

Export Counseling Division

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(b) For the convenience of foreign consignees and other foreign parties, certain BIS 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 Industry and Security, 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 Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue N.W., Room 2705, Washington, D.C. 20044, Attn: "Application Enclosed". BIS will not accept applications sent C.O.D.

§ 748.3 Classification requests, advisory opinions, and encryption review requests.

(a) *Introduction.* In light of your responsibility to classify your item, you may ask BIS to provide you with the correct Export Control Classification Number (ECCN) to the paragraph (or subparagraph if appropriate). BIS 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, BIS will advise you whether a license is required, or likely to be granted, for a particular transaction. Note that these responses do not bind BIS 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". The encryption requirements in the EAR require that certain

encryption items be reviewed by BIS in order for them to be eligible for export or reexport under License Exception ENC (see § 740.17 of the EAR) or to be released from "EI" controls (see § 742.15(b)(2) of the EAR). BIS makes its determination based on the submission of a review request prepared in accordance with the instructions in Supplement No. 6 to Part 742 of the EAR. A review of the questions provided in Supplement No. 5 to part 742 of the EAR may assist in determining whether you must submit an encryption review request (see paragraph (d) of this section) for your particular item.

(b) *Classification requests.* You must submit your Classification Request using Form BIS-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 BIS 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 BIS 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 BIS.

(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 BIS-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.

(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 BIS 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 BIS to verify the correct classification.

(d) *Review requests for encryption items.* A Department of Commerce review of encryption items 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 may be required to determine eligibility under License Exception ENC or for release from "EI" controls. Refer to Supplement No. 5 to part 742 of the EAR for questions that provide initial guidance in determining whether you must submit an encryption review request for your item. Refer to Supplement No. 6 to part 742 of the EAR for a complete list of technical information that is required for encryption review requests. Refer also to §742.15(b) of the EAR for instructions regarding mass market encryption commodities and software.

Refer to §740.17 of the EAR for the provisions of License Exception ENC.

[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; 67 FR 38868, June 6, 2002; 68 FR 35785, June 17, 2003]

§ 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-attorney 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