

§ 748.3

15 CFR Ch. VII (1-1-01 Edition)

U.S. Embassies and Consulates throughout the world.

(c) All applications should be mailed to the following address, unless otherwise specified: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044. If you wish to submit your application using an overnight courier, use the following address: Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue N.W., Room 2705, Washington, D.C. 20044, Attn: "Application Enclosed". BXA will not accept applications sent C.O.D.

§ 748.3 Classification and Advisory Opinions.

(a) *Introduction.* In light of your responsibility to classify your item, you may ask BXA to provide you with the correct Export Control Classification Number (ECCN) to the paragraph (or subparagraph if appropriate). BXA will advise you whether or not your item is subject to the EAR and, if applicable, the appropriate ECCN. This type of request is commonly referred to as a "Classification Request". If requested, for a given end-use, end-user, and/or destination, BXA will advise you whether a license is required, or likely to be granted, for a particular transaction. Note that these responses do not bind BXA to issuing a license in the future. This type of request, along with requests for guidance regarding other interpretations of the EAR are commonly referred to as "Advisory Opinions".

(b) *Classification requests.* You must submit your Classification Request using Form BXA-748P or its electronic equivalent. See the instructions contained in Supplement No. 1 to part 748 to complete the Blocks identified for this type of request. Classification Requests must be sent to BXA at one of the addresses listed in § 748.2(c) of this part or submitted electronically. Be certain that your request is complete and does not omit any essential information.

(1) Each Classification Request must be limited to six items. Exceptions may be granted by BXA on a case-by-case basis for several related items if the relationship between the items is

satisfactorily substantiated in the request. Classification requests must be supported by any descriptive literature, brochures, precise technical specifications or papers that describe the items in sufficient technical detail to enable classification by BXA.

(2) When submitting a Classification Request, you must complete Blocks 1 through 5, 14, 22 (a), (b), (c), (d), and (i), 24, and 25 on Form BXA-748P. You must provide a recommended classification in Block 22(a) and explain the basis for your recommendation based on the technical parameters specified in the appropriate ECCN in Block 24. If you are unable to determine a recommended classification for your item, include an explanation in Block 24, identifying the ambiguities or deficiencies that precluded you from making a recommended classification.

(3) Classification requests for a Department of Commerce review of encryption software transferred from the U.S. Munitions List consistent with Executive Order 13026 of November 15, 1996 (3 CFR, 1996 Comp., p. 228) and pursuant to the Presidential Memorandum of that date are required prior to export to determine eligibility for release from EI controls. Exporters may self-classify 5A992, 5D992 or 5E992 items after submitting to BXA and the ENC Encryption Request Coordinator by the time of export the information described in paragraphs 1-5 of Supplement 6 to Part 742 of the EAR. Refer to § 742.15(b) and Supplement No. 6 to Part 742 of the EAR for instructions on submitting such requests for mass market encryption software.

(c) *Advisory Opinions.* Advisory Opinions must be submitted in writing to the address listed in § 748.2(c) of the EAR. Both your letter and envelope must be marked "Advisory Opinion."

(1) Your letter must contain the following information if you are requesting guidance regarding interpretations of the EAR:

(i) The name, title, and telephone and facsimile numbers of the person to contact,

(ii) Your complete address comprised of street address, city, state, country, and postal code; and

(2) If you are requesting BXA to determine whether a license is required,

or the licensing policy related to a particular end-use, end-user, and/or destination, in addition to the information required in § 748.3(c)(1) you must also include:

- (i) All available information on the parties to the transaction and the proposed end-use or end-user,
- (ii) The model number for each item, where appropriate,
- (iii) The Export Control Classification Number, if known, for each item; and
- (iv) Any descriptive literature, brochures, technical specifications or papers that describe the items in sufficient technical detail to enable BXA to verify the correct classification.

[61 FR 12812, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996; 62 FR 25461, May 9, 1997; 65 FR 62609, Oct. 19, 2000]

§ 748.4 Basic guidance related to applying for a license.

(a) *License applicant.* (1) *Export transactions.* Only a person in the United States may apply for a license to export items from the United States. The applicant must be the exporter, who is the U.S. principal party in interest with the authority to determine and control the sending of items out of the United States, except for Encryption License Arrangements (ELA) (see § 750.7(d) of the EAR). See definition of “exporter” in part 772 of the EAR.

(2) *Routed export transactions.* The U.S. principal party in interest or the duly authorized U.S. agent of the foreign principal party in interest may apply for a license to export items from the United States. Prior to submitting an application, the agent that applies for a license on behalf of the foreign principal party in interest must obtain a power of attorney or other written authorization from the foreign principal party in interest. See § 758.3(b) and (d) of the EAR.

(3) *Reexport transactions.* The U.S. or foreign principal party in interest, or the duly authorized U.S. agent of the foreign principal party in interest, may apply for a license to reexport controlled items from one country to another. Prior to submitting an application, an agent that applies for a license on behalf of a foreign principal party in interest must obtain a power-of-attor-

ney or other written authorization from the foreign principal party in interest, unless there is a preexisting relationship by ownership, control, position of responsibility or affiliation. See power-of-attorney requirements in paragraph (b)(2) of this section.

(b) *Disclosure of parties on license applications and the power of attorney.* (1) *Disclosure of parties.* License applicants must disclose the names and addresses of all parties to a transaction. When the applicant is the U.S. agent of the foreign principal party in interest, the applicant must disclose the fact of the agency relationship, and the name and address of the agent's principal. If there is any doubt about which persons should be named as parties to the transaction, the applicant should disclose the names of all such persons and the functions to be performed by each in Block 24 (Additional Information) of the BXA-748P Multipurpose Application form. Note that when the foreign principal party in interest is the ultimate consignee or end-user, the name and address need not be repeated in Block 24. See “Parties to the transaction” in § 748.5.

(2) *Power of attorney or other written authorization—(i) Requirement.* An agent must obtain a power of attorney or other written authorization from the principal party in interest, unless there is a preexisting relationship by ownership, control, position of responsibility or affiliation, prior to preparing or submitting an application for a license, when acting as either:

(A) An agent, applicant, licensee and exporter for a foreign principal party in interest in a routed transaction; or

(B) An agent who prepares an application for export on behalf of a U.S. principal party in interest who is the actual applicant, licensee and exporter in an export transaction.

(ii) *Application.* When completing the BXA-748P Multipurpose Application Form, Block 7 (documents on file with applicant) must be marked “other” and Block 24 (Additional information) must be marked “748.4(b)(2)” to indicate that the power of attorney or other written authorization is on file with the agent. See § 758.3(d) for power of attorney requirement, and see also part 762 of the EAR for recordkeeping requirements.