

them unless that person meets all of the conditions of § 762.5 of this part relating to reproduction of records. If the original record does not meet the standards of legibility and readability described in § 762.5 of this part and the regulated person intends to rely on that record to meet the recordkeeping requirements of the EAR, that person must retain the original record.

§ 762.5 Reproduction of original records.

(a) The regulated person may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.

(b) In order to maintain the records required by § 762.2 of this part, the regulated persons defined in § 762.1 of this part may use any photographic, photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(1) The system must be capable of reproducing all records on paper.

(2) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides of paper documents in legible form.

(3) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. (For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.)

(4) The system must preserve the initial image (including both obverse and reverse sides of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner

that none of it may be altered once it is initially recorded.

(5) The regulated person must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(6) The regulated person must establish written procedures for inspection and quality assurance of records in the system and document the implementation of those procedures.

(7) The system must be complete and contain all records required to be kept by this part or the regulated person must provide a method for correlating, identifying and locating records relating to the same transaction(s) that are kept in other record keeping systems.

(8) The regulated person must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(9) Upon request by the Office of Export Enforcement, the Office of Antiboycott Compliance, or any other agency of competent jurisdiction, the regulated person must furnish, at the examination site, the records, the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record in the system.

(c) *Requirements applicable to systems based on the storage of digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. With respect to records of transactions, including those involving restrictive trade practices or boycott requirements or requests. The system must be able to locate and reproduce all records relating to a particular transaction based on any one of the following criteria:

(1) The name(s) of the parties to the transaction;

(2) Any country(ies) connected with the transaction; or

(3) A document reference number that was on any original document.

(d) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the regulated person must maintain a detailed index of all records in

§ 762.6

the system that is arranged in such a manner as to allow immediate location of any particular record in the system.

§ 762.6 Period of retention.

(a) *Five year retention period.* All records required to be kept by the EAR must be retained for five years from the latest of the following times:

(1) The export from the United States of the item involved in the transaction to which the records pertain or the provision of financing, transporting or other service for or on behalf of end-users of proliferation concern as described in §§ 736.2(b)(7) and 744.6 of the EAR;

(2) Any known reexport, transshipment, or diversion of such item;

(3) Any other termination of the transaction, whether formally in writing or by any other means; or

(4) In the case of records of pertaining to transactions involving restrictive trade practices or boycotts described in part 760 of the EAR, the date the regulated person receives the boycott-related request or requirement.

(b) *Destruction or disposal of records.* If the Bureau of Industry and Security or any other government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned. This prohibition applies to records pertaining to voluntary disclosures made to BIS in accordance with § 765.5(c)(4)(ii) and other records even if such records have been retained for a period of time exceeding that required by paragraph (a) of this section.

§ 762.7 Producing and inspecting records.

(a) *Persons located in the United States.* Persons located in the United States may be asked to produce records that are required to be kept by any provision of the EAR, or any license, order, or authorization issued thereunder and to make them available for inspection and copying by any authorized agent, official, or employee of the Bureau of Industry and Security, the U.S. Customs Service, or any other agency of the U.S. Government, without any

15 CFR Ch. VII (1-1-04 Edition)

charge or expense to such agent, official, or employee. The Office of Export Enforcement and the Office of Antiboycott Compliance encourage voluntary cooperation with such requests. When voluntary cooperation is not forthcoming, the Office of Export Enforcement and the Office of Antiboycott Compliance are authorized to issue subpoenas requiring persons to appear and testify, or produce books, records, and other writings. In instances where a person does not comply with a subpoena, the Department of Commerce may petition a district court to have a subpoena enforced.

(b) *Persons located outside of the United States.* Persons located outside of the United States that are required to keep records by any provision of the EAR or by any license, order, or authorization issued thereunder shall produce all records or reproductions of records required to be kept, and make them available for inspection and copying upon request by an authorized agent, official, or employee of the Bureau of Industry and Security, the U.S. Customs Service, or a Foreign Service post, or by any other accredited representative of the U.S. Government, without any charge or expense to such agent, official or employee.

[61 FR 12900, Mar. 25, 1996, as amended at 65 FR 42573, July 10, 2000]

PART 764—ENFORCEMENT AND PROTECTIVE MEASURES

Sec.

764.1 Introduction.

764.2 Violations.

764.3 Sanctions.

764.4 Reporting of violations.

764.5 Voluntary self-disclosure.

764.6 Protective administrative measures.

SUPPLEMENT NO. 1 TO PART 764—STANDARD TERMS OF ORDERS DENYING EXPORT PRIVILEGES

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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,