

§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 Export Administration's (BXA) process for reviewing your application for a license and the applicable processing times for various types of applications. Information related to the issuance, denial, revocation, or suspension of a license or license application is provided along with the procedures on obtaining a duplicate or replacement license, the transfer of a license and shipping tolerances available on licenses. This part also contains instructions on obtaining the status of any 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.

§750.3**REVIEW OF LICENSE APPLICATIONS BY BXA AND OTHER GOVERNMENT AGENCIES AND DEPARTMENTS*****(a) Review by BXA***

In reviewing specific license applications, BXA 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, BXA will consider the reliability of each party to the transaction and review any available intelligence information. To the maximum extent possible, BXA will make licensing decisions without referral of license applications to other agencies, however, BXA 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, BXA 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 BXA 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 regional stability, anti-terrorism, crime control reasons, and sanctions; and

(iv) ACDA is concerned primarily with items controlled for national security, nuclear nonproliferation, regional stability, and anti-terrorism reasons.

(v) The Department of Justice is concerned with controls relating to encryption items.

§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 BXA'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 BXA. Registration is defined as the point at which the application is entered into BXA's electronic license processing system. If your application contains deficiencies that prevent BXA from registering your application, BXA will attempt to contact you to correct the deficiencies, however, if BXA 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 BXA 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.** BXA 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 BXA 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.** If a pre-license check, to establish the identity and reliability of the

recipient of the controlled items, is conducted through government channels, provided that:

(i) The need for such a pre-license check is established by the Secretary, or by another agency, if the request for a pre-license check is made by such agency and the request is made in accordance with 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 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: Cuba, Iran, Iraq, Libya, 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, except digital computers with a Composite Theoretical Performance (CTP) less than 500 Mtops;

(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 International 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."

(c) Initial processing

Within 9 days of license application registration, BXA 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 BXA of any information not contained in the referral as described in paragraph (c)(5) of this section. BXA 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 BXA 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.

(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 BXA.

*(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**STATUS OF PENDING APPLICATIONS
AND OTHER REQUESTS***(a) Information available*

You may contact BXA for status of your pending Classification Request, Advisory Opinion, or license application. For Advisory Opinion requests, telephone (202) 482-4905 or send a fax to (202) 219-9179. For license applications and Classification Requests, telephone BXA's System for Tracking Export License Applications ("STELA") at (202) 482-2752. STELA is an automated voice response system, that upon request via any standard touch-tone telephone, will provide you with up to the minute status on any application pending at BXA. Press "0" on your keypad for online instructions or "9" for the letter "Z". Requests for status may be made only by the applicant or the applicant's agent.

(b) STELA's hours

STELA is operational Monday through Friday from 7:15am to 11:15pm and on Saturday from 8:00am to 4:00pm, Eastern Time. If you have any difficulty accessing STELA, contact during normal business hours, one of BXA's offices listed in §748.2(a) of the EAR.

(c) Procedures to access information on STELA

Once you dial STELA you will be instructed to enter your Application Control Number using your push button telephone keys. After you enter the Application Control Number, STELA will provide you with the current status of your license application or Classification request.

§750.6

DENIAL OF LICENSE APPLICATIONS

(a) Intent to deny notification

If BXA intends to deny your license application,

BXA 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 BXA to reconsider the license application;
- (5) The name of the BXA 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, BXA 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

A license authorizes only a specific transaction, or series of transactions, as described in the

license application and any supporting documents. A license application may be approved in whole or in part or further limited by conditions or other restrictions appearing on the license itself or in the EAR. When a license application is approved by BXA, a license is issued as described in paragraph (b) of this section.

(b) Issuance of a license

After a license application is approved, a computer generated license is issued by the Department of Commerce bearing the license number and a validation date. Where appropriate, the license will also show an expiration date. Where necessary, attachments to a license will also be validated with the Department of Commerce seal and the date of validation. Exporters must use the complete license number when preparing a Shipper's Export Declaration (SED) and other export control documents, and in communicating with the Department of Commerce concerning 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 BXA. (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 or quantity 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, unit of quantity, unit price, or wording of the item description (where necessary only for the purpose of conforming to an official revision in the CCL). This does not cover an actual change in the item to be shipped, or an increase in the price or quantity.

(2)(i) For Encryption Licensing Arrangements issued by BXA for exports and reexports of items controlled under ECCN 5A002, 5B002, and 5D002, and for encryption commodities and software previously on the U.S. Munitions List and currently authorized for export or reexport under a State Department license, distribution arrangement or any other authority of the State Department, you must by letter to BXA a request for approval of any additional country of destination.

(ii) Letters requesting changes pursuant to paragraph (c)(2)(i) of this section should be made by the license holder on company letterhead, clearly identifying the original license number and the requested change. In addition, requests for changes to State licenses or other authorizations must be accompanied by a copy of the original State license or authorization. The requested changes may not take effect until approved in writing by BXA. Send requests for changes to the following address:

Office of Strategic Trade
Bureau of Export Administration
U.S. Department of Commerce
Room 2705
14th Street and Pennsylvania Ave., N.W.
Washington, DC 20230

Attn: Encryption Division

(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 the case of Encryption License Agreements (ELA), the licensee may not necessarily be the exporter or reexporter. In this case, the authorized user of the ELA is responsible for 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 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 or dollar value limit. The "Unit" paragraph within each CCL commodity entry will list a specific "Unit" for those commodities controlled by that entry. Any license resulting from a license application to

export or reexport commodities will be licensed in terms of the specified "Unit". If a commodity is licensed in terms of "\$ value", the unit of quantity commonly used in trade may also be shown on the license. Though this unit may be shown on the approved license, the quantity of commodities authorized is limited entirely by the total dollar value shown on the approved license.

(g) License validity period

Licenses involving the export or reexport of items will generally have a 24 month validity period, unless a different validity period has been requested and specifically approved by BXA. Exceptions from the 24 month validity period include, license applications reviewed and approved as an "emergency" (see §748.4(h) of the EAR), license applications for items controlled for short supply reasons, and Special Comprehensive Licenses. Emergency licenses will expire no later than the last day of the calendar month following the month in which the emergency license is issued. Licenses for items controlled for short supply reasons will be limited to a 12 month validity period. 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 day of business following the expiration date. (See part 752 of the EAR for validity periods for Special Comprehensive Licenses.)

(1) Extended validity period. Validity periods in excess of 24 months generally will *not* be granted. BXA will consider granting a validity period exceeding 24 months when extenuating circumstances warrant such an extension, however, no changes will be approved related to any other particular on the license (e.g., parties to the transaction, countries of ultimate destination, etc.). For example, an extended validity period will generally be granted where the transaction is related to a multi-year project, 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 24-month validity of the license, or for other similar circumstances. A continuing requirement to supply spare or replacement parts will not normally justify an extended validity period. Licenses issued in accordance with the emergency clearance provisions contained in §748.4(h) of the EAR will not be extended. See §752.9 of the EAR for information relating to the extension of a Special Comprehensive License.

(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, BXA 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 unloading 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 BXA 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 BXA at the address listed in §748.2(c) of the EAR.

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

(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 whenever it is known that the EAR have been violated or that a violation is about to occur. BXA'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 BXA 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 BXA to order the return or unloading of such shipment at any port of call in accordance with the provisions of the EAA.

(b) Return of revoked or suspended licenses

If BXA revokes or suspends a license, the licensee shall return the license immediately upon notification that the license has been suspended or revoked. The license must be returned to BXA at the address listed in §748.2(c) of the EAR, Attn:"Return of Revoked/Suspended License". All applicable supporting documents and records of shipments must be retained by the licensee in accordance with the recordkeeping provisions of part 762 of the EAR. If the licensee fails to return a license immediately upon notification that it has been suspended or revoked, BXA may impose sanctions provided for in part 764 of the EAR.

§750.9

DUPLICATE LICENSES

(a) Lost, stolen or destroyed

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 BXA at the address listed in §748.2(c) 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;
- (2) The circumstances under which it was lost, stolen or destroyed; and
- (3) If the original license is found, the licensee will return either the original or duplicate license

to the BXA. Note that if shipment was made against the original license, those shipments must be counted against the duplicate license. If you are issued a duplicate license you must retain the duplicate license in accordance with the recordkeeping provisions of part 762 of the EAR.

(b) Hong Kong Trade Department

BXA 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 BXA. BXA 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. BXA 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 BXA, 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 BXA, you must retain the license(s) pending notification by BXA of the action taken. If the request is approved,

you must forward the license(s) to the transferee and the validated letter received from BXA authorizing the transfer. If the transfer request is not approved, the license(s) must either be returned to BXA 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 BXA for additional information, after obtaining the necessary information you may resubmit your request.

§750.11

SHIPPING TOLERANCES

(a) Applicability and use of 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 quantity or 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.

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

(2) The amount of shipping tolerance you are permitted is based on the "Unit" specified for the item you want to export in the applicable ECCN on the CCL (see Supplement No. 1 to part 774 of the EAR). You must calculate shipping tolerance based on the applicable "Unit" whether that be Number, Dollar Value, or Area, Weight, or other Measure. You may not use any other unit that may appear on your license.

(b) Calculating shipping tolerances

There are three basic rules, one for items licensed by "Dollar Value", one for items licensed by "Number", and another for items licensed by "Area, Weight or other Measure".

(1) **Items licensed by "Dollar Value"**. If the "Unit" paragraph in the ECCN applicable to your item reads "\$ value" or "in \$ value", there is no shipping tolerance. You may not ship more than the total dollar value stated on your license.

(2) **Items licensed by "Number"**. If the "Unit" paragraph in the ECCN applicable to your item reads "Number" or "in Number", there is no shipping tolerance with respect to the number of units. However, the value of all of your shipments under one license may exceed the total dollar value stated on that license by up to 25%.

(3) **Items licensed by "Area, Weight or Measure"**. If the "Unit" paragraph in the ECCN applicable to your item reads "kilograms" or "square meters" or some other unit of area, weight or measure, your shipment may exceed the unshipped balance of the area, weight or other measure listed on your license by up to 10% and the total dollar value shown on your license by up to 25%, unless;

(i) Your license stipulates a specific shipping tolerance; or

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

(c) Examples of shipping tolerances

(1) A license authorizes the export of 100,000 kilograms of an item controlled by an ECCN where the "Unit" is stated as "kilograms", the total cost of which is \$1,000,000:

(i) *One shipment*. If one shipment is made,

the quantity that may be exported may not exceed 110,000 kg (10% tolerance on the unshipped Area, Weight, or Measure balance), and the total cost of that one shipment may not exceed \$-1,250,000:

| | |
|-------------|---|
| \$1,000,000 | (the total value shown on the license) |
| +250,000 | (25% of the total value shown on the license) |
| <hr/> | |
| \$1,250,000 | |

(ii) *Two shipments.* If the first shipment is for 40,000 kg (valued at \$400,000), the second shipment may not exceed 66,000 kg (10% of the unshipped balance of 60,000 kg (6,000 kg) plus the unshipped balance), and the total cost of the second shipment shall not exceed \$850,000:

| | |
|-----------|--|
| \$600,000 | (the value of the unshipped balance of 60,000 kg) |
| +250,000 | (25% of the original total value shown on the license) |
| <hr/> | |
| \$850,000 | |

(iii) *Three shipments.* If the first shipment is for 40,000 kg (valued at \$400,000) the second shipment is for 20,000 kg (valued at \$200,000), the third shipment may not exceed 44,000 kg (10% of the unshipped balance of 40,000 kg (4,000 kg) plus the unshipped balance), and the total cost of the third shipment can not exceed \$650,000:

| | |
|-----------|---|
| \$400,000 | (the value of the unshipped balance of 40,000 kg) |
| +250,000 | (25% of the original total value on the license) |
| <hr/> | |
| \$650,000 | |

(2) A license authorizes the export of an item controlled by an ECCN where the "Unit" is stated

as "\$ value", the total cost of which is \$5,000,000. There is no shipping tolerance on this license because the items are controlled by an ECCN where "\$ value" is the stated "Unit".

(3) A license authorizes the export of 10 pieces of equipment controlled by an ECCN where the "Unit" is stated as "Number", with a total value of \$10,000,000 and the export of parts and accessories covered by that same entry valued at \$1,000,000:

(i)(A) If one shipment is made, the quantity of equipment that may be exported may not exceed 10 pieces of equipment because there is no shipping tolerance on the "number" of units. That one shipment of equipment may not exceed \$12,500,000:

| | |
|--------------|---|
| \$10,000,000 | (the total value shown on the license) |
| +2,500,000 | (25% of the total value shown on the license) |
| <hr/> | |
| \$12,500,000 | |

(B) If the one shipment includes parts and accessories, those parts and accessories may not exceed \$1,000,000 because there is no shipping tolerance on any commodity licensed in terms of dollar value.

(ii)(A) If the first shipment is for 4 pieces of equipment valued at \$4,000,000, the second shipment may not exceed 6 pieces of equipment (no tolerance on "number") valued at no more than \$8,500,000:

| | |
|-------------|--|
| \$6,000,000 | (the value of the unshipped 6 pieces) |
| +2,500,000 | (25% of the original total value shown on the license) |
| <hr/> | |
| \$8,500,000 | |

(B) If the first shipment includes \$300,000 of

parts and accessories, the second shipment may not exceed \$700,000 of parts and accessories because there is no shipping tolerance on any commodity licensed in terms of dollar value.

(iii)(A) If the first shipment is for 4 pieces of equipment valued at \$4,000,000 and the second shipment is for 3 pieces of equipment valued at \$3,000,000, the third shipment may not exceed 3 pieces of equipment (no tolerance on "number") valued at no more than \$5,500,000:

\$3,000,000 (the value of the unshipped 3

pieces)
+2,500,000 (25% of the original value
shown on the license)

\$5,500,000

(B) If the first shipment includes \$300,000 of parts and accessories and the second shipment includes another \$300,000, the third shipment may not exceed \$400,000 because there is no shipping tolerance on commodities licensed in terms of dollar value.