

## Bureau of Industry and Security, Commerce

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(EAR) and, if applicable, the appropriate Export Control Classification Number [ECCN]).

(b) *Advisory Opinion requests.* All advisory opinions submitted in accordance with procedures described in § 748.3(a) and (c) of the EAR will be answered within 30 calendar days after receipt.

### § 750.3 Review of license applications by BIS and other government agencies and departments.

(a) *Review by BIS.* In reviewing specific license applications, BIS will conduct a complete analysis of the license application along with all documentation submitted in support of the application. In addition to reviewing the item and end-use, BIS will consider the reliability of each party to the transaction and review any available intelligence information. To the maximum extent possible, BIS will make licensing decisions without referral of license applications to other agencies, however, BIS may consult with other U.S. departments and agencies regarding any license application.

(b) *Review by other departments or agencies.* (1) The Departments of Defense, Energy, State, and the Arms Control and Disarmament Agency (ACDA) have the authority to review any license application submitted under the EAR. In addition, BIS may, where appropriate, refer license applications to other U.S. government departments or agencies. These agencies and departments will be referred to as “agencies” for the purposes of this part. Though these agencies have the authority to review any license application, they may determine that they do not need to review certain types of license applications. In these instances, the agency will provide BIS with a Delegation of Authority to process those license applications without review by that particular agency.

(2) The Departments of Defense, Energy, State, and ACDA are generally concerned with license applications involving items controlled for national security, missile technology, nuclear nonproliferation, and chemical and biological weapons proliferation reasons or destined for countries and/or end uses of concern. In particular, these

agencies are concerned with reviewing license applications as follows:

(i) The Department of Defense is concerned primarily with items controlled for national security and regional stability reasons and with controls related to encryption items;

(ii) The Department of Energy is concerned primarily with items controlled for nuclear nonproliferation reasons;

(iii) The Department of State is concerned primarily with items controlled for regional stability, anti-terrorism, crime control reasons, and sanctions; and

(iv) ACDA is concerned primarily with items controlled for national security, nuclear nonproliferation, regional stability, and anti-terrorism reasons.

(v) The Department of Justice is concerned with controls relating to encryption items.

[61 FR 12829, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996; 63 FR 50525, Sept. 22, 1998]

### § 750.4 Procedures for processing license applications.

(a) *Overview.* (1) All license applications will be resolved or referred to the President no later than 90 calendar days from the date of BIS’s registration of the license application. Processing times for the purposes of this section are defined in calendar days. The procedures and time limits described in this part apply to all license applications registered on or after February 4, 1996. The procedures and time limits in effect prior to December 6, 1995 will apply to license applications registered prior to February 4, 1996.

(2) Properly completed license applications will be registered promptly upon receipt by BIS. Registration is defined as the point at which the application is entered into BIS’s electronic license processing system. If your application contains deficiencies that prevent BIS from registering your application, BIS will attempt to contact you to correct the deficiencies, however, if BIS is unable to contact you, the license application will be returned without being registered. The specific deficiencies requiring return will be enumerated in a notice accompanying

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the returned license application. If a license application is registered, but BIS is unable to correct deficiencies crucial to processing the license application, it will be returned without action. The notice will identify the deficiencies and the action necessary to correct the deficiencies. If you decide to resubmit the license application, it will be treated as a new license application when calculating license processing time frames.

(b) *Actions not included in processing time calculations.* The following actions will not be counted in the time period calculations described in paragraph (a)(1) of this section for the processing of license applications:

(1) *Agreement by the applicant to the delay.* BIS may request applicants to provide additional information in support of their license application, respond to questions arising during processing, or accept proposed conditions or riders on their license application. If BIS has provided the applicant with an intent to deny letter described in § 750.6 of this part, processing times may be suspended in order to negotiate modifications to a license application and obtain agreement to such modifications from the foreign parties to the license application.

(2) *Pre-license checks.* If a pre-license check, to establish the identity and reliability of the recipient of the controlled items, is conducted through government channels, provided that:

(i) The need for such a pre-license check is established by the Secretary, or by another agency, if the request for a pre-license check is made by such agency and the request is made in accordance with the following time frames;

(A) The pre-license check is requested within 5 days of the determination that it is necessary; and

(B) The analysis resulting from the pre-license check is completed within 5 days.

(3) *Government-to-Government assurances.* Requests for government-to-government assurances of suitable end-use of items approved for export or reexport when failure to obtain such assurances would result in rejection of the license application, provided that:

(i) The request for such assurances is sent to the Secretary of State within five days of the determination that the assurances are required;

(ii) The Secretary of State initiates the request of the relevant government within 10 days of receipt of the request for such assurances; and

(iii) The license is issued within 5 days of the Secretary's receipt of the requested assurances.

(4) *Consultations.* Consultation with other governments, if such consultation is provided for by a relevant bilateral arrangement or multilateral regime as a precondition for approving a license.

(5) *Multilateral reviews.* Multilateral review of a license application if such review is required by the relevant multilateral regime.

(6) *Congressional notification.* Under Section 6(j) of the Export Administration Act, as amended (EAA), the Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days prior to issuing a license to any country designated by the Secretary of State as being terrorist-supporting for any items that could make a significant contribution to the military potential of such countries, or could enhance the ability of such countries to support acts of international terrorism. Accordingly, the issuance of any license subject to this requirement will be delayed for 30 days.

(i) *Designated countries.* The following countries have been designated by the Secretary of State as terrorist-supporting countries: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(ii) *Items subject to notification requirement.* License applications involving the export or reexport of the following items to the military, police, intelligence or other sensitive end-users are subject to this notification requirement:

(A) All items controlled for national security reasons, except digital computers with a Composite Theoretical Performance (CTP) less than 500 Mtops;

(B) All items controlled for chemical and biological weapons proliferation reasons;

(C) All items controlled for missile technology reasons;

(D) All items controlled for nuclear nonproliferation reasons; and

(E) All items controlled by the CCL where the entry heading identifies the items controlled as those contained in the International Munitions List.

(iii) *Additional notifications.* The Secretaries of Commerce and State must also notify the appropriate Congressional committees 30 days before a license is issued for the export or reexport of any item controlled on the CCL to a designated country if the Secretary of State determines that the export or reexport “could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.”

(c) *Initial processing.* Within 9 days of license application registration, BIS will, as appropriate:

(1) Contact the applicant if additional information is required, if the license application is improperly completed, or required support documents are missing, to request additional or corrected information;

(2) Assure the stated classification on the license application is correct;

(3) Return the license application if a license is not required with a statement notifying the applicant that a license is not required;

(4) Approve the license application or notify the applicant of the intent to deny the license application; or

(5) Refer the license application electronically along with all necessary recommendations and analysis concurrently to all agencies unless the application is subject to a Delegation of Authority. Any relevant information not contained in the electronic file will be simultaneously forwarded in paper copy.

(d) *Review by other agencies and/or interagency groups.* (1) Within 10 days of receipt of a referral the reviewing agency must advise BIS of any information not contained in the referral as described in paragraph (c)(5) of this section. BIS will promptly request such information from the applicant. The time that elapses between the date the information is requested by the reviewing agency and the date the informa-

tion is received by the reviewing agency will not be counted in processing time frames.

(2) Within 30 days of receipt of the initial referral, the reviewing agency will provide BIS with a recommendation either to approve (with or without conditions or riders) or deny the license application. As appropriate, such a recommendation may be made with the benefit of consultation and/or discussions in interagency groups established to provide expertise and coordinate interagency consultation. These interagency groups consist of:

(i) *The Missile Technology Export Control Group (MTEC).* The MTEC, chaired by the Department of State, reviews license applications involving items controlled for missile technology reasons. The MTEC also reviews license applications involving items not controlled for missile technology (MT) reasons, but destined for a country and/or end-use/end-user of MT concern.

(ii) *The SubGroup on Nuclear Export Coordination (SNEC).* The SNEC, chaired by the Department of State, reviews license applications involving items controlled for nuclear nonproliferation reasons. The SNEC also reviews license applications involving items not controlled for nuclear nonproliferation (NP) reasons, but destined for a country and/or end-use/end-user of NP concern.

(iii) *The Shield.* The Shield, chaired by the Department of State, reviews license applications involving items controlled for chemical and biological weapons reasons. The Shield also reviews license applications involving items not controlled for chemical and biological weapons (CBW) reasons, but destined for a country and/or end-use/end-user of CBW concern.

(e) *Recommendations by reviewing agencies.* Reviewing agencies recommending denial of a license application must provide a statement of reasons, consistent with the provisions of the EAA or EAR, and cite both the statutory and the regulatory basis for the recommendation to deny. A reviewing agency that fails to provide a recommendation within 30 days with a statement of reasons supported by the statutory and regulatory basis shall be

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deemed to have no objection to the final decision of BIS.

(f) *Interagency dispute resolution and escalation procedures*—(1) *Escalation to the Operating Committee (OC)*. (i) In any instance where the reviewing agencies are not in agreement on final disposition of a license application, it will be escalated to the OC for resolution. The Chair of the OC will consider the recommendations of the reviewing agencies and any information provided by the applicant in person during an open OC session. Each agency will be informed of the Chair's decision on the license application within 14 days after the deadline for receiving agency recommendations.

(ii) If any agency disagrees with the OC Chair's decision, the agency may escalate the decision by appealing to the Chair of the Advisory Committee on Export Policy for resolution. If such a request for escalation is not made within 5 days of the decision of the OC Chair, the Chair's decision will be final.

(2) *Escalation to the Advisory Committee on Export Policy (ACEP)*. Requests for escalation to the ACEP must be in writing from an official appointed by the President with the advice and consent of the Senate, or a person properly acting in such capacity, and cite both the statutory and the regulatory basis for the appeal. The ACEP will review all relevant information and recommendations. The Chair of the ACEP will inform the reviewing agencies of the majority vote decision of the ACEP within 11 days from the date of receipt of the escalation request. Within 5 days of the decision, any dissenting agency may appeal in writing the ACEP's decision to the Secretary of Commerce in the Secretary's capacity as the Chair of the Export Administration Review Board. The written request must be made by the head of the agency requesting escalation and cite both the statutory and the regulatory basis for the appeal. Within the same period of time, the Secretary may initiate a meeting on his or her own initiative to consider a license application. In the absence of a timely appeal, the decision of the ACEP will be final.

(3) *Escalation to the Export Administration Review Board (EARB)*. The EARB

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will review all relevant information and recommendations, and such other export control matters as may be appropriate. The Secretary of Commerce will inform the reviewing agencies of the majority vote decision of the EARB within 11 days from the date of receipt of the appeal. Within 5 days of the decision, any agency dissenting from the decision of the EARB may appeal the decision to the President. The appeal must be in writing from the head of the dissenting agency. In the absence of a timely appeal, the decision of the EARB will be final.

[61 FR 12829, Mar. 25, 1996, as amended at 62 FR 25463, May 9, 1997]

### § 750.5 Status of pending applications and other requests.

(a) *Information available*. You may contact BIS for status of your pending Classification Request, Advisory Opinion, or license application. For Advisory Opinion requests, telephone (202) 482-4905 or send a fax to (202) 219-9179. For license applications and Classification Requests, telephone BIS's System for Tracking Export License Applications ("STELA") at (202) 482-2752. STELA is an automated voice response system, that upon request via any standard touch-tone telephone, will provide you with up to the minute status on any application pending at BIS. Press "0" on your keypad for online instructions or "9" for the letter "Z". Requests for status may be made only by the applicant or the applicant's agent.

(b) *STELA's hours*. STELA is operational Monday through Friday from 7:15am to 11:15pm and on Saturday from 8:00am to 4:00pm, Eastern Time. If you have any difficulty accessing STELA, contact during normal business hours, one of BIS's offices listed in § 748.2(a) of the EAR.

(c) *Procedures to access information on STELA*. Once you dial STELA you will be instructed to enter your Application Control Number using your push button telephone keys. After you enter the Application Control Number, STELA will provide you with the current status of your license application or Classification request.

[61 FR 12829, Mar. 25, 1996, as amended at 62 FR 25463, May 9, 1997]