

Bureau of Industry and Security, Commerce

§ 762.2

762.3 Records exempt from recordkeeping requirements.

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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 13, 2009, 74 FR 41325 (August 14, 2009).

SOURCE: 61 FR 12900, Mar. 25, 1996, unless otherwise noted.

§ 762.1 Scope.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Transactions subject to this part.* The recordkeeping provisions of this part apply to the following transactions:

(1) Transactions involving restrictive trade practices or boycotts described in part 760 of the EAR;

(2) Exports of commodities, software, or technology from the United States and any known reexports, transshipment, or diversions of items exported from the United States;

(3) Exports to Canada, if, at any stage in the transaction, it appears that a person in a country other than the United States or Canada has an interest therein, or that the item involved is to be reexported, transshipped, or diverted from Canada to another foreign country; or

(4) Any other transactions subject to the EAR, including, but not limited to, the prohibitions against servicing, forwarding and other actions for or on behalf of end-users of proliferation concern contained in §§ 736.2(b)(7) and 744.6 of the EAR. This part also applies to all negotiations connected with those transactions, except that for export control matters a mere preliminary inquiry or offer to do business and negative response thereto shall not constitute negotiations, unless the inquiry or offer to do business proposes a transaction that a reasonably prudent exporter would believe likely to lead to a violation of the EAA, the EAR or any order, license or authorization issued thereunder.

(b) *Persons subject to this part.* Any person subject to the jurisdiction of the United States who, as principal or agent (including a forwarding agent),

participates in any transaction described in paragraph (a) of this section, and any person in the United States or abroad who is required to make and maintain records under any provision of the EAR, shall keep and maintain all records described in § 762.2 of this part that are made or obtained by that person and shall produce them in a manner provided by § 762.6 of this part.

[61 FR 12900, Mar. 25, 1996, as amended at 70 FR 22249, Apr. 29, 2005]

§ 762.2 Records to be retained.

(a) *Records required to be retained.* The records required to be retained under this part 762 include the following:

(1) Export control documents, as defined in part 772 of the EAR;

(2) Memoranda;

(3) Notes;

(4) Correspondence;

(5) Contracts;

(6) Invitations to bid;

(7) Books of account;

(8) Financial records;

(9) Restrictive trade practice or boycott documents and reports, and

(10) Other records pertaining to the types of transactions described in § 762.1(a) of this part, which are made or obtained by a person described in § 762.1(b) of this part.

(b) *Records retention references.* Paragraph (a) of this section describes records that are required to be retained. Other parts, sections, or supplements of the EAR which require the retention of records or contain recordkeeping provisions, include, but are not limited to the following:

(1) Part 736, General Prohibitions;

(2) § 732.6, Steps for other requirements;

(3) § 740.1, Introduction (to License Exceptions);

(4) § 740.10(c), Servicing and replacement of parts and equipment (RPL);

(5) § 740.13(f), Technology and software—unrestricted (TSU);

(6) § 743.2, High Performance Computers;

(7) Supplement No. 3 to part 742 High Performance Computers, Safeguards and Related Information;

(8) [Reserved]

(9) § 740.7, Humanitarian donations (NEED);

(10) § 746.3 Iraq.

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- (11) Part 747, Special Iraq Reconstruction License.
- (12) § 748.4(a), Disclosure and substantiation of facts on license applications;
- (13) § 748.6, General instructions for license applications;
- (14) § 748.9, Support documents for license applications;
- (15) § 748.10, Import and End-user Certificates;
- (16) § 748.11, Statement by Ultimate Consignee and Purchaser;
- (17) § 748.13, Delivery Verification (DV);
- (18) § 748.2(c), Obtaining forms; mailing addresses;
- (19) § 750.7, Issuance of license and acknowledgment of conditions;
- (20) § 750.8, Revocation or suspension of license;
- (21) § 750.9, Duplicate licenses;
- (22) § 750.10, Transfer of licenses for export;
- (23) § 752.7, Direct shipment to customers;
- (24) § 752.9, Action on SCL applications;
- (25) § 752.10, Changes to the SCL;
- (26) § 752.11, Internal Control Programs;
- (27) § 752.12, Recordkeeping requirements;
- (28) § 752.13, Inspection of records;
- (29) § 752.14, System reviews;
- (30) § 752.15, Export clearance;
- (31) § 754.2(j)(3), Recordkeeping requirements for deep water ballast exchange.
- (32) § 754.4, Unprocessed western red cedar;
- (33) § 758.1(h), Record and proof of agent's authority;
- (34) § 758.1 and § 758.2, Shipper's Export Declaration or Automated Export System record;
- (35) § 758.6, Destination control statements;
- (36) § 760.6, Restrictive Trade Practices and Boycotts;
- (37) § 762.2, Records to be retained;
- (38) § 764.2, Violations;
- (39) § 764.5, Voluntary self-disclosure; and
- (40) § 766.10, Subpoenas;
- (41) § 743.1, Wassenaar reports;
- (42) § 748.14, Exports of firearms;
- (43) § 745.1, Annual reports;
- (44) § 745.2, End-use certificates;
- (45) § 758.2(c), Assumption writing; and

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(46) § 734.4(g), *de minimis* calculation (method).

(c) *Special recordkeeping requirement—*
(1) *Libya*. Persons in receipt of a specific license granted by the Department of the Treasury's Office of Foreign Assets Control (OFAC) for the export to Libya of any item subject to the EAR must maintain a record of those items transferred to Libya pursuant to such specific license and record when the items are consumed or destroyed in the normal course of their use in Libya, reexported to a third country not requiring further authorization from BIS, or returned to the United States. This requirement applies only to items subject to a license requirement under the EAR for export to Libya as of April 29, 2004. These records must include the following information:

- (i) Date of export or reexport and related details (including means of transport);
- (ii) Description of items (including ECCN) and value of items in U.S. Dollars;
- (iii) Description of proposed end-use and locations in Libya where items are intended to be used;
- (iv) Parties other than specific OFAC licensee who may be given temporary access to the items; and
- (v) Date of consumption or destruction, if the items are consumed or destroyed in the normal course of their use in Libya, or the date of reexport to a third country not requiring further authorization from BIS, or return to the United States.

(2) [Reserved]

[61 FR 12900, Mar. 25, 1996, as amended at 61 FR 27258, May 31, 1996; 61 FR 65466, Dec. 13, 1996; 64 FR 17974, Apr. 13, 1999; 65 FR 14860, Mar. 20, 2000; 65 FR 42573, July 10, 2000; 68 FR 16213, Apr. 3, 2003; 69 FR 23638, Apr. 29, 2004; 69 FR 46080, July 30, 2004; 71 FR 20887, Apr. 24, 2006; 73 FR 56970, Oct. 1, 2008; 73 FR 57510, Oct. 3, 2008]

§ 762.3 Records exempt from recordkeeping requirements.

- (a) The following types of records have been determined to be exempt from the recordkeeping requirement procedures:
- (1) Export information page;
 - (2) Special export file list;
 - (3) Vessel log from freight forwarder;