

(2) Whether the transaction would have been authorized had proper application been made;

(3) The quantity and value of the items involved;

(4) Why the violations occurred. For example, OEE may consider whether the violations were intentional or inadvertent; the degree to which the person responsible for the violation making the disclosure was familiar with the EAR; and whether the violator has been the subject of prior administrative or criminal action under the EAA or the EAR;

(5) Whether, as a result of the information provided, OEE is able to prevent any items exported illegally from reaching unauthorized persons or destinations;

(6) The degree of cooperation with the ensuing investigation;

(7) Whether the person has instituted or improved an internal compliance program to reduce the likelihood of future violations.

(f) *Treatment of unlawfully exported items after voluntary self-disclosure.* (1) Any person taking certain actions with knowledge that a violation of the EAA or the EAR has occurred has violated §764.2(e) of this part. Any person who has made a voluntary self-disclosure knows that a violation may have occurred. Therefore, at the time that a voluntary self-disclosure is made, the person making the disclosure may request permission from BIS to engage in the activities described in §764.2(e) of this part that would otherwise be prohibited. If the request is granted by the Office of Exporter Services in consultation with OEE, future activities with respect to those items that would otherwise violate §764.2(e) of this part will not constitute violations. However, even if permission is granted, the person making the voluntary self-disclosure is not absolved from liability for any violations disclosed nor relieved of the obligation to obtain any required reexport authorizations.

(2) A license to reexport items that are the subject of a voluntary self-disclosure, and that have been exported contrary to the provisions of the EAA or the EAR, may be requested from BIS in accordance with the provisions of part 748 of the EAR. If the applicant for

reexport authorization knows that the items are the subject of a voluntary self-disclosure, the request should state that a voluntary self-disclosure was made in connection with the export of the commodities for which reexport authorization is sought.

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997]

#### § 764.6 Protective administrative measures.

(a) *License Exception limitation.* As provided in §740.2(b) of the EAR, all License Exceptions are subject to revision, suspension, or revocation.

(b) *Revocation or suspension of licenses.* As provided in §750.8 of the EAR, all licenses are subject to revision, suspension, or revocation.

(c) *Temporary denial orders.* BIS may, in accordance with §766.24 of the EAR, issue an order temporarily denying export privileges when such an order is necessary in the public interest to prevent the occurrence of an imminent violation.

(d) *Denial based on criminal conviction.* BIS may, in accordance with §766.25 of the EAR, issue an order denying the export privileges of any person who has been convicted of an offense specified in §11(h) of the EAA.

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

(a) *General.* (1) Orders denying export privileges may be "standard" or "non-standard." This Supplement specifies terms of the standard order denying export privilege with respect to denial orders issued after March 25, 1996. Denial orders issued prior to March 25, 1996 are to be construed, insofar as possible, as having the same scope and effect as the standard denial order. All denial orders are published in the FEDERAL REGISTER. The failure by any person to comply with any denial order is a violation of the Export Administration Regulations (EAR) (see §764.2(k) of this part). BIS provides lists of denied persons on a Web site and as a supplement to the unofficial edition of the EAR available by subscription from the Government Printing Office.

(2) Each denial order shall include:

(i) The name and address of any denied persons and any related persons subject to the denial order;

(ii) The basis for the denial order, such as final decision following charges of violation,

settlement agreement, section 11(h) of the EAA, or temporary denial order request;

(iii) The period of denial, the effective date of the order, whether and for how long any portion of the denial of export privileges is suspended, and any conditions of probation; and

(iv) Whether any or all outstanding licenses issued under the EAR to the person(s) named in the denial order or in which such person(s) has an interest, are suspended or revoked.

Denial orders issued prior to March 25, 1996, are to be construed, insofar as possible, as having the same scope and effect as the standard denial order.

The introduction to each denial order shall be specific to that order, and shall include: (1) The name and address of any denied persons and any related persons subject to the denial order; (2) the basis for the denial order, such as final decision following charges of violation, settlement agreement, § 11(h) of the EAA, or temporary denial order request; (3) the period of denial, the effective date of the order, whether and for how long any portion of the denial of export privileges is suspended, and any conditions of probation; and (4) whether any or all outstanding licenses issued under the EAR to the person(s) named in the denial order or in which such person(s) has an interest, are suspended or revoked.

(b) *Standard denial order terms.* The following are the standard terms for imposing periods of export denial. Some orders also contain other terms, such as those that impose civil penalties, or that suspend all or part of the penalties or period of denial.

"It is therefore ordered:

First, that [the denied person(s)] may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Export Administration Regulations (EAR), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the EAR that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a denied person, or service any item, of whatever origin, that is owned, possessed or controlled by a denied person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in § 766.23 of the EAR, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this order.

Fourth, that this order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

This order, which constitutes the final agency action in this matter, is effective [DATE]."

[61 FR 12902, Mar. 25, 1996, as amended at 67 FR 54953, Aug. 27, 2002]

## PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

Sec.

766.1 Scope.

766.2 Definitions.

766.3 Institution of administrative enforcement proceedings.

766.4 Representation.