

§ 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

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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

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

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

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 Export Administration Act (EAA) and/or the Export Administration Regulations (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 the Bureau of Industry and Security (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. 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.

§ 764.2 Violations.

(a) *Engaging in prohibited conduct.* No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by, the EAA, 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, or permit the doing of any act prohibited, or the omission of any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder.

(c) *Solicitation and attempt.* No person may solicit or attempt a violation of the EAA, 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 the EAA, 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, any item exported or to be

exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, 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) *Possession with intent to export illegally.* No person may possess any item controlled for national security or foreign policy reasons under sections 5 or 6 of the EAA:

(1) With intent to export or reexport such item in violation of the EAA, the EAR, or any order, license or authorization issued thereunder; or

(2) With knowledge or reason to believe that the item would be so exported or reexported.

(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, the United States Customs Service, 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 restrictive trade practice or boycott request report, as defined in § 760.6 of the EAR; or

(iii) For the purpose of or in connection with effecting an export, reexport 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 the EAA, the EAR, or any