

information will be regarded by the Department as relating to all of the subsidiary's present and anticipated business activities with the inquiring boycotting country. Accordingly, if any of these present or anticipated business activities are in U.S. commerce, the Department will regard the furnishing as related to an activity in U.S. commerce and subject to the antiboycott regulations.

In deciding whether anticipated business activities will be in U.S. commerce, the Department will consider all of the surrounding circumstances. Particular attention will be given to the history of the U.S. person's business activities with the boycotting country and others, the nature of any activities occurring after a furnishing of information occurs and any relevant economic or commercial factors which may affect these activities.

For example, if a U.S. person has no activities with the boycotting country at present but all of its other international activities are in U.S. commerce, as defined by the Regulations, then the Department is likely to regard any furnishing of information by that person for the purpose of securing entry into the boycotting country's market as relating to anticipated activities in U.S. commerce and subject to the antiboycott regulations. Similarly, if subsequent to the furnishing of information to the boycotting country for the purpose of securing entry into its markets, the U.S. person engages in transactions with that country which are in U.S. commerce, the Department is likely to regard the furnishing as related to an activity in U.S. commerce and subject to the antiboycott regulations.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34950, June 1, 2000]

SUPPLEMENT NO. 15 TO PART 760— INTERPRETATION

Section 760.2 (c), (d), and (e) of this part prohibits United States persons from furnishing certain types of information with intent to comply with, further, or support an unsanctioned foreign boycott against a country friendly to the United States. The Department has been asked whether prohibited information may be transmitted—that is, passed to others by a United States person who has not directly or indirectly authored the information—without such transmission constituting a furnishing of information in violation of §760.2 (c), (d), and (e) of this part. Throughout this interpretation, “transmission” is defined as the passing on by one person of information initially authored by another. The Department believes that there is no distinction in the EAR between transmitting (as defined above) and furnishing prohibited information under the

EAR and that the transmission of prohibited information with the requisite boycott intent is a furnishing of information violative of the EAR. At the same time, however, the circumstances relating to the transmitting party's involvement will be carefully considered in determining whether that party intended to comply with, further, or support an unsanctioned foreign boycott.

The EAR does not deal specifically with the relationship between transmitting and furnishing. However, the restrictions in the EAR on responses to boycott-related conditions, both by direct and indirect actions and whether by primary parties or intermediaries, indicate that U.S. persons who simply transmit prohibited information are to be treated the same under the EAR as those who both author and furnish prohibited information. This has been the Department's position in enforcement actions it has brought.

The few references in the EAR to the transmission of information by third parties are consistent with this position. Two examples, both relating to the prohibition against the furnishing of information about U.S. persons' race, religion, sex, or national origin (§760.2(c) of this part), deal explicitly with transmitting information. These examples (§760.2(c) of this part, example (v), and §760.3(f) of this part, example (vi)) show that, in certain cases, when furnishing certain information is permissible, either because it is not within a prohibition or is excepted from a prohibition, transmitting it is also permissible. These examples concern information that may be furnished by individuals about themselves or their families. The examples show that employers may transmit to a boycotting country visa applications or forms containing information about an employee's race, religion, sex, or national origin if that employee is the source of the information and authorizes its transmission. In other words, within the limits of ministerial action set forth in these examples, employees' actions in transmitting information are protected by the exception available to the employee. The distinction between permissible and prohibited behavior rests not on the definitional distinction between furnishing and transmitting, but on the excepted nature of the information furnished by the employee. The information originating from the employee does not lose its excepted character because it is transmitted by the employer.

The Department's position regarding the furnishing and transmission of certificates of one's own blacklist status rests on a similar basis and does not support the contention that third parties may transmit prohibited information authored by another. Such self-certifications do not violate any prohibitions in the EAR (see Supplement Nos. 1(I)(B), 2, and 5(A)(2); §760.2(f), example (xiv)). It is the

Department's position that it is not prohibited for U.S. persons to transmit such self-certifications completed by others. Once again, because furnishing the self-certification is not prohibited, third parties who transmit the self-certifications offend no prohibition. On the other hand, if a third party authored information about another's blacklist status, the act of transmitting that information would be prohibited.

A third example in the EAR (§760.5, example (xiv) of this part), which also concerns a permissible transmission of boycott-related information, does not support the theory that one may transmit prohibited information authored by another. This example deals with the reporting requirements in §760.5 of this part—not the prohibitions—and merely illustrates that a person who receives and transmits a self-certification has not received a reportable request.

It is also the Department's position that a U.S. person violates the prohibitions against furnishing information by transmitting prohibited information even if that person has received no reportable request in the transaction. For example, where documents accompanying a letter of credit contain prohibited information, a negotiating bank that transmits the documents, with the requisite boycott intent, to an issuing bank has not received a reportable request, but has furnished prohibited information.

While the Department does not regard the suggested distinction between transmitting and furnishing information as meaningful, the facts relating to the third party's involvement may be important in determining whether that party furnished information with the required intent to comply with, further, or support an unsanctioned foreign boycott. For example, if it is a standard business practice for one participant in a transaction to obtain and pass on, without examination, documents prepared by another party, it might be difficult to maintain that the first participant intended to comply with a boycott by passing on information contained in the unexamined documents. Resolution of such intent questions, however, depends upon an analysis of the individual facts and circumstances of the transaction and the Department will continue to engage in such analysis on a case-by-case basis.

This interpretation, like all others issued by the Department discussing applications of the antiboycott provisions of the EAR, should be read narrowly. Circumstances that differ in any material way from those discussed in this interpretation will be considered under the applicable provisions of the Regulations.

SUPPLEMENT NO. 16 TO PART 760— INTERPRETATION

Pursuant to Articles 5, 7, and 26 of the Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan and implementing legislation enacted by Jordan, Jordan's participation in the Arab economic boycott of Israel was formally terminated on August 16, 1995.

On the basis of this action, it is the Department's position that certain requests for information, action or agreement from Jordan which were considered boycott-related by implication now cannot be presumed boycott-related and thus would not be prohibited or reportable under the regulations. For example, a request that an exporter certify that the vessel on which it is shipping its goods is eligible to enter Hashemite Kingdom of Jordan ports has been considered a boycott-related request that the exporter could not comply with because Jordan has had a boycott in force against Israel. Such a request from Jordan after August 16, 1995 would not be presumed boycott-related because the underlying boycott requirement/basis for the certification has been eliminated. Similarly, a U.S. company would not be prohibited from complying with a request received from Jordanian government officials to furnish the place of birth of employees the company is seeking to take to Jordan because there is no underlying boycott law or policy that would give rise to a presumption that the request was boycott-related.

U.S. persons are reminded that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to the regulations, irrespective of the country of origin. For example, requests containing references to "blacklisted companies", "Israel boycott list", "non-Israeli goods" or other phrases or words indicating boycott purpose would be subject to the appropriate provisions of the Department's antiboycott regulations.

SUPPLEMENT NO. 17 TO PART 760— INTERPRETATION

Pursuant to the agreement between the United Arab Emirates (UAE) and Israel establishing diplomatic and commercial relations (the "Abraham Accords"), on August 16, 2020, the UAE issued Federal Decree-Law No. 4 of 2020, abolishing Federal Law No. 15 of 1972 Concerning the Arab League Boycott of Israel, thereby formally terminating participation by the UAE in the Arab League Boycott of Israel as of that date.

On the basis of this action, it is the Department's position that certain requests for information, action or agreement from the UAE, which were presumed to be boycott-related under this part of the EAR if issued

prior to August 16, 2020, would not be presumed to be boycott-related if issued after August 16, 2020, and thus would not be prohibited or reportable under this part of the EAR.

For example, a request from the UAE that an exporter certify that the vessel on which it is shipping its goods is eligible to enter UAE ports was formerly presumed to be a boycott-related request under this part of the EAR with which the exporter could not comply because the UAE had a boycott law in force against Israel. Such a request from the UAE made after August 16, 2020, would no longer be presumed to be boycott-related because the underlying boycott requirement/basis for the certification was eliminated as of August 16, 2020. Similarly, a U.S. company would not be prohibited from complying with a request made by UAE government officials after August 16, 2020, to furnish the place of birth of employees the company is seeking to take to the UAE because there is no underlying UAE government boycott law or policy that would give rise to a presumption that the request was boycott-related.

U.S. persons are reminded that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to this part of the EAR, irrespective of the country of origination. For example, requests containing references to “blacklisted companies,” “Israel boycott list,” “non-Israeli goods,” or other phrases or words indicating a boycott purpose would be subject to the appropriate provisions of the Department’s antiboycott regulations in this part.

[86 FR 30536, June 9, 2021]

PART 762—RECORDKEEPING

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AUTHORITY: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

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, transfers (in-country), 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 § 762.7 of this part.

[61 FR 12900, Mar. 25, 1996, as amended at 70 FR 22249, Apr. 29, 2005; 78 FR 13471, Feb. 28, 2013; 87 FR 57106, Sept. 16, 2022]

§ 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, except parties submitting documents electronically to BIS via the SNAP-R system are not required to retain copies of documents so submitted;

(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;

(10) Notification from BIS of an application being returned without action; notification by BIS of an application being denied; notification by BIS of the results of a commodity classification or encryption review request conducted by BIS;

(11) The serial number, make, model, and caliber for any firearm controlled in ECCNs 0A501.a, 0A506, or 0A507 and for shotguns with barrel length less than 18 inches controlled in 0A502 and 0A508 that have been exported. The “exporter” or any other party to the transaction (see § 758.3 of the EAR), that creates or receives such records is a person responsible for retaining this record; and

(12) 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 record-keeping provisions, include, but are not limited to the following:

(1) § 732.6, Steps for other requirements;

(2) § 734.4(g), *de minimis* calculation (method);

(3) Section 734.9(h), Foreign Direct Product (FDP) supply chain certification;

(4) Part 736, General Prohibitions;

(5) § 740.1, Introduction (to License Exceptions);

(6) § 740.9(a)(3)(i)(B), Tools of trade; Temporary exports, reexports, and transfers (in country) of technology by U.S. persons (TMP);

(7) § 740.10(c), Servicing and replacement of parts and equipment (RPL);

(8) § 740.11(b)(2)(iii) and (iv), Exports, reexports and transfers (in-country) made for or on behalf of a department or agency of the U.S. Government and Items exported at the direction of the U.S. Department of Defense (GOV);

(9) § 740.12, Humanitarian donations (GFT);

(10) § 740.13(h), Technology and software—unrestricted (TSU);

(11) § 740.20(g), Responses to License Exception STA eligibility requests for “600 series” end items (STA);

(12) § 743.1, Wassenaar reports;

(13) § 743.2, High Performance Computers;

(14) § 743.4(c)(1) and (c)(2), Conventional arms reporting;

(15) § 745.1, Annual reports;

(16) § 745.2, End-use certificates;

(17) § 746.3 Iraq;

(18) [Reserved]

(19) § 748.1(d)(2), Procedure for requesting authorization to file paper applications, notifications, or requests;

(20) § 748.4(b), Disclosure of parties on license applications and the power of attorney;

(21) § 748.6, General instructions for license applications;

(22) § 748.9, Support documents for license applications;

(23) § 748.10, PRC End-User Statement;

(24) § 748.11, Statement by Ultimate Consignee and Purchaser;

(25) § 748.12, Firearms Convention (FC) Import Certificate;

(26) [Reserved]

(27) Supplement No. 2 to Part 748 paragraph (c)(2), Security Safeguard Plan requirement;

(28) § 750.7, Issuance of license and acknowledgment of conditions;

(29) § 750.8, Revocation or suspension of license;

(30) § 750.9, Duplicate licenses;

(31) § 750.10, Transfer of licenses for export;

(32)–(39) [Reserved]

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(40) § 754.4, Unprocessed western red cedar;

(41) § 758.1 and § 758.2, Automated Export System record;

(42) § 758.1(h), Record and proof of agent's authority;

(43) § 758.3(b), Routed Export Transactions;

(44) § 758.6, Destination control statements;

(45) § 760.5, Reporting requirements;

(46) § 762.2, Records to be retained;

(47) § 764.2, Violations;

(48) § 764.5, Voluntary self-disclosure;

(49) § 766.10, Subpoenas;

(50) § 772.2, "Specially designed" definition, note to paragraphs (b)(4), (b)(5), and (b)(6);

(51) § 740.20, note to paragraph (c)(1), License Exception STA prior approval on a BIS or DDTC license (STA);

(52) § 744.15(b), UVL statement as well as any logs or records created for multiple exports, reexports, and transfers (in-country);

(53) § 750.7(c)(2), Notification of name change by advisory opinion request;

(54) § 748.13, Certain Hong Kong import and export licenses; *and*

(55) § 740.23, License Exception MED.

(56) § 740.25, License Exception HBM.

(57) § 740.26, License Exception RFF.

(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]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 762.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 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;

(4) Inspection certificate;

(5) Warranty certificate, except for a warranty certificate issued for an address located outside the United States for any firearm controlled in ECCNs 0A501.a or .b, 0A506 or 0A507 and for shotguns with barrel length less than 18 inches controlled in 0A502 or 0A508;

(6) Guarantee certificate;

(7) Packing material certificate;

(8) Goods quality certificate;

(9) Notification to customer of advance meeting;

(10) Letter of indemnity;

(11) Financial release form;

(12) Financial hold form;

(13) Export parts shipping problem form;

(14) Draft number log;

(15) Expense invoice mailing log;

(16) Financial status report;

(17) Bank release of guarantees;

(18) Cash sheet;

(19) Commission payment back-up;

(20) Commissions payable worksheet;

(21) Commissions payable control;

(22) Check request forms;

(23) Accounts receivable correction form;

- (24) Check request register;
 - (25) Commission payment printout;
 - (26) Engineering fees invoice;
 - (27) Foreign tax receipt;
 - (28) Individual customer credit status;
 - (29) Request for export customers code forms;
 - (30) Acknowledgement for receipt of funds;
 - (31) Escalation development form;
 - (32) Summary quote;
 - (33) Purchase order review form;
 - (34) Proposal extensions;
 - (35) Financial proposal to export customers;
- and
- (36) Sales summaries.
- (b) [Reserved]

[61 FR 12900, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997; 85 FR 4180, Jan. 23, 2020; 89 FR 34710, Apr. 30, 2024]

§ 762.4 Original records required.

The regulated person must maintain the original records in the form in which that person receives or creates 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. With respect to documents that BIS issues to a party in SNAP-R, either an electronically stored copy in a format that makes the document readable with software possessed by that party or a paper print out of the complete document is deemed to be an original record for purposes of this section.

[61 FR 12900, Mar. 25, 1996, as amended at 75 FR 17055, Apr. 5, 2010]

§ 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