

§ 730.10

15 CFR Ch. VII (1–1–04 Edition)

(v) The Sensors and Instrumentation TAC; and

(vi) The Transportation and Related Equipment TAC.

(2) *For more information.* For information on attending a TAC meeting or on becoming a TAC member, please contact Ms. Lee Ann Carpenter, Director, TAC Unit, OAS-EA/BIS, Room 3886C, U.S. Department of Commerce, Washington, DC 20230; Telephone number: (202) 482-2583. FAX number: (202) 501-8024.

[61 FR 12734, Mar. 25, 1996, as amended at 62 FR 25452, May 9, 1997]

§ 730.10 Advisory information.

The general information in this part is just that—general. To achieve brevity, so as to give you a quick overview, the information in this part is selective, incomplete, and not expressed with regulatory precision. The controlling language is the language of succeeding parts of the EAR and of any other laws or regulations referred to or applicable. The content of this part is not to be construed as modifying or interpreting any other language or as in any way, limiting the authority of BIS, any of its components or any other government department or agency. You should not take any action based solely on what you read in this part.

SUPPLEMENT NO. 1 TO PART 730—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

This supplement lists the control numbers assigned to the information collection requirements for the Bureau of Industry and Security by the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995. This supplement complies with the requirements of section 3506(c)(1)(B)(i) of the Paperwork Reduction Act requiring agencies to display current control numbers assigned by the Director of OMB for each agency information collection requirement.

Current OMB control No.	15 CFR part or section where collections of information are identified or described
0694-0001	§ 748.12(d) of the EAR.
0694-0004	Part 768 of the EAR.
0694-0008	§ 748.13, Supplement No. 5 to part 748 of the EAR.
0694-0009	§ 748.10(e) of the EAR.
0694-0012	Part 760 and § 762.2(b) of the EAR.
0694-0013	Part 774 of the EAR.
0694-0015	§ 773.3 of the EAR.

Current OMB control No.	15 CFR part or section where collections of information are identified or described
0694-0016	§§ 748.13 and 762.2(b) of the EAR.
0694-0017	§ 748.10 of the EAR.
0694-0021	§§ 748.11 and 762.2(b) of the EAR.
0694-0023	§§ 740.3(d) and 740.4(c) of the EAR.
0694-0025	§§ 754.4 and 762.2(b) of the EAR.
0694-0026	§ 754.3 of the EAR.
0694-0027	§ 754.2 of the EAR.
0694-0029	§ 740.4(a) of the EAR.
0694-0030	Supplement No. 2 to part 748, paragraph (p) of the EAR.
0694-0031	§ 750.9 of the EAR.
0694-0032	§ 748.4(d)(2) of the EAR.
0694-0033	§§ 740.7(b) and 762.2(b) of the EAR.
0694-0038	§§ 758.6(e)(2) of the EAR.
0694-0040	§§ 758.5(c)(2) and 758.8 of the EAR.
0694-0047	Supplement No. 2 to part 748, paragraph (o)(2) of the EAR.
0694-0048	§ 748.3 of the EAR.
0694-0050	§ 752.5(c)(5) of the EAR.
0694-0051	§ 750.10 of the EAR.
0694-0058	§§ 762.2(b) and 764.5 of the EAR.
0694-0064	§§ 748.9 and 762.2(b) of the EAR.
0694-0065	§ 754.4(c) of the EAR of the EAR.
0694-0073	§ 742.12, Supplement No. 3 to part 742, and § 762.2(b) of the EAR.
0694-0078	Supplement No. 1 to part 774 of the EAR.
0694-0086	Supplement No. 1 to part 774 of the EAR.
0694-0088	Parts 746, 748, and 752; § 762.2(b) of the EAR.
0694-0089	Part 752 and § 762.2(b) of the EAR.
0694-0093	§§ 748.10 and 762.2(b) of the EAR.
0694-0094	Part 758 of the EAR of the EAR.
0694-0095	§§ 740.7(a)(3)(ii) and 758.1(d) of the EAR.
0694-0096	Part 760, § 762.6(a) of the EAR.
0694-0097	§§ 752.15(b), 758.6, and 762.2(b) of the EAR.
0694-0102	§§ 754.6 and 754.7 of the EAR.
0694-0101	§ 734.4 of the EAR.
0694-0100	Supplement No. 1 to part 730.
0607-0001	§ 758.2(m) of the EAR.
0607-0018	§§ 740.1(d), 740.3(a)(3), 752.7(b), § 752.15(a) of the EAR.
0607-0152	§§ 754.2(h) and (i), 754.4(c), 758.1, § 758.2(m) and 758.3 of the EAR.
	§§ 740.1(d), 740.3(a)(3), 752.7(b), § 752.15(a) of the EAR.
	§§ 754.2(h) and (i), 754.4(c), 758.1, § 758.2(m), and 758.3 of the EAR.

SUPPLEMENT NO. 2 TO PART 730—TECHNICAL ADVISORY COMMITTEES

(a) *Purpose.* The purpose of this supplement is to describe the procedures and criteria for the establishment and operation of Technical Advisory Committees.

(b) *Technical advisory committees.* Any producer of articles, materials, or supplies, including technology, software, and other information, that are subject to export controls, or are being considered for such controls because of their significance to the national security of the United States, may request the Secretary of Commerce to establish a technical advisory committee, under the provisions of section 5(h) of the Export Administration Act of 1979, as amended (EAA) to advise and assist the Department of Commerce and other appropriate U.S. Government agencies or officials with respect to

questions involving technical matters; worldwide availability and actual utilization of production technology; licensing procedures that affect the level of export controls applicable to a clearly defined grouping of articles, materials, or supplies, including technology, software, or other information; and exports and reexports subject to all controls that the United States maintains including proposed revisions of any such controls. If producers of articles, materials, or supplies, including technology, software, and other information, that are subject to export controls because of their significance to the national security of the United States, wish a trade association or other representative to submit a written request on their behalf for the appointment to a TAC, such request shall be submitted in accordance with paragraph (b)(4) of this supplement.

(1) *Form and substance of requests.* Each request for the appointment of a TAC shall be submitted in writing to: Assistant Secretary for Export Administration, P.O. Box 273, Washington, DC 20044.

The request shall include:

(i) A description of the articles, materials, or supplies including technology and software, in terms of a clear, cohesive grouping (citing the applicable Export Control Classification Numbers where practical);

(ii) A statement of the reasons for requesting the appointment of a TAC; and

(iii) Any information in support of any contention that may be made that the request meets the criteria described in paragraph (b)(2) of this supplement.

(2) *Consideration of request for establishment of a TAC.* The Department of Commerce will review all requests for the establishment of a TAC to determine if the following criteria are met:

(i) That a substantial segment of the industry producing the specified articles, materials, or supplies including technology desires such a committee; and

(ii) That the evaluation of such articles, materials, or supplies including technology and software for export control purposes is difficult because of questions involving technical matters, worldwide availability and actual utilization of production and software technology, or licensing procedures.

(3) *Requests by a substantial segment of an industry.* In determining whether or not a substantial segment of any industry has requested the appointment of a TAC, the Department of Commerce will consider:

(i) The number of persons or firms requesting the establishment of a TAC for a particular grouping of commodities, software and technology in relation to the total number of U.S. producers of such items; and

(ii) The volume of annual production by such persons or firms of each item in the grouping in relation to the total U.S. production. Generally, a substantial segment of an

industry (for purposes of this supplement) shall consist of:

(A) Not less than 30 percent of the total number of U.S. producers of the items concerned; or

(B) Three or more U.S. producers who produce a combined total of not less than 30 percent of the total U.S. annual production, by dollar value of the items concerned; or

(C) Not less than 20 percent of the total number of U.S. producers of the items concerned, provided that the total of their annual production thereof is not less than 20 percent of the total U.S. annual production, by dollar value.

(iii) If it is determined that a substantial segment of the industry concerned has requested the establishment of a TAC concerning a specific grouping of items that the Department of Commerce determines difficult to evaluate for export control purposes, BIS will establish and use the TAC requested.

(4) *Requests from trade associations or other representatives.* Requests from trade associations or other representatives of U.S. producers for the establishment of a TAC must comply with the provisions of paragraphs (b) (1) through (3) of this supplement. In addition, in order to assist BIS in determining whether the criteria described in paragraph (b)(3) of this supplement have been met, a trade association or other representative submitting a request for the establishment of a TAC should include the following information:

(i) The total number of firms in the particular industry;

(ii) The total number of firms in the industry that have authorized the trade association or other representative to act in their behalf in this matter;

(iii) The approximate amount of total U.S. annual production by dollar value of the items concerned produced by those firms that have authorized the trade association or other representative to act in their behalf; and

(iv) A description of the method by which authorization to act on behalf of these producers was obtained.

(5) *Nominations for membership on TACs.* When the Department of Commerce determines that the establishment of a TAC is warranted, it will request nominations for membership on the committee among the producers of the items and from any other sources that may be able to suggest well-qualified nominees.

(6) *Selection of industry members of committee.* Industry members of a TAC will be selected by the Department of Commerce from a list of the nominees who have indicated their availability for service on the committee. To the extent feasible, the Department of Commerce will select a committee balanced to represent all significant facets of

the industry involved, taking into consideration such factors as the size of the firms, their geographical distribution, and their product lines. No industry representative shall serve on a TAC for more than four consecutive years. The membership of a member who is absent from four consecutive meetings shall be terminated.

(7) *Government members.* Government members of a TAC will be selected by the Department of Commerce from the agencies having an interest in the subject matter concerned.

(8) *Invitation to serve on committee.* Invitations to serve on a TAC will be sent by letter to the selected nominees.

(9) *Election of Chair.* The Chair of each TAC shall be elected by a vote of the majority of the members of the committee present and voting.

(c) *Charter.* (1) No TAC established pursuant to this supplement shall meet or take any action until an advisory committee charter has been filed with the Assistant Secretary for Export Administration of the Department of Commerce and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction over the Department. Such charter shall contain the following information:

- (i) The committee's official designation;
- (ii) The committee's objectives and the scope of its activities;
- (iii) The period of time necessary for the committee to carry out its purposes;
- (iv) The agency or official to whom the committee reports;
- (v) The agency responsible for providing the necessary support for the committee;
- (vi) A description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;
- (vii) The estimated annual operating costs in dollars and years for such committee;
- (viii) The estimated number and frequency of committee meetings;
- (ix) The committee's termination date, if less than two years from the date of the committee's establishment; and
- (x) The date the charter is filed.

(d) *Meetings.* (1) Each TAC established under the provisions of the EAA and paragraph (b) of this supplement shall meet at least once every three months at the call of its Chair unless it is specifically determined by the Chair, in consultation with other members of the committee, that a particular meeting is not necessary.

(2) No TAC may meet except at the call of its Chair.

(3) Each meeting of a TAC shall be conducted in accordance with an agenda approved by a designated Federal government employee.

(4) No TAC shall conduct a meeting in the absence of a designated Federal government

employee who shall be authorized to adjourn any advisory committee meeting, whenever the Federal government employee determines adjournment to be in the public interest.

(e) *Public notice.* Notice to the public of each meeting of a TAC will be issued at least 20 days in advance and will be published in the FEDERAL REGISTER. The notice will include the time and place of the meeting and the agenda.

(f) *Public attendance and participation.* (1) Any member of the public who wishes to do so may file a written statement with any TAC before or after any meeting of a committee.

(2) A request for an opportunity to deliver an oral statement relevant to matters on the agenda of a meeting of a TAC will be granted to the extent that the time available for the meeting permits. A committee may establish procedures requiring such persons to obtain advance approval for such participation.

(3) Attendance at meetings of TACs will be open to the public unless it is determined pursuant to section 10(d) of the Federal Advisory Committee Act to be necessary to close all, or some portion, of the meeting to the public. A determination that a meeting or portion thereof be closed to the public may be made if all or a specific portion of a meeting of a TAC is concerned with matters described in section 552(b) of Title 5, U.S.C.

(4) Participation by members of the public in open TAC meetings or questioning of committee members or other participants shall not be permitted except in accordance with procedures established by the committee.

(5) Every effort will be made to accommodate all members of the public who wish to attend.

(g) *Minutes.* (1) Detailed minutes of each meeting of each TAC will be kept and will contain a record of the persons present, a complete and accurate description of the matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the TAC.

(2) The accuracy of all the minutes will be certified by the TAC Chair.

(h) *Records.* (1) Subject to section 552 of Title 5, U.S.C. and Department of Commerce Administrative Order 205-12, "Public Information," and "Public Information" regulations issued by the Department of Commerce that are contained in 15 CFR part 4, Subtitle A, the records, reports, transcripts, minutes, appendices, working papers, draft, studies, agenda, or other documents that were made available to or prepared for or by each TAC will be available for public inspection and copying.

(2) Each TAC will prepare once each year a report describing its membership, functions, activities, and such related matters as would be informative to the public consistent with the policy of section 552(b) of Title 5, U.S.C.

(3)(i) Requests for records should be addressed to: Bureau of Industry and Security, Freedom of Information, Records Inspection Facility, U.S. Department of Commerce, Room 4513, Washington, DC 20230, Telephone (202) 482-2593.

(ii) Rules concerning the use of the Records Inspection Facility are contained in 15 CFR part 4, Subtitle A, or may be obtained from this facility.

(i) *Compensation.* If the Department of Commerce deems it appropriate, a member of a TAC may be reimbursed for travel, subsistence, and other necessary expenses incurred in connection with the member's duties.

(j) *Scope of advisory committee functions.* All TACs are limited to the functions described in their charters.

(k) *Duration of committees.* Each TAC will terminate at the end of two years from the date the committee was established or two years from the effective date of its most recent extension, whichever is later. Committees may be continued only for successive two-year periods by appropriate action taken by the authorized officer of the Department of Commerce prior to the date on which such advisory committee would otherwise terminate. TACs may be extended or terminated only after consultation with the committee.

(l) *Miscellaneous.* (1) TACs established in accordance with paragraph (b) of this supplement must conform to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), Office of Management and Budget Circular A-63 (Revision of March 1974), "Advisory Committee Management," Department of Commerce Administrative Order 205-12, "Public Information," the applicable provisions of the EAA, and any other applicable Department of Commerce regulations or procedures affecting the establishment or operation of advisory committees.

(2) Whenever the Department of Commerce desires the advice or assistance of a particular segment of an industry with respect to any export control problem for which the service of a TAC, as described in paragraph (b) of this supplement is either unavailable or impracticable, an advisory committee may be established pursuant to the provisions of section 9 of the Federal Advisory Committee Act. Such committees will be subject to the requirements of the Federal Advisory Committee Act, OMB Circular A-63 (Revision of March 1974), "Advisory Committee Management," Department of Commerce Administrative Order 205-12, "Public Information," and any other applicable Department of Commerce regulations or procedures affecting the establishment or operation of advisory committees.

(3) Nothing in the provisions of this supplement shall be construed to restrict in any manner the right of any person or firm to discuss any export control matter with the

Department of Commerce or to offer advice or information on export control matters. Similarly, nothing in these provisions shall be construed to restrict the Department of Commerce in consulting any person or firm relative to any export control matter.

SUPPLEMENT NO. 3 TO PART 730—OTHER
U.S. GOVERNMENT DEPARTMENTS
AND AGENCIES WITH EXPORT CONTROL RESPONSIBILITIES

NOTE: The departments and agencies identified with an asterisk control exports for foreign policy or national security reasons and, in certain cases, such controls may overlap with the controls described in the EAR (see part 734 of the EAR).

Defense Services and Defense Articles

*Department of State, Office of Defense Trade Controls, Tel. (703) 875-6644, Fax: (703) 875-6647.
22 CFR parts 120 through 130.

Drugs, Chemicals and Precursors

Drug Enforcement Administration, International Chemical Control Unit, Tel. (202) 307-7202, Fax: (202) 307-8570.
21 CFR parts 1311 through 1313.

Controlled Substances: Drug Enforcement Administration, International Drug Unit, Tel. (202) 307-2414, Fax: (202) 307-8570.
21 CFR 1311 through 1313.

Drugs and Biologics: Food and Drug Administration, Import/Export, Tel. (301) 594-3150, Fax: (301) 594-0165.
21 U.S.C. 301 *et seq.*

Investigational drugs permitted: Food and Drug Administration, International Affairs, Tel. (301) 443-4480, Fax: (301) 443-0235.
21 CFR 312.1106.

Fish and Wildlife Controls; Endangered Species

Department of the Interior, Chief Office of Management Authority, Tel. (703) 358-2093, Fax: (703) 358-2280.
50 CFR 17.21, 17.22, 17.31, 17.32.

Foreign Assets and Transactions Controls

*Department of Treasury, Office of Foreign Assets Control, Licensing, Tel. (202) 622-2480, Fax: (202) 622-1657.
31 CFR parts 500 through 590.

Medical Devices

Food and Drug Administration, Office of Compliance, Tel. (301) 594-4699, Fax: (301) 594-4715.
21 U.S.C. 301 *et seq.*

Natural Gas and Electric Power

Department of Energy, Office of Fuels Programs, Tel. (202) 586-9482, Fax: (202) 586-6050.

10 CFR 205.300 through 205.379 and part 590.

Nuclear Materials and Equipment

*Nuclear Regulatory Commission, Office of International Programs, Tel. (301) 415-2344, Fax: (301) 415-2395.
10 CFR part 110.

Nuclear Technology: Technical Data for Nuclear Weapons/Special Nuclear Materials

*Department of Energy, Office of Arms Control and Non Proliferation, Export Control Division, Tel. (202) 586-2112, Fax: (202) 586-6977.
10 CFR part 810.

Ocean Freight Forwarders

Federal Maritime Commission, Office of Freight Forwarders, Tel. (202) 523-5843, Fax: (202) 523-5830.
46 CFR part 510.

Patent Filing Data Sent Abroad

*Department of Commerce, Patent and Trademark Office, Licensing and Review; Tel. (703) 308-1722, Fax: (703) 305-3603, 3604.
37 CFR part 5.

U.S. Flagged or U.S. Manufactured Vessels Over 1,000 Gross Tons

U.S. Maritime Administration, Division of Vessel Transfer and Disposal, Tel. (202) 366-5821, Fax: (202) 366-3889.
46 CFR part 221.

[61 FR 12734, Mar. 25, 1996, as amended at 65 FR 38149, June 19, 2000]

PART 732—STEPS FOR USING THE EAR

Sec.

732.1 Steps overview.

732.2 Steps regarding scope of the EAR.

732.3 Steps regarding the ten general prohibitions.

732.4 Steps regarding License Exceptions.

732.5 Steps regarding Shipper's Export Declaration or Automated Export System record, Destination Control Statements, and recordkeeping.

732.6 Steps for other requirements.

SUPPLEMENT NO. 1 TO PART 732—DECISION TREE

SUPPLEMENT NO. 2 TO PART 732—AM I SUBJECT TO THE EAR?

SUPPLEMENT NO. 3 TO PART 732—BIS'S "KNOW YOUR CUSTOMER" GUIDANCE AND RED FLAGS

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 USC 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

SOURCE: 61 FR 12740, Mar. 25, 1996, unless otherwise noted.

§ 732.1 Steps overview.

(a)(1) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part is intended to help you determine your obligations under the EAR by listing logical steps in § 732.2 through § 732.5 of this part that you can take in reviewing these regulations. A flow chart describing these steps is contained in Supplement No. 1 to part 732. By cross-references to the relevant provisions of the EAR, this part describes the suggested steps for you to determine applicability of the following:

(i) The scope of the EAR (part 734 of the EAR);

(ii) Each of the general prohibitions (part 736 of the EAR);

(iii) The License Exceptions (part 740 of the EAR); and

(iv) Other requirements such as clearing your export with the U.S. Customs Service, keeping records, and completing and documenting license applications.

(2) These steps describe the organization of the EAR, the relationship among the provisions of the EAR, and the appropriate order for you to consider the various provisions of the EAR.

(b) *Facts about your transaction.* The following five types of facts determine your obligations under the EAR and will be of help to you in reviewing these steps:

(1) *What is it?* What an item is, for export control purposes, depends on its *classification*, which is its place on the Commerce Control List (see part 774 of the EAR).

(2) *Where is it going?* The *country of ultimate destination* for an export or re-export also determines licensing requirements (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List).

(3) *Who will receive it?* The *ultimate end-user* of your item cannot be a bad end-user. See General Prohibition Four (Denial Orders) in § 736.2(b)(4) and parts 744 and 764 of the EAR for a reference to the list of persons you may not deal with.