

Bureau of Export Administration, Commerce

§ 748.3

SUPPLEMENT NO. 3 TO PART 748—BXA-711, STATEMENT BY ULTIMATE CONSIGNEE AND PURCHASER INSTRUCTIONS

SUPPLEMENT NO. 4 TO PART 748—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION (IC/DV) AND END USE CERTIFICATE SYSTEMS IN FOREIGN COUNTRIES

SUPPLEMENT NO. 5 TO PART 748—U.S. IMPORT CERTIFICATE AND DELIVERY VERIFICATION PROCEDURE

SUPPLEMENT NO. 6 TO PART 748—AUTHORITIES ISSUING IMPORT CERTIFICATES UNDER THE FIREARMS CONVENTION

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106-508; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

SOURCE: 61 FR 12812, Mar. 25, 1996, unless otherwise noted.

§ 748.1 General provisions.

(a) *Scope.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. The provisions of this part involve applications, whether submitted in writing or electronically, for classifications, advisory opinions or licenses subject to the Export Administration Regulations (EAR). All terms, conditions, provisions, and instructions, including the applicant and consignee certifications, contained in such form(s) are incorporated as part of the EAR. For the purposes of this part, the term “application” refers to the Form BXA-748P: Multipurpose Application or its electronic equivalent. If a provision contained in this part relates solely to a license application the term “license application” will appear.

(b) *BXA responses.* BXA will give a formal classification, advisory opinion or licensing decision only through the review of a properly completed application supported by all relevant facts and required documentation submitted in writing or electronically to BXA.

(c) *Confidentiality.* Consistent with section 12(c) of the Export Administration Act, as amended, information obtained for the purposes of considering license applications, and other information obtained by the U.S. Department of Commerce concerning license applications, will not be made available to the public without the approval of the Secretary of Commerce.

§ 748.2 Obtaining forms; mailing addresses.

(a) You may obtain the forms required by the EAR from any U.S. Department of Commerce District Office; or in person or by telephone or facsimile from the following BXA offices:

Export Counseling Division

U.S. Department of Commerce, 14th Street and Pennsylvania Ave., N.W., Room H1099D, Washington, D.C. 20230, Telephone Number: (202) 482-4811, Facsimile Number: (202) 482-3617,

Western Regional Offices:

3300 Irvine Avenue, Ste. 345, Newport Beach, CA 92660, Telephone Number: (714) 660-0144, Facsimile Number: (714) 660-9347,
5201 Great America Pkwy, Ste. 226, Santa Clara, CA 95054, Telephone Number: (408) 748-7450, Facsimile Number: (408) 748-7470

(b) For the convenience of foreign consignees and other foreign parties, certain BXA forms may be obtained at 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

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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