitute a voluntary self-disclosure or initial notification of a voluntary self-disclosure for purposes of this section.
 - (4) Although a voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by BIS, it is a factor that is considered together with all other factors in a case. The weight given to voluntary self-disclosure is solely within the discretion of BIS, and the mitigating effect of voluntary self-disclosure may be outweighed by aggravating factors. Voluntary self-disclosure does not prevent transactions from being referred to the Department of Justice for criminal prosecution. In such a case, BIS would notify the Department of Justice of the voluntary self-disclosure, but the decision as to how to consider that factor is within the discretion of the Department of Justice.

- (5) A firm will not be deemed to have made a disclosure under this section unless the individual making the disclosure did so with the full knowledge and authorization of the firm's senior management or of a person with authority to make such disclosures on behalf of the firm.
- (6) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) **Information to be provided –**

- (1) **General.** Any person wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify OAC as soon as possible after violations are discovered, and then conduct a thorough review of all transactions where violations of the antiboycott provisions are suspected.
- (2) **Initial notification.** The initial notification must be in writing and be sent to the address in § 764.8(c)(7) of this part. The notification should include the name of the person making the disclosure and a brief description of the suspected violations. The notification should describe the general nature and extent of the violations. If the person making the disclosure subsequently completes the narrative account required by § 764.8(c)(3) of this part, the disclosure will be deemed to have been made on the date of the initial notification for purposes of § 764.8(b)(3) of this part.
- (3) **Narrative account.** After the initial notification, a thorough review should be conducted of all business transactions where possible antiboycott provision violations are suspected. OAC recommends that the review cover a period of five years prior to the date of the initial notification. If your review goes back less than five years, you risk failing to discover violations that may later become the subject of an investigation. Any violations not voluntarily disclosed do not receive the same mitigation as the violations voluntarily self-disclosed under this section. However, the failure to make such disclosures will not be treated as a separate violation unless some other section of the EAR or other provision of law enforced by BIS requires disclosure. Upon completion of the review, OAC should be furnished with a narrative account that sufficiently describes the suspected violations so that their nature and gravity can be assessed. The narrative account should also describe the nature of the review conducted and measures that may have been taken to minimize the likelihood that violations will occur in the future. The narrative account should include:
 - (i) The kind of violation involved, for example, the furnishing of a certificate indicating that the goods supplied did not originate in a boycotted country;
 - (ii) An explanation of when and how the violations occurred, including a description of activities surrounding the violations (e.g., contract negotiations, sale of goods, implementation of letter of credit, bid solicitation);
 - (iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations; and
 - (iv) A description of any mitigating factors.
- (4) Supporting documentation.
 - (i) The narrative account should be accompanied by copies of documents that explain and support it, including:

- (A) Copies of boycott certifications and declarations relating to the violation, or copies of documents containing prohibited language or prohibited requests for information;
 - (B) Other documents relating to the violation, such as letters, facsimiles, telexes and other evidence of written or oral communications, negotiations, internal memoranda, purchase orders, invoices, bid requests, letters of credit and brochures;
- (ii) Any relevant documents not attached to the narrative account must be retained by the person making the disclosure until the latest of the following: the documents are supplied to OAC; BIS informs the disclosing party that it will take no action; BIS issues a warning letter for the violation; BIS issues an order that constitutes the final agency action in the matter and all avenues for appeal are exhausted; or the documents are no longer required to be kept under part 762 of the EAR.
- (5) **Certification.** A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a corporation or other organization should be signed by an official of the corporation or other organization with the authority to do so. Section 764.2(g) of this part relating to false or misleading representations applies in connection with the disclosure of information under this section.
- (6) **Oral presentations.** OAC believes that oral presentations are generally not necessary to augment the written narrative account and supporting documentation. If the person making the disclosure believes otherwise, a request for a meeting should be included with the disclosure.
- (7) **Where to make voluntary self-disclosures.** The information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure should be submitted to: Office of Antiboycott Compliance, 14th and Pennsylvania Ave., NW., Room 6098, Washington, DC 20230, tel: (202) 482-2381, facsimile: (202) 482-0913.
- (d) **Action by the Office of Antiboycott Compliance.** After OAC has been provided with the required narrative and supporting documentation, it will acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact, and take whatever additional action, including further investigation, it deems appropriate. As quickly as the facts and circumstances of a given case permit, BIS may take any of the following actions:
 - (1) Inform the person making the disclosure that, based on the facts disclosed, it plans to take no action;
 - (2) Issue a warning letter;
 - (3) Issue a proposed charging letter and attempt to settle the matter pursuant to § 766.18 of the EAR;
 - (4) Issue a charging letter pursuant to § 766.3 of the EAR if a settlement is not reached or BIS otherwise deems appropriate; and/or
 - (5) Refer the matter to the Department of Justice for criminal prosecution.
- (e) **Criteria.** Supplement no. 2 to part 766 of the EAR describes how BIS typically exercises its discretion regarding whether to pursue an antiboycott administrative enforcement case under part 766 and what administrative sanctions to seek in settling such a case.

[72 FR 39004, July 17, 2007]

Supplement No. 1 to Part 764—Standard Terms of Orders Denying Export Privileges

(a) *General.*

(1) Orders denying export privileges may be “standard” or “non-standard.” This Supplement specifies terms of the standard order denying export privilege with respect to denial orders issued after March 25, 1996. Denial orders issued prior to March 25, 1996 are to be construed, insofar as possible, as having the same scope and effect as the standard denial order. All denial orders are published in the FEDERAL REGISTER. The failure by any person to comply with any denial order is a violation of the Export Administration Regulations (EAR) (see § 764.2(k) of this part). BIS provides a list of persons currently subject to denial orders on its Web site at <http://www.bis.doc.gov>.

(2) Each denial order shall include:

- (i) The name and address of any denied persons and any related persons subject to the denial order;
- (ii) The basis for the denial order, such as final decision following charges of violation, settlement agreement, section 11(h) of the EAA, or temporary denial order request;
- (iii) The period of denial, the effective date of the order, whether and for how long any portion of the denial of export privileges is suspended, and any conditions of probation; and
- (iv) Whether any or all outstanding licenses issued under the EAR to the person(s) named in the denial order or in which such person(s) has an interest, are suspended or revoked.

Denial orders issued prior to March 25, 1996, are to be construed, insofar as possible, as having the same scope and effect as the standard denial order.

The introduction to each denial order shall be specific to that order, and shall include: (1) The name and address of any denied persons and any related persons subject to the denial order; (2) the basis for the denial order, such as final decision following charges of violation, settlement agreement, § 11(h) of the EAA, or temporary denial order request; (3) the period of denial, the effective date of the order, whether and for how long any portion of the denial of export privileges is suspended, and any conditions of probation; and (4) whether any or all outstanding licenses issued under the EAR to the person(s) named in the denial order or in which such person(s) has an interest, are suspended or revoked.

(b) ***Standard denial order terms.*** The following are the standard terms for imposing periods of export denial. Some orders also contain other terms, such as those that impose civil penalties, or that suspend all or part of the penalties or period of denial.

“It is therefore ordered:

First, that [the denied person(s)] may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Export Administration Regulations (EAR), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or
- C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

- A. Export, reexport, or transfer (in-country) to or on behalf of the denied person any item subject to the EAR;
- B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the EAR that has been exported from the United States;
- D. Obtain from the denied person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a denied person, or service any item, of whatever origin, that is owned, possessed or controlled by a denied person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in § 766.23 of the EAR, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this order.

This order, which constitutes the final agency action in this matter, is effective [DATE OF ISSUANCE].”

[61 FR 12902, Mar. 25, 1996, as amended at 67 FR 54953, Aug. 27, 2002; 70 FR 8720, Feb. 23, 2005; 78 FR 22727, Apr. 16, 2013; 85 FR 73417, Nov. 18, 2020]