

**§ 748.8**

PIN holder. Electronic submission of a license application will be considered complete upon the transmittal of the application to BIS or to an entity under contract to receive such applications for BIS.

(c) *Maintenance of a log.* Your company must maintain a log, either manually or electronically, specifying the date and time of each electronic submission, the ECCNs of items on each electronic submission, and the name of the employee or agent submitting the license application. This log may not be altered. Written corrections must be made in a manner that does not erase or cover original entries. If the log is maintained electronically, corrections may only be made as notations.

(d) *Updating.* An applicant company must promptly notify BIS of any change in its name or address. If your company wishes to have an individual added as a PIN holder, your company must advise BIS and follow the instructions provided by BIS. Your company should conduct periodic reviews to ensure that PINs are held only by individuals whose current responsibilities make it necessary and appropriate that they act for the company in this capacity.

**§ 748.8 Unique license application requirements.**

In addition to the instructions contained in Supplement No. 1 to this part 748, you must also ensure that the additional requirements for certain items or types of transactions described in this section are addressed in your license application. See Supplement No. 2 to this part 748 if your application involves:

- (a) Chemicals, medicinals, and pharmaceuticals.
- (b) Communications intercepting devices.
- (c) Digital computers, telecommunications, and related equipment.
- (d) Gift parcels; consolidated in a single shipment.
- (e) Intransit shipments through the United States.
- (f) Intransit shipments outside of the United States.
- (g) Nuclear Nonproliferation items and end-uses.

(h) Numerical control devices, motion control boards, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed assemblies and specially designed software.

(i) Parts, components, and materials incorporated abroad into foreign-made products.

(j) Ship stores, plane stores, supplies, and equipment.

(k) Regional stability controlled items.

(l) Reexports.

(m) Robots.

(n) Short Supply controlled items.

(o) Technology.

(p) Temporary exports or reexports.

(q) Exports of chemicals controlled for CW reasons by ECCN 1C350 to countries not listed in Supplement No. 2 to part 745 of the EAR.

[61 FR 12812, Mar. 25, 1996, as amended at 64 FR 27146, May 18, 1999]

**§ 748.9 Support documents for license applications.**

(a) *Exemptions.* If you plan to submit a license application involving one of the following situations and your item is not a firearms item destined for an OAS member country, no support documentation is required. Simply submit the license application. If your item is a firearms item (Reason for Control identified as "FC" on the Commerce Control List, Supplement No. 1 to part 774 of the EAR) destined for an OAS member country, proceed to § 748.14 of this part.

(1) All exports and reexports involving ultimate consignees located in any of the following destinations:

- |                    |                      |
|--------------------|----------------------|
| Bahamas            | Greenland            |
| Barbados           | Guatemala            |
| Belize             | Guyana               |
| Bermuda            | Haiti                |
| Bolivia            | Honduras             |
| Brazil             | Jamaica              |
| Canada             | Leeward and          |
| Chile              | Windward Islands     |
| Colombia           | Mexico               |
| Costa Rica         | Miquelon and St.     |
| Dominican Republic | Pierre Islands       |
| Ecuador            | Netherlands Antilles |
| El Salvador        | Nicaragua            |
| French West Indies | Panama               |
| French Guiana      | Paraguay             |

**Bureau of Industry and Security, Commerce**

**§ 748.9**

Peru  
Surinam  
Trinidad and Tobago

Uruguay  
Venezuela

(2) The ultimate consignee or purchaser is a foreign government(s) or foreign government agency(ies). To determine whether the parties to your transaction meet the definition of "government agency" refer to the definition contained in part 772 of the EAR. Remember, if either the ultimate consignee or purchaser is not a foreign government or foreign government agency, a statement is required from the nongovernmental party. However, support documents are required from governments of the People's Republic of China, India, Bulgaria, Czech Republic, Hungary, Poland, Romania, and Slovakia.

(3) The license application is filed by, or on behalf of, a relief agency registered with the Advisory Committee on Voluntary Foreign Aid, U.S. Agency for International Development, for export to a member agency in the foreign country.

(4) The license application is submitted to export or reexport items for temporary exhibit, demonstration, or testing purposes.

(5) The license application is submitted for items controlled for short supply reasons (see part 754 of the EAR).

(6) The license application is submitted under the Special Comprehensive License procedure described in part 752 of the EAR.

(7) The license application is submitted to export or reexport software or technology.

(8) The license application is submitted to export or reexport encryption items controlled under ECCNs 5A002, 5B002, 5D002 and 5E002.

(b) *Support document requirements.* License applications not exempt under paragraph (a) of this section generally must be supported by documents designed to elicit information concerning the disposition of the items intended for export or reexport. These support documents must be either submitted at the time the license application is filed or retained in the applicant's files in accordance with the recordkeeping provisions of part 762 of the EAR. The type of support documentation required is

dependent on the item involved and the country of ultimate destination. To determine which type of support documentation is required, answer the following questions:

(1) Does your transaction involve items controlled for national security reasons?

(i) If yes, continue with question number 2 in paragraph (b)(2) of this section.

(ii) If no, your transaction may require a Statement by Ultimate Consignee and Purchaser. Read the remainder of this section beginning with paragraph (c) of this section, then proceed to § 748.11 of the EAR.

(2) Does your transaction involve items controlled for national security reasons destined for one of the following countries? (This applies only to those overseas destinations specifically listed.)

- |                      |                    |
|----------------------|--------------------|
| Argentina            | Korea, Republic of |
| Australia            | Liechtenstein      |
| Austria              | Luxembourg         |
| Belgium              | Netherlands        |
| Bulgaria             | New Zealand        |
| China (PRC)          | Norway             |
| Czech Republic       | Pakistan           |
| Denmark              | Poland             |
| Finland              | Portugal           |
| France               | Romania            |
| Germany              | Singapore          |
| Greece               | Slovakia           |
| Hong Kong            | Spain              |
| Hungary              | Sweden             |
| India                | Switzerland        |
| Ireland, Republic of | Taiwan             |
| Italy                | Turkey             |
| Japan                | United Kingdom     |

(i) If yes, your transaction may require an Import or End-User Certificate. Note that if the destination is the People's Republic of China, a Statement of Ultimate Consignee and Purchaser may be substituted for a PRC End-User Certificate under the following conditions:

(A) The item to be exported (i.e., replacement parts and sub-assemblies) is for servicing previously exported items and is valued at \$75,000 or less; or

(B) The End-User is not a Chinese entity.

(ii) If no, your transaction may require a Statement by Ultimate Consignee and Purchaser. Read the remainder of this section beginning with

paragraph (c) of this section, then proceed to § 748.11 of the EAR.

(c) *License applications requiring support documents.* License applications requiring support by either a Statement by the Ultimate Consignee and Purchaser or an Import or End-User Certificate must indicate the type of support document obtained in Block 6 or 7 on your application with an “X” in the appropriate box. If the support document is an Import or End User Certificate, you must also identify the originating country and number of the Certificate in Block 13 on your application. If a license application is submitted without either the correct Block or Box marked on the application or the required support document, the license application will be immediately returned without action unless the satisfactory reasons for failing to obtain the document are supplied in Block 24 or in an attachment to your license application.

(1) *License applications supported by an Import or End User Certificate.* If submission of the original certificate is not required by § 748.10(g) of this part, you may submit your license application upon receipt of a facsimile or other legible copy of the Import or End User Certificate provided that no shipment is made against any license issued based upon the Import or End User Certificate prior to receipt and retention of the original statement by the applicant. If § 748.10(g) of this part requires submission of the original certificate with your license application, you must submit the original. Copies will not be accepted.

(2) *License applications supported by Ultimate Consignee and Purchaser statements.* These types of license applications may be submitted upon receipt of a facsimile or other legible copy of the original statement provided that the applicant receives the manually-signed original within 60 days from the date the original is signed by the ultimate consignee.

(d) *Exceptions to obtaining the required support document.* BIS will consider the granting of an exception to the requirement for supporting document where the requirements cannot be met due to circumstances beyond your control. An exception will not be granted contrary

to the objectives of the U.S. export control laws and regulations. Refer to § 748.12(d) of this part for specific instructions on procedures for requesting an exception.

(e) *Validity period.* (1) When an Import or End-User Certificate or a Statement by Ultimate Consignee and Purchaser is required to support one or more license applications, you must submit the first license application within the validity period shown on the Certificate, or 6 months from the date the Certificate was issued or Statement signed, whichever is shorter.

(2) All subsequent license applications supported by the same Import or End-Use Certificate must be submitted to BIS within one year from the date that the first license application supported by the same Import or End-Use Certificate was submitted to BIS.

(3) All subsequent license applications supported by the same Statement by Ultimate Consignee and Purchaser must be submitted within two years of the first application if the statement was completed as a single transaction statement. If the statement was completed as a multiple transaction statement, all applications must be submitted within two years of signature by the consignee or purchaser, whichever was last.

(f) *English translation requirements.* All abbreviations, coded terms, or other expressions on support documents having special significance in the trade or to the parties to the transaction must be explained on an attachment to the document. Documents in a language other than English must be accompanied by an attachment giving an accurate English translation, either made by a translating service or certified by you to be correct. Explanations or translations should be provided on a separate piece of paper, and not entered on the support documents themselves.

(g) *Responsibility for full disclosure.* (1) Information contained in a support document cannot be construed as extending or expanding or otherwise modifying the specific information supplied in a license application or license issued by BIS. The license application covering the transaction discloses all facts pertaining to the transaction.

The authorizations contained in the resulting license are not extended by information contained in an Import Certificate, End-User Certificate or Statement by Ultimate Consignee and Purchaser regarding reexport from the country of destination or any other facts relative to the transaction that are not reported on the license application.

(2) Misrepresentations, either through failure to disclose facts, concealing a material fact, or furnishing false information, will subject responsible parties to administrative action by BIS. Administrative action may include suspension, revocation, or denial of licensing privileges and denial of other participation in exports from the United States.

(3) In obtaining the required support document, you as the applicant are not relieved of the responsibility for full disclosure of any other information concerning the ultimate destination and end-use, end-user of which you know, even if inconsistent with the representations made in the Import Certificate, End-User Certificate, or Statement by Ultimate Consignee and Purchaser. You are responsible for promptly notifying BIS of any change in the facts contained in the support document that comes to your attention.

(h) *Effect on license application review.* BIS reserves the right in all respects to determine to what extent any license will be issued covering items for which an Import or End-User Certificate has been issued by a foreign government. BIS will not seek or undertake to give consideration to recommendations from the foreign government as to the action to be taken on a license application. A supporting document issued by a foreign government will be only one of the factors upon which BIS will base its licensing action, since end-uses and other considerations are important factors in the decision making process.

(i) *Request for return of support documents submitted to BIS.* If an applicant is requested by a foreign importer to return an unused or partially used Import or End-User Certificate submitted to BIS in support of a license application, the procedure provided in this paragraph (i) should be followed:

(1) The applicant must send a letter request for return of an Import or End-User Certificate to the address stated in § 748.2(c) of this part, "Attn: Import/End-User Certificate Request".

(2) The letter request must include the name and address of the importer, the Application Control Number under which the original Import or End-User Certificate was submitted, the Application Control Numbers for any subsequent license applications supported by the same certificate, and one of the following statements, if applicable:

(i) If the certificate covers a quantity greater than the total quantity identified on the license application(s) submitted against it, a statement that the certificate will not be used in connection with another license application.

(ii) If you do not intend to make any additional shipments under a license covered by the certificate, or are in possession of an expired license covered by the certificate, a statement to this effect, indicating the unshipped items.

(j) *Recordkeeping requirements for returning certificates retained by the applicant.* (1) Though the recordkeeping provisions of the EAR require that all original support documents be retained for a period of five years, an unused or partially used certificate may be returned at the request of a foreign importer provided that you submit the original certificate, accompanied by a letter of explanation, a copy of each license covered by the certificate, and a list of all shipments made against each license to BIS at the address listed in § 748.2(c). BIS will notify you in writing whether your request has been granted. The following information must be contained in your letter of explanation:

(i) A statement citing the foreign importer's request for return of the certificate;

(ii) The license number(s) that have been issued against the certificate (including both outstanding and expired licenses); and

(iii) If the certificate covers a quantity greater than the total quantity stated on the license(s), you must include a statement that the certificate will not be used in connection with another license application.

(2) If your request is granted, BIS will return the certificate to you. You

## § 748.10

## 15 CFR Ch. VII (1-1-04 Edition)

must make a copy of the certificate before you return the original to the importer. This copy must show all the information contained on the original certificate including any notation made on the certificate by BIS. The copies must be retained on file along with your correspondence in accordance with the recordkeeping provisions in part 762 of the EAR.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997; 63 FR 50525, Sept. 22, 1998; 64 FR 2431, Jan. 14, 1999; 64 FR 17973, Apr. 13, 1999]

### § 748.10 Import and End-User Certificates.

(a) *Scope.* There are a variety of Import and End-User Certificates currently in use by various governments. The control exercised by the government issuing the Import or End-User Certificate is in addition to the conditions and restrictions placed on the transaction by BIS. The laws and regulations of the United States are in no way modified, changed, or superseded by the issuance of an Import or End-User Certificate. This section describes exceptions and relationships true for both Import and End-User Certificates, and applies only to transactions involving national security controlled items destined for one of the countries identified in § 748.9(b)(2) of this part.

(b) *Import or End-User Certificate.* An Import or End-User Certificate must be obtained, unless your transaction meets one of the exemptions stated in § 748.9(a) of this part, if:

(1) Any commodities on your license application are controlled for national security (NS) reasons, except for items controlled under ECCN 5A002 or 5B002;

(2) The ultimate destination is a country listed in § 748.9(b)(2) of this part.

(3) Your transaction involves an export to the People's Republic of China (PRC) of a computer, regardless of dollar value, that requires a license application.

(4) Your license application involves the export of commodities and software classified in a single entry on the CCL, the total value of which exceeds \$5,000. Note that this \$5,000 threshold does not apply to exports to the People's Repub-

lic of China of computers subject to the provisions of § 748.10(b)(3).

(i) Your license application may list several separate CCL entries. If any entry controlled for national security reasons exceeds \$5,000, then an Import or End-User Certificate must be obtained covering all items controlled for national security reasons on your license application;

(ii) If your license application involves a lesser transaction that is part of a larger order for items controlled for national security reasons in a single ECCN exceeding \$5,000, an Import or End-User Certificate must be obtained.

(iii) You may be specifically requested by BIS to obtain an Import Certificate for a transaction valued under \$5,000.

(c) *How to obtain an Import or End-User Certificate.* (1) Applicants must request that the importer (e.g., ultimate consignee or purchaser) obtain the Import or End-User Certificate, and that it be issued covering only those items that are controlled for national security reasons. Importers should not be requested to obtain an Import or End-User Certificate for items that are controlled for reasons other than national security. Upon receipt, the importer must transmit the original document to the applicant.

(2) The applicant's name must appear on the Import or End-User Certificate submitted to BIS as either the applicant, supplier, or order party. The Import Certificate may be made out to either the ultimate consignee or the purchaser, even though they are different parties, as long as both are located in the same country.

NOTE TO PARAGRAPH (C) OF THIS SECTION: You should furnish the consignee with the item description contained in the CCL to be used in applying for the Import or End-User Certificate. It is also advisable to furnish a manufacturer's catalog, brochure, or technical specifications if the item is new.

(3) If your transaction requires support of a PRC End-User Certificate, you must ensure the following information is included on the PRC End-User Certificate signed by an official of the Department of Science and Technology of the Ministry of Foreign Trade and