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### § 750.1 SCOPE

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part describes the Bureau of Industry and Security's (BIS) process for reviewing your application for a license and the applicable processing times for various types of applications. Information related to the issuance, revocation, or suspension of a license and the denial of a license application is provided along with the procedures on obtaining a duplicate or replacement license (limited to those which BIS has validated and issued in hardcopy), the transfer of a license, and the shipping tolerances available on licenses.

This part also contains instructions on obtaining the status of a pending application.

### § 750.2 PROCESSING OF CLASSIFICATION REQUESTS AND ADVISORY OPINIONS

#### (a) *Classification requests*

All classification requests submitted in accordance with procedures described in §748.3(a) and (b) of the EAR will be answered within 14 calendar days after receipt. All responses will inform the person of the proper classification (e.g., whether or not the item is subject to the Export Administration Regulations (EAR) and, if applicable, the appropriate Export Control Classification Number [ECCN]).

#### (b) *Advisory Opinion requests*

All advisory opinions submitted in accordance with procedures described in §748.3(a) and (c) of the EAR will be answered within 30 calendar days after receipt. Requests to obtain Validated End-User authorization will be resolved within 30 calendar days as described in Supplement No. 9 to Part 748 of the EAR.

### § 750.3 REVIEW OF LICENSE APPLICATIONS BY BIS AND OTHER GOVERNMENT AGENCIES AND DEPARTMENTS

#### (a) *Review by BIS*

In reviewing specific license applications, BIS will conduct a complete analysis of the license application along with all documentation submitted in support of the application. In addition to reviewing the item and end-use, BIS will consider the reliability of each party to the transaction and review any available intelligence information. To the maximum extent possible, BIS will make licensing decisions without referral of license applications to other agencies,

however, BIS may consult with other U.S. departments and agencies regarding any license application.

***(b) Review by other departments or agencies***

(1) The Departments of Defense, Energy, State, and the Arms Control and Disarmament Agency (ACDA) have the authority to review any license application submitted under the EAR. In addition, BIS may, where appropriate, refer license applications to other U.S. government departments or agencies. These agencies and departments will be referred to as “agencies” for the purposes of this part. Though these agencies have the authority to review any license application, they may determine that they do not need to review certain types of license applications. In these instances, the agency will provide BIS with a Delegation of Authority to process those license applications without review by that particular agency.

(2) The Departments of Defense, Energy, State, and ACDA are generally concerned with license applications involving items controlled for national security, missile technology, nuclear nonproliferation, and chemical and biological weapons proliferation reasons or destined for countries and/or end uses of concern. In particular, these agencies are concerned with reviewing license applications as follows:

(i) The Department of Defense is concerned primarily with items controlled for national security and regional stability reasons and with controls related to encryption items;

(ii) The Department of Energy is concerned primarily with items controlled for nuclear nonproliferation reasons;

(iii) The Department of State is concerned primarily with items controlled for national security, nuclear nonproliferation, missile technology, regional stability, anti-terrorism, crime control reasons, and sanctions; and

(iv) The Department of Justice is concerned with controls relating to encryption items and items primarily useful for the surreptitious interception of wire, oral, or electronic communications.

## **§ 750.4 PROCEDURES FOR PROCESSING LICENSE APPLICATIONS**

***(a) Overview***

(1) All license applications will be resolved or referred to the President no later than 90 calendar days from the date of BIS's registration of the license application. Processing times for the purposes of this section are defined in calendar days. The procedures and time limits described in this part apply to all license applications registered on or after February 4, 1996. The procedures and time limits in effect prior to December 6, 1995 will apply to license applications registered prior to February 4, 1996.

(2) Properly completed license applications will be registered promptly upon receipt by BIS. Registration is defined as the point at which the application is entered into BIS's electronic license processing system. If your application contains deficiencies that prevent BIS from registering your application, BIS will attempt to contact you to correct the deficiencies, however, if BIS is unable to contact you, the license application will be returned without being registered. The specific deficiencies requiring return will be enumerated in a notice accompanying the returned license application. If a license application is registered, but BIS is unable to correct deficiencies crucial to processing the license application, it will be returned without action. The notice will identify the deficiencies and the action necessary to correct the deficiencies. If you decide to resubmit the license application, it will be treated as a new license application when calculating license processing time frames.

***(b) Actions not included in processing time calculations***

The following actions will not be counted in the time period calculations described in paragraph (a)(1) of this section for the processing of license applications:

**(1) Agreement by the applicant to the delay.** BIS may request applicants to provide additional information in support of their license application, respond to questions arising during processing, or accept proposed conditions or riders on their license application. If BIS has provided the applicant with an intent to deny letter described in §750.6 of this part, processing times may be suspended in order to negotiate modifications to a license application and obtain agreement to such modifications from the foreign parties to the license application.

**(2) Pre-license checks.** BIS conducts pre-license checks in order to establish the identity and reliability of the recipient of the items subject to the EAR that require a license, as well as to substantiate representations made on the license application. The results of the pre-license check, including the U.S. government's inability to conduct the pre-license check due to the end user's or host government's actions, will be considered in determining the outcome of a license application. The time required to conduct a pre-license check is not included in license application processing time calculations according to this paragraph, if the pre-license check is:

- (i) Conducted through government channels, and
- (ii) The request for a pre-license check is made by the Secretary or by another agency within the following time frames:

(A) The pre-license check is requested within 5 days of the determination that it is necessary; and

(B) The analysis resulting from the pre-license check is completed and reported to licensing officials within 5 days.

**(3) Government-to-Government assurances.** Requests for government-to-government assurances of suitable end-use of items approved for export or reexport when failure to obtain such assurances would result in rejection of the license application, provided that:

(i) The request for such assurances is sent to the Secretary of State within five days of the determination that the assurances are required;

(ii) The Secretary of State initiates the request of the relevant government within 10 days of receipt of the request for such assurances; and

(iii) The license is issued within 5 days of the Secretary's receipt of the requested assurances.

**(4) Consultations.** Consultation with other governments, if such consultation is provided for by a relevant bilateral arrangement or multilateral regime as a precondition for approving a license.

**(5) Multilateral reviews.** Multilateral review of a license application if such review is required by the relevant multilateral regime.

**(6) Congressional notification.** Under Section 6(j) of the Export Administration Act, as amended (EAA), the Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days prior to issuing a license to any country designated by the Secretary of State as being terrorist-supporting for any items that could make a significant contribution to the military potential of such countries, or could enhance the ability of such countries to support acts of international terrorism. Accordingly, the issuance of any

license subject to this requirement will be delayed for 30 days.

(i) **Designated countries.** The following countries have been designated by the Secretary of State as terrorist-supporting countries: Iran, North Korea, Sudan, and Syria.

(ii) **Items subject to notification requirement.** License applications involving the export or reexport of the following items to the military, police, intelligence or other sensitive end-users are subject to this notification requirement:

(A) All items controlled for national security reasons;

(B) All items controlled for chemical and biological weapons proliferation reasons;

(C) All items controlled for missile technology reasons;

(D) All items controlled for nuclear nonproliferation reasons; and

(E) All items controlled by the CCL where the entry heading identifies the items controlled as those contained in the Wassenaar Arrangement Munitions List.

(iii) **Additional notifications.** The Secretaries of Commerce and State must also notify the appropriate Congressional committees 30 days before a license is issued for the export or reexport of any item controlled on the CCL to a designated country if the Secretary of State determines that the export or reexport “could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.”

(7) **Congressional Notification.** Congressional notification, including any consultations prior to

notification, prior to the issuance of an authorization to export when notification is required by § 743.5 of the EAR.

(8) **Satellites for launch.** Applicant must obtain approval by the Department of Defense of a technology transfer control plan and the National Security Agency of an encryption technology transfer control plan and must make arrangements with the Department of Defense for monitoring of all launch activities.

**(c) Initial processing**

Within 9 days of license application registration, BIS will, as appropriate:

(1) Contact the applicant if additional information is required, if the license application is improperly completed, or required support documents are missing, to request additional or corrected information;

(2) Assure the stated classification on the license application is correct;

(3) Return the license application if a license is not required with a statement notifying the applicant that a license is not required;

(4) Approve the license application or notify the applicant of the intent to deny the license application; or

(5) Refer the license application electronically along with all necessary recommendations and analysis concurrently to all agencies unless the application is subject to a Delegation of Authority. Any relevant information not contained in the electronic file will be simultaneously forwarded in paper copy.

**(d) Review by other agencies and/or interagency groups**

(1) Within 10 days of receipt of a referral the reviewing agency must advise BIS of any

information not contained in the referral as described in paragraph (c)(5) of this section. BIS will promptly request such information from the applicant. The time that elapses between the date the information is requested by the reviewing agency and the date the information is received by the reviewing agency will not be counted in processing time frames.

(2) Within 30 days of receipt of the initial referral, the reviewing agency will provide BIS with a recommendation either to approve (with or without conditions or riders) or deny the license application. As appropriate, such a recommendation may be made with the benefit of consultation and/or discussions in interagency groups established to provide expertise and coordinate interagency consultation. These interagency groups consist of:

(i) ***The Missile Technology Export Control Group (MTEC).*** The MTEC, chaired by the Department of State, reviews license applications involving items controlled for missile technology reasons. The MTEC also reviews license applications involving items not controlled for missile technology (MT) reasons, but destined for a country and/or end-use/end-user of MT concern.

(ii) ***The SubGroup on Nuclear Export Coordination (SNEC).*** The SNEC, chaired by the Department of State, reviews license applications involving items controlled for nuclear nonproliferation reasons. The SNEC also reviews license applications involving items not controlled for nuclear nonproliferation (NP) reasons, but destined for a country and/or end use/end-user of NP concern.

(iii) ***The Shield.*** The Shield, chaired by the Department of State, reviews license applications involving items controlled for chemical and biological weapons reasons. The Shield also reviews license applications involving items not controlled for chemical and biological weapons

(CBW) reasons, but destined for a country and/or end-use/end-user of CBW concern.

(iv) ***Remote Sensing Interagency Working Group (RSIWG).*** The RSIWG, chaired by the State Department, reviews license applications involving remote sensing spacecraft described in ECCN 9A515.a.1, .a.2, .a.3, or .a.4, sensitive remote sensing components described in 9A515.g, or “technology” described in ECCN 9E515.f.

(e) ***Recommendations by reviewing agencies***

Reviewing agencies recommending denial of a license application must provide a statement of reasons, consistent with the provisions of the EAA or EAR, and cite both the statutory and the regulatory basis for the recommendation to deny. A reviewing agency that fails to provide a recommendation within 30 days with a statement of reasons supported by the statutory and regulatory basis shall be deemed to have no objection to the final decision of BIS.

(f) ***Interagency dispute resolution and escalation procedures***

(1) **Escalation to the Operating Committee (OC).**

(i) In any instance where the reviewing agencies are not in agreement on final disposition of a license application, it will be escalated to the OC for resolution. The Chair of the OC will consider the recommendations of the reviewing agencies and any information provided by the applicant in person during an open OC session. Each agency will be informed of the Chair’s decision on the license application within 14 days after the deadline for receiving agency recommendations.

(ii) If any agency disagrees with the OC Chair’s decision, the agency may escalate the decision by appealing to the Chair of the Advisory Committee on Export Policy for

resolution. If such a request for escalation is not made within 5 days of the decision of the OC Chair, the chair's decision will be final.

**(2) Escalation to the Advisory Committee on Export Policy (ACEP).** Requests for escalation to the ACEP must be in writing from an official appointed by the President with the advice and consent of the Senate, or a person properly acting in such capacity, and cite both the statutory and the regulatory basis for the appeal. The ACEP will review all relevant information and recommendations. The Chair of the ACEP will inform the reviewing agencies of the majority vote decision of the ACEP within 11 days from the date of receipt of the escalation request. Within 5 days of the decision, any dissenting agency may appeal in writing the ACEP's decision to the Secretary of Commerce in the Secretary's capacity as the Chair of the Export Administration Review Board. The written request must be made by the head of the agency requesting escalation and cite both the statutory and the regulatory basis for the appeal. Within the same period of time, the Secretary may initiate a meeting on his or her own initiative to consider a license application. In the absence of a timely appeal, the decision of the ACEP will be final.

**(3) Escalation to the Export Administration Review Board (EARB).** The EARB will review all relevant information and recommendations, and such other export control matters as may be appropriate. The Secretary of Commerce will inform the reviewing agencies of the majority vote decision of the EARB within 11 days from the date of receipt of the appeal. Within 5 days of the decision, any agency dissenting from the decision of the EARB may appeal the decision to the President. The appeal must be in writing from the head of the dissenting agency. In the absence of a timely appeal, the decision of the EARB will be final.

## § 750.5 [RESERVED]

### § 750.6 DENIAL OF LICENSE APPLICATIONS

#### *(a) Intent to deny notification*

If BIS intends to deny your license application, BIS will notify you in writing within 5 days of the decision. The notification will include:

- (1) The intent to deny decision;
- (2) The statutory and regulatory basis for the denial;
- (3) To the extent consistent with the national security and foreign policy of the United States, the specific considerations that led to the decision to deny the license application;
- (4) What, if any, modifications or restrictions to the license application would allow BIS to reconsider the license application;
- (5) The name of the BIS representative in a position to discuss the issues with the applicant; and
- (6) The availability of appeal procedures.

#### *(b) Response to intent to deny notification*

You will be allowed 20 days from the date of the notification to respond to the decision before the license application is denied. If you respond to the notification, BIS will advise you if, as a result of your response, the decision to deny has been changed. Unless you are so advised by the 45th day after the date of the notification, the denial will become final, without further notice. You will then have 45 days from the date of final denial to exercise the right to appeal under part 756 of the EAR.

## § 750.7 ISSUANCE OF LICENSES

### *(a) Scope*

(1) Unless limited by a condition set out in a license, the export, reexport, or transfer (in-country) authorized by a license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. The applicant must inform the other parties identified on the license, such as the ultimate consignees and end users, of the license's scope and of the specific conditions applicable to them.

(2) BIS grants licenses in reliance on representations the applicant made or submitted in connection with the license application, letters of explanation, and other documents submitted. Any license obtained in which a false or misleading representation was made, or a material fact was falsified or concealed on the license application, letters of explanation, or any document submitted in connection with the license application, shall be deemed void as of the date of issuance. See § 750.8(a) of the EAR, which provides that all licenses are subject to revocation, in whole or in part, without notice. See part 764 of the EAR for other sanctions that may result in the event a violation occurs.

(3) A BIS license authorizing the release of "technology" to an entity also authorizes the release of the same "technology" to the entity's foreign persons who are permanent and regular employees (and who are not proscribed persons) of the entity's facility or facilities authorized on the license, except to the extent a license condition limits or prohibits the release of the "technology" to foreign persons of specific countries or country groups. See § 734.20 of the EAR for additional information regarding the release of "technology" authorized by a BIS license.

### *(b) Issuance of a license*

BIS may issue a license electronically via its Simplified Network Application Processing (SNAP-R) system or via paper or both electronically and via paper. Each license has a license number that will be shown on the license.

### *(c) Changes to the license*

(1) The following non-material changes do not require submission of a "Replacement" license or any other notification to BIS. (If you wish to make any change not identified in this paragraph, you will need to submit a "Replacement" license in accordance with the instructions contained in Supplement No. 1 to part 748 of the EAR Block 11):

(i) Decrease in unit price or total value;

(ii) Increase in price if permitted under the shipping tolerances in §750.11 of this part;

(iii) Increase in price that can be justified on the basis of changes in point of delivery, port of export, or as a result of transportation cost, drayage, port charges, warehousing, currency fluctuations, etc.;

(iv) Establishment of unit or total price in conformance with a "price statement" on a license that permits price to be based on the market price at a specified date plus an exporter's mark-up, or like basis;

(v) Change in intermediate consignee if the new intermediate consignee is located in the country of ultimate destination as shown on the license, except a change in, or addition of, an intermediate consignee involving a consolidated shipment;

(vi) Change in continuity of shipment by unloading from carrier at a country listed in Country Group B (see Supplement No. 1 to part 740 of the EAR) port not in the country of ultimate destination, without the designation of

an intermediate consignee on the shipping documents and license, provided:

(A) The purpose is to transfer the shipment to another vessel, barge, or vehicle, solely for onforwarding to the country of destination shown on the shipping documents and the license;

(B) The shipment is moving on a through bill of lading;

(C) The carrier is not registered in, owned or controlled by, or under charter or lease to a country in Country Group D:1 or E:2 (see Supplement No. 1 to part 740 of the EAR), or a national of any of these countries;

(D) The carrier retains custody of the shipment until it is delivered to the ultimate consignee; and

(E) The original bill of lading or air waybill first issued at the port of export is delivered with the shipment to the ultimate consignee;

(vii) Change in address of purchaser or ultimate consignee if the new address is located within the same country shown on the license; or

(viii) Change in ECCN, where necessary only for the purpose of conforming to an official revision in the CCL; or wording of the item description. This does not cover an actual change in the item to be shipped, or an increase in the total price or quantity on the license; or

(ix) Direct exports, reexports, or transfers (in-country) to and among approved end users and the ultimate consignee on a license, provided those end users and ultimate consignee are listed by name and location on such license *and* the license does not contain any conditions specific to the ultimate consignee that cannot be complied with by the end user, such as a reporting requirement that must be made by the ultimate consignee. Reexports and transfers (in-country) among approved end users may be

further limited by license conditions; or

(x) Export, reexport or transfer (in-country) of missile technology (MT) controlled minimum necessary “software” and/or “technology” permitted pursuant to the missile technology licensing policy in § 742.5(b)(3) of the EAR. (See § 742.5(b)(3)(i) for the scope of eligible minimum “software” and/or “technology” and other limitations for licenses for MT controlled items).

*Note 1 to paragraph (c)(1)(x): This MT licensing policy is implemented pursuant to paragraph (c)(1)(x) of this section because it applies to all MT licenses, except when a condition is placed on the license which excludes the use of paragraph (c)(1)(x) of this section, as described in § 742.5(b)(3)(ii).*

*Note 2 to paragraph (c)(1)(x): License Exception TSU under § 740.13 of the EAR is available for the ECCNs controlled for MT reasons specified in paragraph (a)(5) in § 740.2, provided the software or technology is for an end use specified in that paragraph and meets the requirements of License Exception TSU. (See §§ 740.2(a)(5) and 740.13). The licensing policy in § 742.5(b)(3) is only available for licensed exports (or reexports, or transfers (in-country)).*

(xi) Addition of a new HTS-6 Code identified under supplements nos. 2, 4, or 5 to part 746 or item identified under supplement no. 6 to part 746 for export or reexport to or transfer within Russia or Belarus, provided the criteria of this paragraph are met.

(A) The end use of the BIS license is for the divestiture of items within Russia or Belarus or their transfer within Russia or Belarus for the purpose of reexporting such items from Russia or Belarus;

(B) The new HTS-6 Code under supplements nos. 2, 4, or 5 to part 746 or item identified under supplement no. 6 to part 746

was added to the EAR after the validation date of the BIS license;

(C) The BIS license has not yet expired; *and*

(D) The export, reexport, or in-country transfer of these additional HTS-6 Codes under supplements nos. 2, 4, or 5 to part 746 or items identified under supplement no. 6 to part 746 will not exceed the shipping tolerance of the original license or the number of units authorized under the original license.

(2) In some circumstances, BIS may authorize changing the name of a person listed on a license (i.e., name of exporter, reexporter, purchaser, intermediate consignee, ultimate consignee or end user), provided the pertinent person has not undergone a change in ownership, including merger or acquisition, or any other change in legal status since the time the license was issued. In order to rely on this paragraph (c)(2), BIS must have approved the name change in response to an advisory opinion request submitted by the licensee pursuant to § 748.3(c) of the EAR and the instructions below.

(i) The advisory opinion request must be submitted on the licensee's company letterhead and include the following information:

(A) The title of the advisory opinion, in this format: "License name change notification and review request;"

(B) All license numbers subject to the notification and review request (either in the letter or as a separate attachment);

(C) The name(s) changing on the license(s) (include the original and new names), and when the name(s) are changing (either in the letter or as a separate attachment);

(D) Any background information available on the reasons for the name change(s)

(e.g., press releases from the person changing its name(s)); and

(E) A statement regarding whether there has been a change in ownership, including a merger or acquisition, or any other change in legal status regarding the person(s) changing its name(s).

(F) Confirmation that, if the request is approved, the licensee will share the advisory opinion response from BIS with all other persons listed on the license, and inform those persons that the advisory opinion response must be retained pursuant to the recordkeeping requirements in part 762 of the EAR.

(ii) If BIS determines the name change is not a material change to the license and approves the request to change the name(s) on the license, BIS will send a written response to the licensee who submitted the notification. If BIS does not approve the request to change the name(s) on the license, BIS will send a written response to the licensee who submitted the notification.

(iii) For guidance on using an export license with approved name changes, see § 758.4(d) (Exports against license with approved name change).

(iv) If a license name change notification and review request is denied by BIS or the licensee determines that there has been a material change to the license, such as a change in ownership of a person on the license, including merger or acquisition, or any other change in legal status since the time the license was issued, a new license application should be submitted.

#### ***(d) Responsibility of the licensee***

The person to whom a license is issued is the licensee. In export transactions, the exporter must be the licensee, and the exporter-licensee is responsible for the proper use of the license, and for all terms and conditions of the license, except to the extent that certain terms and conditions are

directed toward some other party to the transaction. In reexport or routed export transactions, a U.S. agent acting on behalf of a foreign principal party in interest may be the licensee; in these cases, both the agent and the foreign principal party in interest, on whose behalf the agent has acted, are responsible for the use of the license, and for all terms and conditions of the license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. It is the licensee's responsibility to communicate in writing the specific license conditions to the parties to whom those conditions apply. In addition, when required by the license, the licensee is responsible for obtaining written acknowledgment(s) of receipt of the conditions from the party(ies) to whom those conditions apply.

***(e) Prohibited use of a license***

No person convicted of a violation of any statute specified in section 11(h) of the EAA, at the discretion of the Secretary of Commerce, may apply for any license for a period up to 10 years from the date of the conviction. See § 766.25 of the EAR.

***(f) Quantity of commodities authorized***

Unlike software and technology, commodities will be approved with a quantity and dollar value limit. Any license resulting from a license application to export or reexport commodities will be licensed in terms of the specified unit of quantity commonly used in trade. A total dollar value for the commodity will be authorized based on the per unit price of the commodity. Subject to the shipping tolerances authorized in § 750.11 of this part, the authorization is limited by both the quantity and value listed on the license.

***(g) License validity period***

Licenses involving the export or reexport of items will generally have a four-year validity period, unless a different validity period has been

requested and specifically approved by BIS or is otherwise specified on the license at the time that it is issued. Exceptions from the four-year validity period include license applications for items controlled for short supply reasons, which will be limited to a 12-month validity period and license applications reviewed and approved as an “emergency” (see § 748.4(h) of the EAR). Emergency licenses will expire no later than the last day of the calendar month following the month in which the emergency license is issued. The expiration date will be clearly stated on the face of the license. If the expiration date falls on a legal holiday (Federal or State), the validity period is automatically extended to midnight of the first business day following the expiration date.

**(1) Extended validity period.** BIS will consider granting a validity period exceeding 4 years on a case-by-case basis when extenuating circumstances warrant such an extension. Requests for such extensions may be made at the time of application or after the license has been issued and it is still valid. BIS will not approve changes regarding other aspects of the license, such as the parties to the transaction and the countries of ultimate destination. An extended validity period will generally be granted where, for example, the transaction is related to a multi-year project; when the period corresponds to the duration of a manufacturing license agreement, technical assistance agreement, warehouse and distribution agreement, or license issued under the International Traffic in Arms Regulations; when production lead time will not permit an export or reexport during the original validity period of the license; when an unforeseen emergency prevents shipment within the 4-year validity of the license; or for other similar circumstances.

**(2) Request for extension.** (i) The applicant must submit a letter in writing to request an extension in the validity period of a previously approved license. The subject of the letter must

be titled: “Request for Validity Period Extension” and contain the following information:

(A) The name, address, and telephone number of the requestor;

(B) A copy of the original license, with the license number, validation date, and current expiration date legible; and

(C) Justification for the extension.

(ii) It is the responsibility of the applicant to ensure that all applicable support documents remain valid and are in the possession of the applicant. If the request for extension is approved, BIS will provide the applicant with a written response.

*(h) Specific types of licenses*

**(1) Licenses for temporary exports or reexports.** If you have been granted a license for the temporary export or reexport of items and you decide not to return the items to the United States, you must submit a license application requesting authorization to dispose of the items. Except when the items are to be used on a temporary basis at a new destination (and returned to the United States after such use), you must ensure that your license application is accompanied by all documents that would be required if you had requested a license to export or reexport the same item directly to the new destination.

**(2) Intransit within the United States.** If you have been issued a license authorizing an intransit shipment (that does not qualify for the *intransit* provisions of License Exception TMP) through the United States, your license will be valid only for the export of the intransit shipment wholly of foreign origin and for which a Transportation and Exportation customs entry or an Immediate Exportation customs entry is outstanding.

**(3) Intransit outside the United States.** If you have been issued a license authorizing unlading or transit through a country listed in the General Prohibition Eight contained in §736.2(b)(8) of the EAR, and you did not know the identity of the intermediate consignee at the time of the original license application, you must notify BIS in writing once you have ascertained the identity of the intermediate consignee. Your notification must contain the original license number, and the complete name, address, and telephone number of the intermediate consignee. The written request must be submitted to BIS at the address listed in §748.1(d)(2) of the EAR.

**(4) Replacement license.** If you have been issued a “replacement license” (for changes to your original license not covered in paragraph (c) of this section), you must retain both the original and the replacement license.

*(i) Terminating license conditions*

Exporters or reexporters who have shipped under licenses with conditions that would not apply to an export under a License Exception or if no license was required, and foreign consignees who have agreed to such conditions, are no longer bound by these conditions when the licensed items become eligible for a License Exception or can be exported or reexported without a license. Items that become eligible for a License Exception are subject to the terms and conditions of the applicable License Exception and to the restrictions in §740.2 of the EAR. Items that become eligible for export without a license remain subject to the EAR and any export, reexport, or disposition of such items may only be made in accordance with the requirements of the EAR. Termination of license conditions does not relieve an exporter or reexporter of its responsibility for violations that occurred prior to the availability of a License Exception or prior to the removal of license requirements.

*(j) Records*

If you have been issued a license you must retain the license, and maintain complete records in accordance with part 762 of the EAR including any licenses (whether used or unused, valid or expired) and all supporting documents and shipping records.

## **§ 750.8 REVOCATION OR SUSPENSION OF LICENSES**

### ***(a) Revocation***

All licenses for exports or reexports are subject to revision, suspension, or revocation, in whole or in part, without notice. BIS's Office of Exporter Services may revoke any license in which a person who has been convicted of one of the statutes specified in section 11(h) of the EAA, at the discretion of the Secretary of Commerce, has an interest in the license at the time of the conviction. It may be necessary for BIS to stop a shipment or an export or reexport transaction at any stage in the process (e.g., in order to prevent an unauthorized export or reexport). If a shipment is already en route, it may be further necessary for BIS to order the return or unloading of such shipment at any port of call in accordance with the provisions of the EAA.

### ***(b) Revoked or suspended licenses***

If BIS revokes or suspends a license, the licensee must retain all applicable supporting documents and records of shipments in accordance with the recordkeeping provisions of part 762 of the EAR.

## **§ 750.9 DUPLICATE LICENSES**

### ***(a) Lost, stolen or destroyed***

For licensees whom BIS authorized the submission of paper applications, if a license is lost, stolen or destroyed, you, as the licensee, may obtain a duplicate of the license by submitting a letter to the BIS at the address listed in § 748.1(d)(2) of the EAR, Attention: Duplicate

License Request.” You must certify in your letter:

(1) That the original license ([number] issued to [name and address of licensee]) has been lost, stolen or destroyed; and

(2) The circumstances under which it was lost, stolen or destroyed.

(3) [RESERVED]

### ***(b) Hong Kong Trade Department***

BIS will automatically issue a duplicate license whenever the license lists a party in Hong Kong as the intermediate consignee, or when Hong Kong is identified as the country from which the reexport will take place. The duplicate license will be labeled “Duplicate for Hong Kong Trade Department”. This duplicate must be forwarded to the reexporter or intermediate consignee for submission to the Hong Kong Trade Department. The original license must be retained on file by the licensee in accordance with the recordkeeping provisions contained in part 762 of the EAR.

## **§ 750.10 TRANSFERS OF LICENSES FOR EXPORTS**

### ***(a) Authorization***

As the licensee, you may not transfer a license issued for the export of items from the United States to any other party, except with the prior written approval of BIS. BIS may authorize a transfer of a license for export to a transferee who is subject to the jurisdiction of the United States, is a principal party in interest, and will assume all powers and responsibilities under the license for the control of the shipment of the items out of the United States. BIS will approve only one transfer of the same license and only transfers of licenses to export items.

**(b) How to request the transfer of licenses**

**(1) Letter from licensee.** You, as the licensee, must submit a letter in writing to request a transfer of a license or licenses. The letter must contain the following information:

- (i)** The reasons for the requested transfer;
- (ii)** Either a list of the outstanding license numbers or a statement that all outstanding licenses in the name of the licensee are to be transferred, and the total number of such outstanding licenses;
- (iii)** A list of all license applications for export to be transferred that are pending with BIS, identifying the Application Control Number for each, or other information that will assist in identifying the pending license applications;
- (iv)** Name and address of the person you intend to transfer the licenses and license applications to;
- (v)** The facts necessitating transfer;
- (vi)** A statement as to whether or not any consideration has been, or will be, paid for the transfer; and
- (vii)** Identification by name of the legal document (certificate, agreement, etc.) or other authority by which the new firm name is legally established, the new corporation or firm created, or the assets transferred and showing the effective date of such document and the state where filed or recorded.

**(2) Information from transferee.** The person to whom you wish to transfer your license(s) must provide you a signed letter, that must be submitted with your request, containing the following:

- (i)** That the transferee is a principal party in interest in the transaction covered by the license,

or is acting as agent for a principal party in interest;

- (ii)** That the transferee is subject to the jurisdiction of the United States;

**(iii)** That the transferee assumes all powers and responsibilities under the license for the control of the shipment of the items out of the United States;

- (iv)** Whether any consideration has been, has not been, or will be paid for the transfer;

**(v)** The name and address of the foreign principal in instances where the transferee will make the export as an agent on behalf of a foreign principal; and

**(vi)** If the license is to be transferred to a subsidiary or firm, or if you transfer to the transferee all, or a substantial portion, of your assets or business, the transferee must certify that the legal authority changing the exporter imposes on the transferee the responsibility to accept and fulfill the obligations of the transferor under the transactions covered by the license; and

- (vii)** The following certification:

The undersigned hereby certifies that, if license number(s)\_\_\_\_\_ is (are) transferred in accordance with my (our) request, any and all documents evidencing the order covered by this(these)license(s) will be retained and made available upon request in compliance with the recordkeeping provisions contained in Part 762 of the Export Administration Regulations. The undersigned further certifies compliance with all requirements of the Export Administration Regulations regarding these licenses.

**(c) Notification of transfer and recordkeeping**

Unless instructed otherwise by BIS, you must retain the license(s) pending notification by BIS of the action taken. If the request is approved, you must forward the license(s) to the transferee and the validated letter received from BIS authorizing the transfer. If the transfer request is not approved, the license(s) must either be returned to BIS or used by you if you so choose and have retained the legal and operational capacity fully to meet the responsibilities imposed by the license(s). If your initial request is returned by BIS for additional information, after obtaining the necessary information you may resubmit your request.

### **§ 750.11 SHIPPING TOLERANCES**

Under some circumstances, you may use a license issued for the export of items from the United States to export more than the value shown on that license. This additional amount is called a shipping tolerance. This section tells you, as the licensee, when you may take advantage of a

shipping tolerance and the amount of shipping tolerance you are permitted to use.

**(a)** If you have already shipped the full quantity of items approved on your license, you may not use this shipping tolerance provision. No further shipment may be made under the license.

**(b)** If you have not shipped the full quantity of items approved on the license, the value of all of your shipments under one license, up to the full quantity approved on the license, may exceed the total dollar value stated on that license by up to 10%, unless;

**(1)** Your license stipulates a specific shipping tolerance; or

**(2)** Your item is controlled for short supply reasons and a different tolerance has been established. (See part 754 of the EAR).