

§732.4

(l) *Step 17: Review orders, terms, and conditions.* Review the orders, terms, and conditions applicable to your transaction. General Prohibition Nine (Orders, Terms, and Conditions) prohibits the violation of any orders, terms, and conditions imposed under the EAR. Terms and conditions are frequently contained in licenses. In addition, the ten general prohibitions (part 736 of the EAR) and the License Exceptions (part 740 of the EAR) impose terms and conditions or limitations on your proposed transactions and use of License Exceptions. A given license or License Exception may not be used unless each relevant term or condition is met.

(m) *Step 18: Review the "Know Your Customer" Guidance and General Prohibition Ten (Knowledge Violation to Occur).* License requirements under the EAR are determined solely by the classification, end-use, end-user, ultimate destination, and conduct of U.S. persons. Supplement No. 1 to part 732 of the EAR is intended to provide helpful guidance regarding the process for the evaluation of information about customers, end-uses, and end-users. General Prohibition Ten (Knowledge Violation to Occur) prohibits anyone from proceeding with a transaction with knowledge that a violation of the EAR has occurred or is about to occur. It also prohibits related shipping, financing, and other services. General Prohibition Ten applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99.

(n) *Step 19: Complete the review of the general prohibitions.* After completion of Steps described in this section and review of all ten general prohibitions in part 736 of the EAR, including cross-referenced regulations in the EAR, you will know which, if any, of the ten general prohibitions of the EAR apply to you and your contemplated transaction or activity.

(1) If none of the ten general prohibitions is applicable to your export from the United States, no license from BIS is required, you do not need to qualify for a License Exception under part 740 of the EAR. You should skip the Steps in §732.4 of this part regarding License Exceptions and proceed directly to the Steps in §732.5 of this part regarding

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recordkeeping, clearing the Bureau of Customs and Border Protection with the appropriate Shipper's Export Declaration or Automated Export System record, and using the required Destination Control Statement.

(2) If none of the ten general prohibitions is applicable to your reexport or export from abroad, no license is required and you should skip all remaining Steps.

(3) If one or more of the ten general prohibitions are applicable, continue with the remaining steps.

[61 FR 12740, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 61 FR 68577, Dec. 30, 1996; 62 FR 25453, May 9, 1997; 63 FR 50520, Sept. 22, 1998; 65 FR 38150, June 19, 2000; 65 FR 62604, Oct. 19, 2000; 67 FR 38860, June 6, 2002; 67 FR 54952, Aug. 27, 2002; 67 FR 70546, Nov. 25, 2002; 68 FR 50472, Aug. 21, 2003]

§732.4 Steps regarding License Exceptions.

(a) *Introduction to Steps for License Exceptions.* If your export or reexport is subject to the EAR and is subject to General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), or Three (Foreign-Produced Direct Product Reexports), consider the steps listed in paragraph (b) of this section. If your export or reexport is subject to General Prohibitions Four (Denial Orders), Seven (U.S. Person Proliferation Activity), Eight (In-Transit), Nine (Orders, Terms, and Conditions), or Ten (Knowledge Violation to Occur), there are no License Exceptions available for your export or reexport. If your export is subject to General Prohibition Five (End-Use End-User), consult part 744 of the EAR. If your export or reexport is subject to General Prohibition Six (Embargo), consult part 746 of the EAR for applicable License Exceptions.

(b) *Steps for License Exceptions.* (1) *Step 20: Applicability of General Prohibitions.* Determine whether any one or more of the general prohibitions described in §736.2(b) of the EAR apply to your export or reexport. If no general prohibition applies to your export or reexport, then you may proceed with your export or reexport and need not review part 740 of the EAR regarding License Exceptions. You are reminded

of your recordkeeping obligations related to the clearance of the U.S. Customs Service provided in parts 762 and 758 of the EAR.

(2) *Step 21: Applicability of restrictions on all License Exceptions.* Determine whether any one or more of the restrictions in §740.2 of the EAR applies to your export or reexport. If any one or more of these restrictions apply, there are no License Exceptions available to you, and you must either obtain a license or refrain from the export or reexport.

(3) *Step 22: Terms and conditions of the License Exceptions.* (i) If none of the restrictions in §740.2 of the EAR applies, then review each of the License Exceptions to determine whether any one of them authorizes your export or reexport. Eligibility for License Exceptions is based on the item, the country of ultimate destination, the end-use, and the end-user, along with any special conditions imposed within a specific License Exception.

(ii) You may meet the conditions for more than one License Exception. Moreover, although you may not qualify for some License Exceptions you may qualify for others. Review the broadest License Exceptions first, and use any License Exception available to you. You are not required to use the most restrictive applicable License Exception. If you fail to qualify for the License Exception that you first consider, you may consider any other License Exception until you have determined that no License Exception is available.

(iii) License Exceptions TMP, RPL, BAG, AVS, GOV, and TSU authorize exports notwithstanding the provisions of the CCL. List-based License Exceptions (LVS, GBS, CIV, TSR, and CTP) are available only to the extent specified on the CCL. Part 740 of the EAR provides authorization for reexports only to the extent each License Exception expressly authorizes reexports. License Exception APR authorizes reexports only.

(iv) If you are exporting under License Exceptions GBS, CIV, LVS, CTP, TSR, or GOV, you should review §743.1 of the EAR to determine the applicability of certain reporting requirements.

(4) *Step 23: Scope of License Exceptions.* Some License Exceptions are limited by country or by type of item.

(i) Countries are arranged in country groups for ease of reference. For a listing of country groups, please refer to Supplement No. 1 to part 740 of the EAR. Unless otherwise indicated in a License Exception, License Exceptions do not apply to any exports or reexports to embargoed destinations. If your export or reexport is subject to General Prohibition Six (Embargo) for embargoed destinations, License Exceptions are only available to the extent specifically provided in part 746 of the EAR concerning embargoed destinations.

(ii) Special commodity controls apply to short supply items. No License Exceptions described in part 740 of the EAR may be used for items listed on the CCL as controlled for Short Supply reasons. License Exceptions for short supply items are found in part 754 of the EAR.

(5) *Step 24: Compliance with all terms and conditions.* If a License Exception is available, you may proceed with your export or reexport. However, you must meet all the terms and conditions required by the License Exception that you determined authorized your export or reexport. You must also consult part 758 and 762 of the EAR to determine your recordkeeping and documentation requirements.

(6) *Step 25: License requirements.* If no License Exception is available, then you must either obtain a license before proceeding with your export or reexport or you must refrain from the proposed export or reexport.

(7) *Step 26: License applications.* If you are going to file a license application with BIS, you should first review the requirements at part 748 of the EAR. Exporters, reexporters, and exporters from abroad should review the instructions concerning applications and required support documents prior to submitting an application for a license.

[61 FR 12740, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 63 FR 2456, Jan. 15, 1998]