

to the extent that foreign availability is eliminated. If foreign availability is not eliminated, BIS will decontrol the item by removing the requirement for a license for the export of the item to the destinations covered by the assessment. To the extent that the negotiations are successful and the foreign availability is eliminated, BIS will remove the license requirement for the export of the item to any country that has agreed to eliminate foreign availability.

(j) *Changes in foreign availability.* If BIS becomes aware of conditions, including new evidence, that affect a previous determination that foreign availability exists or does not exist, BIS may review the conditions. If BIS finds that the foreign availability previously determined no longer exists, or that foreign availability not earlier found now does exist, BIS will make a recommendation to the Secretary of Commerce for the appropriate changes in the control. The Secretary of Commerce will make a determination, and BIS will publish a FEDERAL REGISTER notice of the determination.

§ 768.8 Eligibility of expedited licensing procedures for non-controlled countries.

(a) BIS determines the eligibility of an item for expedited licensing procedures on the basis of an evaluation of the foreign availability of the item. Eligibility is specific to the items and the countries to which they are found to be available.

(b) BIS will initiate an eligibility evaluation:

- (1) On its own initiative;
- (2) On receipt of a FAS; or
- (3) On receipt of a TAC certification.

(c) Upon initiation of an eligibility evaluation following receipt of either a FAS or TAC certification, BIS will notify the claimant or TAC of the receipt and initiation of an evaluation and publish a FEDERAL REGISTER notice of the initiation of the evaluation.

(d) The criteria for determining eligibility for expedited licensing procedures are:

- (1) The item must be available-in-fact to the specified non-controlled country from a foreign source;

(2) The item must be of a quality similar to that of the U.S.-controlled item; and

(3) The item must be available-in-fact to the specified non-controlled country without effective restrictions.

(e) Within 30 days of initiation of the evaluation, the Secretary of Commerce will make a determination of foreign availability on the basis of the BIS evaluation and recommendation, taking into consideration the evidence the Secretaries of Defense, State, and other interested agencies provide to BIS and any other information that the Secretary considers relevant.

(f) Within 30 days of the receipt of the FAS or TAC certification, BIS will publish the Secretary's determination in the FEDERAL REGISTER, that the item will or will not be eligible for expedited licensing procedures to the stated countries and, where appropriate, amend Supplement No. 2 to part 768.

(g) Following completion of a self-initiated evaluation, BIS will be notified of the Secretary's determination and, where appropriate, Supplement No. 2 to part 768 will be amended.

(h) Foreign availability submissions and TAC certifications to initiate an expedited licensing procedure evaluation must be clearly designated on their face as a request for expedited licensing procedure and must specify the items, quantities and countries alleged eligible. Submissions and certifications should be sent to: Department of Commerce, Bureau of Industry and Security, Room H-1093, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

[61 FR 12915, Mar. 25, 1996, as amended at 72 FR 25196, May 4, 2007]

§ 768.9 Appeals of negative foreign availability determinations.

Appeals of negative determinations will be conducted according to the standards and procedures described in part 756 of the EAR. A Presidential decision (NSO) to deny a license or continue controls notwithstanding a determination of foreign availability is not subject to appeal.