

for national security reasons or approve the license in question if there is no foreign policy reason to deny the license, unless the President exercises a National Security Override (see § 768.7 of this part). The effect of any such determination on the effectiveness of foreign policy controls may be considered independent of this part.

(b) *Types of assessments.* There are two types of foreign availability assessments:

- (1) Denied license assessment; and
- (2) Decontrol assessment.

(c) *Expedited licensing procedures.* See § 768.8 of this part for the evaluation of eligibility of an item for the expedited licensing procedures.

[61 FR 12915, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996]

§ 768.4 Initiation of an assessment.

(a) *Assessment request.* To initiate an assessment, each claimant or TAC must submit a FAS or a TAC Certification to BXA. TACs are authorized to certify foreign availability only to controlled countries. Claimants can allege foreign availability for either controlled or non-controlled countries.

(b) *Denied license assessment.* A claimant whose license application BXA has denied, or for which it has issued a letter of intent to deny on national security grounds, may request that BXA initiate a denied license assessment by submitting a Foreign Availability Submission (FAS) within 90 days after denial of the license. As part of its submission, the claimant must request that the specified license application be approved on the grounds of foreign availability. The evidence must relate to the particular export as described on the license application and to the alleged comparable item. If foreign availability is found, the Secretary will approve the license for the specific items, countries, and quantities listed on the application. The denied license assessment procedure, however, is not intended to result in the removal of the U.S. export control on an item by incrementally providing a country with amounts that, taken together, would constitute a sufficient quantity of an item. The Secretary will not approve on foreign availability grounds a denied license if the approval of such li-

cense would itself render the U.S. export control ineffective in achieving its purpose. In the case of a positive determination, the Secretary will determine whether a decontrol assessment is warranted. If so, then BXA will initiate a decontrol assessment.

(c) *Decontrol assessment.* (1) Any claimant may at any time request that BXA initiate a decontrol assessment by a FAS to BXA alleging foreign availability to any country or countries.

(2) A TAC may request that BXA initiate a decontrol assessment at any time by submitting a TAC Certification to BXA that there is foreign availability to a controlled country for items that fall within the area of the TAC's technical expertise.

(3) The Secretary, on his/her own initiative, may initiate a decontrol assessment.

(d) *BXA mailing address.* All foreign availability submissions and TAC certifications should be submitted to: Department of Commerce, Bureau of Export Administration, 14th Street and Pennsylvania Avenue, NW, Room 3877, Washington, DC 20230.

§ 768.5 Contents of foreign availability submissions and Technical Advisory Committee certifications.

(a) All foreign availability submissions must contain, in addition to information on product or technology alleged to be available from foreign sources, at least:

- (1) The name of the claimant;
- (2) The claimant's mailing and business address;
- (3) The claimant's telephone number; and
- (4) A contact point and telephone number.

(b) Foreign availability submissions and TAC certifications should contain as much evidence as is available to support the claim, including, but not limited to:

- (1) Product names and model designations of the items alleged to be comparable;
- (2) Extent to which the alleged comparable item is based on U.S. technology;
- (3) Names and locations of the non-U.S. sources and the basis for claiming