§ 764.4 Reporting of violations.

(a) Where to report. If a person learns that an export control violation of the EAR has occurred or may occur, that person may notify:


or, for violations of part 760 of the EAR:


(b) Failure to report violations. Failure to report potential violations may result in the unwarranted issuance of licenses or exports without the required licenses to the detriment of the interests of the United States.

(c) Reporting requirement distinguished. The reporting provisions in paragraph (a) of this section are not “reporting requirements” within the meaning of § 764.2(i) of this part.

(d) Formerly embargoed destinations. Reporting requirements for activities within the scope of § 764.2(e) that involve items subject to the EAR which may have been illegally exported or re-exported to Libya prior to the lifting of the comprehensive embargo on Libya are found in §764.7 of the EAR.

§ 764.5 Voluntary self-disclosure.

(a) General policy. BIS strongly encourages disclosure to OEE if you believe that you may have violated the EAR, or any order, license or authorization issued thereunder. Voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by OEE.

(b) Limitations. (1) The provisions of this section do not apply to disclosures of violations relating to part 760 of the EAR.

(2) The provisions of this section apply only when information is provided to OEE for its review in determining whether to take administrative action under part 766 of the EAR for violations of the export control provisions of the EAR.

(3) The provisions of this section apply only when information is received by OEE for review prior to the time that OEE, or any other agency of the United States Government, has learned the same or substantially similar information from another source and has commenced an investigation or inquiry in connection with that information.

(4) While voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by OEE, it is a factor that is considered together with all other factors in a case. The weight given to voluntary self-disclosure is solely within the discretion of OEE, and the mitigating effect of voluntary self-disclosure may be outweighed by aggravating factors. Voluntary self-disclosure does not prevent transactions from being referred to the Department of Justice for criminal prosecution. In such a case, OEE would notify the Department of Justice of the voluntary self-disclosure, but the consideration of that factor is within the discretion of the Department of Justice.

(5) A firm will not be deemed to have made a disclosure under this section unless the individual making the disclosure did so with the full knowledge and authorization of the firm’s senior management.

(6) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) Information to be provided—(1) General. Any person wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify OEE as soon as possible after violations are discovered, and then conduct a thorough review of all export-related transactions where violations are suspected.

(2) Initial notification. (i) The initial notification should be in writing and be sent to one of the addresses in §764.5(c)(7) of this part. The notification should include the name of the
person making the disclosure and a brief description of the suspected violations. The notification should describe the general nature and extent of the violations. If the person making the disclosure subsequently completes the narrative account required by §764.5(c)(3) of this part, the disclosure will be deemed to have been made on the date of the initial notification for purposes of §764.5(b)(3) of this part.

(ii) OEE recognizes that there may be situations where it will not be practical to make an initial notification in writing. For example, written notification may not be practical if a shipment leaves the United States without the required license, yet there is still an opportunity to prevent acquisition of the items by unauthorized persons. In such situations, OEE should be contacted promptly at one of the offices listed in §764.5(c)(7) of this part.

(3) Narrative account. After the initial notification, a thorough review should be conducted of all export-related transactions where possible violations are suspected. OEE recommends that the review cover a period of five years prior to the date of the initial notification. If your review goes back less than five years, you risk failing to discover violations that may later become the subject of an investigation. Any violations not voluntarily disclosed do not receive consideration under this section. However, the failure to make such disclosures will not be treated as a separate violation unless some other section of the EAR or other provision of law requires disclosure. Upon completion of the review, OEE should be furnished with a narrative account that sufficiently describes the suspected violations so that their nature and gravity can be assessed. The narrative account should also describe the nature of the review conducted and measures that may have been taken to minimize the likelihood that violations will occur in the future. The narrative account should include:

(i) The kind of violation involved, for example, a shipment without the required license or dealing with a party denied export privileges;
(ii) An explanation of when and how the violations occurred;
(iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations;
(iv) License numbers;
(v) The description, quantity, value in U.S. dollars and ECCN or other classification of the items involved; and
(vi) A description of any mitigating circumstances.

(4) Supporting documentation. (i) The narrative account should be accompanied by copies of documents that explain and support it, including:
(A) Licensing documents such as licenses, license applications, import certificates and end-user statements;
(B) Shipping documents such as Shipper's Export Declarations, air waybills and bills of lading; and
(C) Other documents such as letters, facsimiles, telexes and other evidence of written or oral communications, internal memoranda, purchase orders, invoices, letters of credit and brochures.

(ii) Any relevant documents not attached to the narrative account must be retained by the person making the disclosure until OEE requests them, or until a final decision on the disclosed information has been made. After a final decision, the documents should be maintained in accordance with the recordkeeping rules in part 762 of the EAR.

(5) Certification. A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person’s knowledge and belief. Certifications made by a corporation or other organization should be signed by an official of the corporation or other organization with the authority to do so. Section 764.2(g) of this part, relating to false or misleading representations, applies in connection with the disclosure of information under this section.

(6) Oral presentations. OEE believes that oral presentations are generally not necessary to augment the written narrative account and supporting documentation. If the person making the disclosure believes otherwise, a request for a meeting should be included with the disclosure.
§ 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.

§ 764.7 Activities involving items that may have been illegally exported or reexported to Libya.

(a) Introduction. As set forth in §764.2(e) of this part, and restated in General Prohibition Ten at §736.2(b)(10) of the EAR, no person (including a non-