

## **§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	Guyana
Barbados	Haiti
Belize	Honduras
Bermuda	Jamaica
Bolivia	Leeward and Windward Islands
Brazil	Leeward Antilles
Canada	Mexico
Chile	Miquelon and St. Pierre Islands
Colombia	Nicaragua
Costa Rica	Panama
Dominican Republic	Paraguay
Ecuador	Peru
El Salvador	Surinam
French West Indies	Trinidad and Tobago
French Guiana	Uruguay
Greenland	Venezuela
Guatemala	

(2) The ultimate consignee or purchaser is a foreign government(s) or foreign government agency(ies), other than the government of the People's Republic of China. 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.

(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? Does your transaction involve items destined for the People's Republic of China (PRC)?

(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.) If your item is destined for the PRC, does your transaction involve items that require a license to the PRC for any reason?

Argentina	Korea, Republic of
Australia	Luxembourg
Austria	Netherlands
Belgium	New Zealand
Bulgaria	Norway

China (PRC)	Pakistan
Czech Republic	Poland
Denmark	Portugal
Finland	Romania
France	Singapore
Germany	Slovakia
Greece	Spain
Hong Kong	Sweden
Hungary	Switzerland
India	Taiwan
Ireland, Republic of	Turkey
Italy	United Kingdom
Japan	

(i) If yes, your transaction may require an Import Certificate or End-User Statement. If your transaction involves items destined for the PRC that are controlled to the PRC for any reason, your transaction may require a PRC End-User Statement. Note that if the destination is the PRC, a Statement of Ultimate Consignee and Purchaser may be substituted for a PRC End-User Statement when 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.

(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 Certificate or End-User Statement 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 Certificate or End User Statement, you must also identify the originating country and number of the Certificate or Statement 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 Certificate or End-User Statement. You may submit your license application upon receipt of a facsimile or other legible copy of the Import Certificate or End-User Statement, provided that no shipment is made against any license issued

based upon the Import Certificate or End-User Statement prior to receipt and retention of the original statement by the applicant.

(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 §748.1(d)(2) 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 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; 70 FR 72074, Dec. 1, 2005; 72 FR 33659, June 19, 2007; 75 FR 31681, June 4, 2010; 76 FR 54931, Sept. 6, 2011; 76 FR 70339, Nov. 14, 2011]

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

(a) Scope. There are a variety of Import Certificates and End-User Statements currently in use by various governments. The control exercised by the government issuing the Import Certificate or End-User Statement 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 Certificate or End-User Statement. This section describes exceptions and relationships for both Import Certificates and End-User Statements, and generally applies only to transactions exceeding \$50,000. In the case of countries identified in §748.9(b)(2) of this part (excluding the People's Republic of China (PRC)), Import Certificates are required for national security controlled items in transactions exceeding \$50,000. In the case of the PRC, End-User Statements are required for transactions exceeding \$50,000 involving all items that require a license to the PRC for any reason. However, this \$50,000 threshold is lower for certain exports to the PRC (see paragraph (b)(3) of this section).

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

(1) Any commodities on your license application are controlled for national security (NS) reasons (except for items controlled under ECCNs 5A002 or 5B002), or any commodities to the PRC on your license application are controlled for any reason;

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

(3) Your license application involves the export of commodities classified in a single entry on the CCL, and your ultimate consignee is in any destination listed in §748.9(b)(2), and the total value of your transaction exceeds \$50,000. Note that the \$50,000 transaction threshold does not apply to certain exports to the PRC. If your transaction involves an export to the PRC of a computer that requires a license for any reason, an End-User Statement is required regardless of dollar value. Also, if your transaction involves an export to the PRC of an item classified under ECCN 6A003 that requires a license for any reason, an End-User Statement is required for transactions exceeding \$5000.

(i) Your license application may list several separate CCL entries. If any individual entry including an item that is controlled for national security reasons exceeds \$50,000, then an Import Certificate must be obtained covering all items controlled for national security reasons on your license application. If the total value of entries on a license application that require a license to the PRC for any reason listed on the CCL exceeds \$50,000, then a PRC End-User Statement covering all such controlled items that require a license to the PRC on your license application must be obtained;

(ii) If your license application involves a lesser transaction that is part of a larger order for items controlled for national security reasons (or, for the PRC, for any reason) in a single ECCN exceeding \$50,000, an Import Certificate, or a PRC End-User Statement, as appropriate, must be obtained.

(iii) You may be specifically requested by BIS to obtain an Import Certificate for a transaction valued under \$50,000. You also may be specifically requested by BIS to obtain an End-User Statement for a transaction valued under \$50,000 or for a transaction that requires a license to the PRC for reasons in the EAR other than those listed in the CCL.

(c) How to obtain an Import Certificate or End-User Statement. (1) Applicants must request that the importer (e.g., ultimate consignee or purchaser) obtain the Import Certificate and that it be issued covering only those items that are controlled for national security reasons. Exporters should not request that importers obtain Import Certificates for items that are controlled for reasons other than national security. Note that in the case of the PRC, applicants must request that the importer obtain an End-User Statement for all items on a license application that require a license to the PRC for any reason listed on the CCL. Applicants must obtain original Import Certificate or End-User Statements from importers.

(2) The applicant's name must appear on the Import Certificate or End-User Statement 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.

(3) If your transaction requires the support of a PRC End-User Statement, you must ensure that the following information is included on the PRC End-User Statement signed by an official of the Department of Mechanic, Electronic and High Technology Industries, Export Control Division I, of the PRC Ministry of Commerce (MOFCOM), with MOFCOM's seal affixed to it:

(i) Title of contract and contract number (optional);

- (ii) Names of importer and exporter;
- (iii) End-User and end-use;
- (iv) Description of the item, quantity and dollar value; and
- (v) Signature of the importer and date.

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 Statement. It is also advisable to furnish a manufacturer's catalog, brochure, or technical specifications if the item is new.

(d) Where to obtain Import and End-User Certificates. See Supplement No. 4 to this part for a list of the authorities administering the Import Certificate/Delivery Verification and End-User Certificate Systems in other countries.

(e) Triangular symbol on International Import Certificates. (1) In accordance with international practice, the issuing government may stamp a triangular symbol on the International Import Certificate (IIC). This symbol is notification that the importer does not intend to import or retain the items in the country issuing the certificate, but that, in any case, the items will not be delivered to any destination except in accordance with the export regulations of the issuing country.

(2) If you receive an IIC bearing a triangular symbol, you must identify all parties to the transaction on the license application, including those located outside the country issuing the IIC. If the importer declines to provide you with this information, you may advise the importer to provide the information directly to BIS, through a U.S. Foreign Commercial Service office, or in a sealed envelope to you marked "To be opened by BIS only".

(f) Multiple license applications supported by one certificate. An Import or End-User Certificate may cover more than one purchase order and more than one item. Where the certificate includes items for which more than one license application will be submitted, you must include in Block 24 on your application, or in an attachment to each license application submitted against the certificate, the following certification:

I (We) certify that the quantities of items shown on this license application, based on the Certificate identified in Block 13 of this license application, when added to the quantities shown on all other license applications submitted to BIS based on the same Certificate, do not total more than the total quantities shown on the above cited Certificate.

(g) Submission of Import Certificates and End-User Statements. Certificates and Statements must be retained on file by the applicant in accordance with the recordkeeping provisions of part 762 of the EAR, and should not be submitted with the license application. For more information on what Import Certificate and End-User Statement information must be included in license applications, refer to §748.9(c) of the EAR. In addition, as set forth in §748.12(e), to assist in license reviews, BIS will require applicants, on a random basis, to submit specific original Import Certificate and End-User Statements.



(h) Alterations. After an Import or End-User Certificate is issued by a foreign government, no corrections, additions, or alterations may be made on the Certificate by any person. If you desire to explain any information contained on the Certificate, you may attach a signed statement to the Certificate.

(i) Request for Delivery Verification. BIS will, on a selective basis, require Delivery Verification documents for shipments supported by Import Certificates. You will be notified if Delivery Verification is required at the time of issuance of the license. Please refer to §748.13 of this part for detailed information on these procedures.

(j) Retention procedures. You must retain on file the original copy of any certificate issued in support of a license application submitted to BIS, unless the original is submitted with the license application. All recordkeeping provisions contained in part 762 of the EAR apply to this requirement, except that reproductions may not be substituted for the officially authenticated original in this instance.

[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; 65 FR 12923, Mar. 10, 2000; 65 FR 60856, Oct. 13, 2000; 66 FR 5447, Jan. 19, 2001; 66 FR 6465, Jan. 22, 2001; 67 FR 10615, Mar. 8, 2002; 72 FR 33659, June 19, 2007; 73 FR 36, Jan. 2, 2008]

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## **§748.11 Statement by Ultimate Consignee and Purchaser.**

(a) Exceptions to completing a Statement by Ultimate Consignee and Purchaser. A Statement by the Ultimate Consignee and/or Purchaser involved in a transaction must be completed unless:

(1) An International Import Certificate, a People's Republic of China End-User Certificate, an Indian Import Certificate, or a Bulgarian, Czech, Hungarian, Polish, Romanian or Slovak Import Certificate is required in support of the license application;

(2) The applicant is the same person as the ultimate consignee, provided the required statements are contained in Block 24 on the license application. This exemption does not apply where the applicant and consignee are separate entities, such as parent and subsidiary, or affiliated or associated firms;

(3) The application is valued at \$5000 or less, and is not part of a larger transaction; or

(4) The transaction meets one of the exemptions stated in §748.9(a) of this part.

(b) Submission of the Statement by Ultimate Consignee and Purchaser. A copy of the statement must be submitted with your license application if the country of ultimate destination is listed in

either Country Group D:2, D:3, or D:4 (See Supplement No. 1 to part 740 of the EAR). The copy submitted by the applicant must be of sufficient quality to ensure all assertions made on the statement are legible and that the signatures are sufficiently legible to permit identification of the signature as that of the signer. The applicant must receive the manually-signed original within 60 days from the date the original is signed by the ultimate consignee. The applicant must, upon receipt, retain the manually-signed original, and both the ultimate consignee and purchaser should retain a copy of the statement in accordance with the recordkeeping provisions contained in part 762 of the EAR.

(c) Form or letter. The ultimate consignee and purchaser must complete either a statement on company letterhead in accordance with paragraph (e) of this section or Form BIS-711, Statement by Ultimate Consignee and Purchaser. If the consignee and purchaser elect to complete the statement on letterhead and both the ultimate consignee and purchaser are the same entity, only one statement is necessary. If the ultimate consignee and purchaser are separate entities, separate statements must be prepared and signed. If the ultimate consignee and purchaser elects to complete Form BIS-711, only one Form BIS-711 (containing the signatures of the ultimate consignee and purchaser) need be completed. Whether your ultimate consignee and purchaser sign a written statement or complete Form BIS-711, the following constraints apply:

(1) Responsible officials representing the ultimate consignee and purchaser must sign the statement. "Responsible official" is defined as someone with personal knowledge of the information included in the statement, and authority to bind the ultimate consignee or purchaser for whom they sign, and who has the power and authority to control the use and disposition of the licensed items.

(2) The authority to sign the statement may not be delegated to any person (agent, employee, or other) whose authority to sign is not inherent in his or her official position with the ultimate consignee or purchaser for whom he or she signs. The signing official may be located in the U.S. or in a foreign country. The official title of the person signing the statement must also be included.

(3) The consignee and/or purchaser must submit information that is true and correct to the best of their knowledge and must promptly send a new statement to the applicant if changes in the facts or intentions contained in their statement(s) occur after the statement(s) have been forwarded to the applicant. Once a statement has been signed, no corrections, additions, or alterations may be made. If a signed statement is incomplete or incorrect in any respect, a new statement must be prepared, signed and forwarded to the applicant.

(d) Instructions for completing Form BIS-711. Instructions on completing Form BIS-711 are contained in Supplement No. 3 to this part. The ultimate consignee and purchaser may sign a legible copy of Form BIS-711. It is not necessary to require your ultimate consignee and purchaser sign an original Form BIS-711, provided all information contained on the copy is legible.

(e) Instructions for completing the statement on letterhead. Information in response to each of the following criteria must be included in the statement. If any information is unknown, that fact should be disclosed in the statement. Preprinted information supplied on the statement, including the name, address, or nature of business of the ultimate consignee or purchaser appearing on the

letterhead or order form is acceptable but will not constitute evidence of either the signer's identity, the country of ultimate destination, or end-use of the items described in the license application.

(1) Paragraph 1. One of the following certifications must be included depending on whether the statement is proffered in support of a single license application or multiple license applications:

(i) Single. This statement is to be considered part of a license application submitted by [name and address of applicant].

(ii) Multiple. This statement is to be considered a part of every license application submitted by [name and address of applicant] until two years from the date this statement is signed.

(2) Paragraph 2. One or more of the following certifications must be included. Note that if any of the facts related to the following statements are unknown, this must be clearly stated.

(i) The items for which a license application will be filed by [name of applicant] will be used by us as capital equipment in the form in which received in a manufacturing process in [name of country] and will not be reexported or incorporated into an end product.

(ii) The items for which a license application will be filed by [name of applicant] will be processed or incorporated by us into the following product(s) [list products] to be manufactured in [name of country] for distribution in [list name of country or countries].

(iii) The items for which a license application will be filed by [name of applicant] will be resold by us in the form in which received for use or consumption in [name of country].

(iv) The items for which a license application will be filed by [name of applicant] will be reexported by us in the form in which received to [name of country or countries].

(v) The items received from [name of applicant] will be [describe use of the items fully].

(3) Paragraph 3. The following two certifications must be included:

(i) The nature of our business is [possible choices include; broker, distributor, fabricator, manufacturer, wholesaler, retailer, value added reseller, original equipment manufacturer, etc.].

(ii) Our business relationship with [name of applicant] is [possible choices include; contractual, franchise, distributor, wholesaler, continuing and regular individual business, etc.] and we have had this business relationship for [number of years].

(4) Paragraph 4. The final paragraph must include all of the following certifications:

(i) We certify that all of the facts contained in this statement are true and correct to the best of our knowledge and we do not know of any additional facts that are inconsistent with the above statements. We shall promptly send a replacement statement to [name of the applicant] disclosing any material change of facts or intentions described in this statement that occur after this statement has been prepared and forwarded to [name of applicant]. We acknowledge that the making of any false statement or concealment of any material fact in connection with this statement may result in imprisonment or fine, or both, and denial, in whole or in part, of

participation in U.S. exports or reexports.

(ii) Except as specifically authorized by the U.S. Export Administration Regulations, or by written approval from the Bureau of Industry and Security, we will not reexport, resell, or otherwise dispose of any items approved on a license supported by this statement:

(A) To any country not approved for export as brought to our attention by the exporter; or

(B) To any person if there is reason to believe that it will result directly or indirectly in disposition of the items contrary to the representations made in this statement or contrary to the U.S. Export Administration Regulations.

(iii) We understand that acceptance of this statement as a support document cannot be construed as an authorization by BIS to reexport the items in the form in which received even though we may have indicated the intention to reexport, and that authorization to reexport is not granted in an export license on the basis of information provided in the statement, but as a result of a specific request in a license application.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997; 65 FR 42568, July 10, 2000; 70 FR 8249, Feb. 18, 2005]

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## **§748.12 Special provisions for support documents.**

(a) Grace periods. Whenever the requirement for an Import Certificate or End-User Statement or Statement by Ultimate Consignee or Purchaser is imposed or extended by a change in the regulations, the license application need not conform to the new support documentation requirements for a period of 45 days after the effective date of the regulatory change published in the Federal Register.

(1) Requirements are usually imposed or extended by virtue of one of the following:

(i) Addition or removal of national security controls over a particular item; or

(ii) Development of an Import Certificate/Delivery Verification or End-User Certificate program by a foreign country; or

(iii) Removal of an item from eligibility under the Special Comprehensive License described in part 752 of the EAR, when you hold such a special license and have been exporting the item under that license.

(2) License applications filed during the 45 day grace period must be accompanied by any

evidence available to you that will support representations concerning the ultimate consignee, ultimate destination, and end use, such as copies of the order, letters of credit, correspondence between you and ultimate consignee, or other documents received from the ultimate consignee. You must also identify the regulatory change (including its effective date) that justifies exercise of the 45 day grace period. Note that an Import Certificate or End-User Statement will not be accepted, after the stated grace period, for license applications involving items that are no longer controlled for national security reasons. If an item is removed from national security controls, you must obtain a Statement by Ultimate Consignee and Purchaser as described in §748.11 of this part. Likewise, any item newly controlled for national security purposes requires support of an Import Certificate or End-User Statement as described in §748.10 of this part after expiration of the stated grace period.

(b) Reexports. If a support document would be required for an export from the United States, the same document would be required for reexport to Country Group D:1 and E:2 (see Supplement No. 1 to part 740 of the EAR).

(c) Granting of exceptions to the support documentation requirement. An exception to obtaining the required support documentation will be considered by BIS, however, an exception will not be granted contrary to the objectives of the U.S. export control program. A request for exception may involve either a single transaction, or where the reason necessitating the request is continuing in nature, multiple transactions. If satisfied by the evidence presented, BIS may waive the support document requirement and accept the license application for processing. Favorable consideration of a request for exception generally will be given in instances where the support document requirement:

(1) Imposes an undue hardship on you and/or ultimate consignee (e.g., refusal by the foreign government to issue an Import or End-User Certificate and such refusal constitutes discrimination against you); or

(2) Cannot be complied with (e.g., the items will be held in a foreign trade zone or bonded warehouse for subsequent distribution in one or more countries); or

(3) Is not applicable to the transaction (e.g., the items will not be imported for consumption into the named country of destination).

(d) Procedures for requesting an exception. (1) Requests for exception must be submitted with the license application to which the request relates. Where the request relates to more than one license application it should be submitted with the first license application and referred to in Block 24 on any subsequent license application. The request for exception must be submitted in writing on the applicant's letterhead.

(2) In instances where you are requesting exception from obtaining an Import or End-User Certificate, the request must be accompanied by a manually-signed original Statement by Ultimate Consignee and Purchaser as described in §748.11 of this part.

(3) At a minimum, the letter request must include:

(i) Name and address of ultimate consignee;

- (ii) Name and address of purchaser, if different from ultimate consignee;
- (iii) Location of foreign trade zone or bonded warehouse if the items will be exported to a foreign trade zone or bonded warehouse;
- (iv) Type of request, i.e., whether for a single transaction or multiple transactions;
- (v) Full explanation of the reason(s) for requesting the exception;
- (vi) Nature and duration of the business relationship between you and ultimate consignee and purchaser shown on the license application;
- (vii) Whether you have previously obtained and/or submitted to BIS an Import or End-User Certificate issued in the name of the ultimate consignee and/or purchaser, and a list of the Application Control Number(s) to which the certificate(s) applied; and
- (viii) Any other facts to justify granting an exception.

(4) Action by BIS. (i) Single transaction request. Where a single transaction is involved, BIS will act on the request for exception at the same time as the license application with which the request is submitted. In those instances where the related license application is approved, the issuance of the license will serve as an automatic notice to the applicant that the exception was approved. If any restrictions are placed on granting of the exception, these will appear on the approval. If the request for exception is not approved, BIS will advise you by letter.

(ii) Multiple transactions request. Where multiple transactions are involved, BIS will advise you by letter of the action taken on the exception request. The letter will contain any conditions or restrictions that BIS finds necessary to impose (including an exception termination date if appropriate). In addition, a written acceptance of these conditions or restrictions may be required from the parties to the transaction.

(e) Availability of original. The original certificate or statement must be kept on file, and made available for inspection in accordance with the provisions of part 762 of the EAR. To ensure compliance with this recordkeeping requirement, BIS will require applicants, on a random basis, to submit specific original certificates and statements that have been retained on file. Applicants will be notified in writing of any such request.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997; 72 FR 33660, June 19, 2007; 72 FR 43531, Aug. 6, 2007]

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## **§748.13 Delivery Verification (DV).**

(a) Scope. (1) BIS may request the licensee to obtain verifications of delivery on a selective basis. A Delivery Verification Certificate (DV) is a document issued by the government of the country of ultimate destination after the export has taken place and the items have either entered the export jurisdiction of the recipient country or are otherwise accounted for by the importer to the issuing government. Governments that issue DVs are listed in Supplement No. 4 to this part.

(2) If BIS decides to request verification of delivery, the request will appear as a condition on the face of the license. If the license is sent directly to a party other than the applicant authorized to receive the license (e.g., agent, forwarder, broker, etc.), such party is responsible for notifying the licensee immediately in writing that a DV is required.

(b) Exception to obtaining Delivery Verification. The DV requirement for a particular transaction does not apply if the item is no longer controlled for national security reasons following the issuance of a license.

(c) Procedure for obtaining Delivery Verification. When notified that a DV is required by BIS, the licensee must transmit to the importer a written request for a DV at the time of making each shipment under the license (whenever possible, this request should be submitted together with the related bill of lading or air waybill). The request must include the number of the Import or End-User Certificate for the transaction referred to on the license, and notify the importer that this same Import or End-User Certificate number should be shown on the DV.

(1) The importer must obtain the DV from the appropriate government ministry identified in Supplement No. 4 to this part, and forward the completed DV to the licensee. The DV must cover the items described on the license that have been shipped. Note that BIS must be able to relate the description provided in the DV to the approved license. In order to ensure the same terminology is used, the licensee should provide the importer with the description as it appears on the license.

(2) The original copy of the DV must be sent to BIS within 90 days after the last shipment has been made against the license. If verification of delivery is required for items covered by a license against which partial shipments have been made, the licensee shall obtain the required DV for each partial shipment, and retain these on file until all shipments have been made against the license. Once all shipments against the license have been made (or the licensee has determined that none will be), the licensee must forward, in one package, all applicable DVs to Office of Exporter Services, Export Management and Compliance Division, Room 2099B, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

(3) The documents must be forwarded with a dated letter giving the license number, the name, title and signature of the authorized representative, and one of the following statements:

(i) The total quantity authorized by license number \_\_\_ has been exported, and all delivery verification documents are attached.

(ii) A part of the quantity authorized by license number \_\_\_ will not be exported. Delivery verification documents covering all items exported are attached.

(iii) No shipment has been made against this license, and none is contemplated.

(d) Inability to obtain Delivery Verification Certificates. If a licensee is unable to obtain the required DV (within the time frame stated above, or at all) from the importer, the licensee must promptly notify BIS and, upon request, make available all information and records, including correspondence, regarding the attempt to obtain the DV.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997; 75 FR 31681, June 4, 2010; 78 FR 13469, Feb. 28, 2013]

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## **Supplement No. 5 to Part 748—U.S. Import Certificate and Delivery Verification Procedure**

The United States participates in an Import Certificate/Delivery Verification procedure. Under this procedure, U.S. importers are sometimes required to provide their foreign suppliers with an U.S. International Import Certificate that is validated by the U.S. Government. This certificate tells the government of the exporter's country that the items covered by the certificate will be imported into the U.S. Economy and will not be reexported except as authorized by U.S. export control regulations. In addition, in some cases, the exporter's government may require a delivery verification. Under this procedure, the U.S. Customs Service validates a certificate confirming that the items have entered the U.S. economy. The U.S. importer must return this certificate to the foreign exporter.

This supplement establishes the procedures and requirements of BIS with respect to both of these programs. Paragraph (a) of this supplement contains the requirements and procedures of the U.S. International Import Certificate procedure. Paragraph (b) of this supplement contains the requirements and procedures of the Delivery Verification procedure.

(a) U.S. International Import Certificates. If you are a U.S. importer, a foreign supplier may request you to obtain a U.S. import certificate. The reason for this request is that the exporter's government requires a U.S. import certificate as a condition to issuing an export license. To obtain such a certificate you will have to fill in and execute the U.S. International Import Certificate form (Form BIS-645P/ATF-4522/DSP-53) and submit it to the U.S. government agency that has jurisdiction over the items you are importing. In doing so, you will be making a representation to the United States Government that you will import the items described in the certificate into the United States or if not so imported, you will not divert, transship or reexport them to another destination with the explicit approval of the U.S. government agency that has jurisdiction over those items. (Representations that items will be entered into the U.S. do not preclude the temporary unloading of items in a foreign trade zone for subsequent entry into the economy of the U.S.) If the items described in the certificate are subject to U.S. Department of Commerce jurisdiction, the Department will validate the certificate and return it to you. You may then send the certificate to your foreign supplier. In this way the government of the exporting country is assured that the items will become subject to the export control laws of the United States.

(1) Items for which the U.S. Department of Commerce issues U.S. International Import



Certificates and forms to use. The Department of Commerce issues U.S. International Import Certificates for the following types of items.

(i) Items controlled for National Security reasons. Items under the export licensing jurisdiction of BIS that are identified as controlled for national security reasons on the Commerce Control List (Supplement No. 1 to part 774 of the EAR). You will need to submit in triplicate a completed Form BIS-645P/ATF-4522/DSP-53;

(ii) Nuclear equipment and materials. Items subject to the export licensing jurisdiction of the Nuclear Regulatory Commission for nuclear equipment and materials. (see 10 CFR part 110). You will need to submit in quadruplicate a completed Form BIS-645P/ATF-4522/DSP-53; and

(iii) Munitions Items. Items listed on the U.S. Munitions List (see 22 CFR part 121) that do not appear on the more limited U.S. Munitions Import List (27 CFR 47.21). You will need to submit in triplicate a completed Form BIS-645P. For triangular transactions (See paragraph (a)(5) of this supplement) involving items on the U.S. Munitions List, you must contact the Department of State, Directorate of Defense Trade Controls and use Form BIS-645P/ATF-4522/DSP-53. You should contact the Treasury Department, Bureau of Alcohol, Tobacco and Firearms for items appearing on the U.S. Munitions Import List. You will need to use Form ATF-4522.

(2) Where to submit forms. U.S. International Import Certificates and requests to amend certificates may be presented for validation either in person or by mail at the following locations.

(i) By courier to the Bureau of Industry and Security, Room 2099B, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230, Attn: Import Certificate Request; or

(ii) In person or by mail at one of the following Department of Commerce U.S. and Foreign Commercial Service District Offices:

Boston, MA	New Orleans, LO
Buffalo, NY	New York, NY
Chicago, IL	Philadelphia, PA
Cincinnati, OH	Phoenix, AZ
Cleveland, OH	Pittsburgh, PA
Dallas, TX	Portland, OR
Detroit, MI	St. Louis, MO
Houston, TX	San Francisco, CA
Kansas City, MO	Savannah, GA
Los Angeles, CA	Seattle, WA
Miami, FL	Trenton, NJ

(3) U.S. International Import Certificate validity periods. The U.S. International Import Certificate must be submitted to the foreign government within six months from the date of certification by the U.S. Department of Commerce. The expiration of this six-month period in no way affects the responsibility of the importer to fulfill the commitments made in obtaining the certificate. If the certificate is not presented to the government of the exporting country before the expiration of its validity period, the exporter must apply for a new certificate. The original unused U.S. International Import Certificate must be returned to BIS at the address specified in paragraph (a)(2)(i) of this supplement.

(4) Statements on the certificate or amendments are representations to the U.S. Government which continue in effect.

(i) All statements and representations made in a U.S. International Import Certificate or an amendment thereto, will be deemed to be continuing in nature until the transaction described in the certificate is completed and the items are delivered into the economy of the importing country.

(ii) Any change of fact or intention in regard to the transaction described in the certificate shall be promptly disclosed to BIS by the U.S. importer by presentation of an amended certificate. The amended certificate must describe all of the changes and be accompanied by the original certificate bearing the certification of BIS. If the original certificate has been transferred to the foreign exporter, you must, where possible, attempt to obtain the original certificate prior to applying for an amendment. If the original certificate is unobtainable because the foreign exporter has submitted it to the appropriate foreign government, or for any other reason, then you must submit a written statement with your amendment giving the reasons for your failure to submit the original certificate.

(5) Certificates for Triangular transaction (items will not enter the U.S. or applicant is not sure that they will enter the United States).

(i) In accordance with international practice, BIS will, upon request, stamp the certificate with a triangular symbol as notification to the government of the exporting country that the U.S. importer is uncertain whether the items will be imported into the U. S. or knows that the items will not be imported into the U.S., but that, in any case, the items will not be delivered to any other destination except in accordance with the EAR.

(ii) The triangular symbol on a certificate U.S. International Import Certificate is not, in and of itself, an approval by BIS to transfer or sell items to a foreign consignee. Note that a triangular Certificate will not be issued covering foreign excess property sold abroad by the U.S. Department of Defense.

(6) Approval to export items to a foreign consignee prior to delivery under a U.S. International Import Certificate. The written approval of BIS is required before items covered by a U.S. International Import Certificate (whether or not bearing a triangular symbol) may be shipped to a destination other than the U.S. or Canada or sold to a foreign purchaser, and before title to or possession of such items may be transferred to a foreign transferee. This requirement does not apply after the items have been delivered in accordance with the undertaking set forth in the Certificate or if at the time of such shipment, sale, passage of possession or passage of title, a

License Exception or a NLR provision of the EAR would authorize the transaction.

(i) If prior approval is required, a letter requesting authorization to release the shipment shall be submitted to BIS at the address listed in paragraph (a)(2)(i) of this supplement.

(ii) The letter must contain the certificate number; date issued; location of the issuing office; names, addresses, and identities of all parties to the complete transaction; and the quantity, dollar value, and description of the items. The letter must be accompanied by the U.S. International Import Certificate, and all other documentation required by the EAR for the item and country of ultimate destination, as identified in part 748 of the EAR. If requirements stated in part 748 of the EAR do not apply to your transaction, you must identify the intended end-use of the items in your letter.

(iii) Where the letter request is approved and is supported by a foreign import certificate, no further approval from BIS is required for the purchaser or transferee to resell or again transfer the items. However, where BIS approves a request that was not supported by a foreign import certificate, the person to whom approval is granted is required to inform the purchaser or transferee, in writing, that the items are to be shipped to the approved destination only and that no other disposition of the items is permitted without the approval of BIS.

(iv) If the transaction is approved, a validated letter of approval will be sent to the U.S. purchaser for retention in his records. Where a DV or other official government confirmation of delivery is required, the letter will so indicate.

(v) If the items covered by a certificate have been imported into a destination other than the U.S. and the foreign exporter of the items requests a Delivery Verification, the person who obtained the certificate must obtain a DV from the person to whom the items were delivered in the actual importing country. (If a DV is unobtainable, other official government confirmation of delivery must be obtained.) The DV or other official government confirmation of delivery must be submitted to BIS together with an explanatory letter giving the U.S. International Import Certificate number, date issued, and location of issuing office. BIS will then issue Form ITA-6008, Delivery Compliance Notice, in two copies, the original of which must be forwarded to the country of origin in order to serve as evidence to the exporting country that the requirements of the U.S. Government have been satisfied with respect to delivery of the items.

(vi) Delivery, sale, or transfer of items to another U.S. purchaser.

(A) Items covered by a U.S. International Import Certificate may not be sold, and title to or possession of such items may not be transferred, to another U.S. purchaser or transferee before the items are delivered to the U.S. (or to an approved foreign destination, as provided by paragraph (a)(5) of this supplement), except in accordance with the provisions described in paragraph (a)(6) of this supplement. The provisions of this paragraph do not apply after the items have been delivered in accordance with the undertaking set forth in the certificate.

(B) Resale or transfer to another U.S. purchaser or transferee requires the prior approval of BIS only in cases where the buyer or transferee is listed in Supplement No. 1 to part 766 of the EAR. However, you, as the person who obtained the certificate are required to notify BIS of any change in facts or intentions relating to the transaction, and in all cases you will be held responsible for the delivery of the items in accordance with the EAR. You are required in all

cases to secure, prior to sale or transfer, and to retain in your files in accordance with the recordkeeping provisions contained in part 762 of the EAR, written acceptance by the purchaser or transferee of:

(1) All obligations undertaken by, and imposed under the EAR, upon the holder of the certificate; and

(2) An undertaking that all subsequent sales or transfers will be made subject to the same conditions.

(C) The responsibility of the certificate holder for obtaining a DV also applies to those cases where the items are resold to a U.S. purchaser (See paragraph (b)(1) of this supplement.

(vii) Reexport or transshipment of items after delivery to U.S. Items imported into the U.S. under the provisions of a U.S. International Import Certificate may not be reexported to any destination under the intransit provisions of License Exception TMP (see §740.9(b)(1) of the EAR). However, all other provisions of the EAR applicable to items of domestic origin shall apply to the reexport of items of foreign origin shipped to the U.S. under a U.S. International Import Certificate.

(viii) Lost or destroyed U.S. International Import Certificates. If a U.S. International Import Certificate is lost or destroyed, a duplicate copy may be obtained by the person in the U.S. who executed the original U.S. International Import Certificate by submitting to any of the offices listed in paragraph (a)(2)(i) of this supplement new Form BIS-645P/ATF-4522/DSP-53 in the same way as an original request, except that the forms shall be accompanied by a letter detailing the circumstances under which the original certificate was lost or destroyed and certifying:

(A) That the original U.S. International Import Certificate No. \_\_\_\_, dated \_\_\_\_, issued to (name and address of U.S. importer) for import from (foreign exporter's name and address) has been lost or destroyed; and

(B) That if the original U.S. International Import Certificate is found, the applicant agrees to return the original or duplicate of the certificate to the Bureau of Industry and Security.

(ix) Unused U.S. International Import Certificates. If the transaction will not be completed and the U.S. International Import Certificate will not be used, return the certificate for cancellation to BIS at the address listed in paragraph (a)(2)(i) of this supplement.

(b) Delivery Verification Certificate. U.S. importers may be requested by their foreign suppliers to furnish them with a certified Form BIS-647P, Delivery Verification Certificate, covering items imported into the U.S. These requests are made by foreign governments to assure that strategic items shipped to the U.S. are not diverted from their intended destination. In these instances, the issuance of an export license by the foreign country is conditioned upon the subsequent receipt of a Delivery Verification Certificate from the U.S. importer. Accordingly, your compliance with your foreign exporter's request for a Delivery Verification is necessary to ensure your foreign exporter fulfills its government obligations and is able to participate in future transactions with you. Failure to comply may subject your exporter to penalties that may prevent future trade.

(1) The responsibility of a person or firm executing a U.S. International Import Certificate for

providing the foreign exporter with confirmation of delivery of the items includes instances where the items are resold or transferred to another U.S. person or firm prior to actual delivery to the U.S. or to an approved foreign destination. The person who executed the U.S. International Import Certificate shall secure in writing from the U.S. purchaser or transferee, and retain in your files in accordance with the recordkeeping provisions stated in part 762 of the EAR:

(i) Acceptance of the obligation to provide the purchaser or transferee with either the Delivery Verification (or other official government confirmation of delivery if a Delivery Verification is unobtainable) or assurance that this document was submitted to BIS; and

(ii) An undertaking that each succeeding U.S. transferee or purchaser will assume the same obligation or assurance. In each case the seller or transferor must transmit to the U.S. purchaser or transferee the U.S. International Import Certificate number covering the export from the foreign country and request that they pass it on to any other U.S. purchasers or transferees.

(2) Completion and certification of Delivery Verification Certificates. If you are requested by your foreign exporter to provide a Delivery Verification, you must obtain Form BIS-647P from a U.S. customs office or one of the offices listed in paragraph (a)(2) of this supplement and complete all blocks (except those below the line titled "To be completed by U.S. Customs Service") on the form. The language used in the block titled "Description of Goods" must describe the items in the same terms as those shown on the applicable U.S. International Import Certificate. Upon completion Form BIS-647P must be presented, in duplicate, to a U.S. customs office. The U.S. customs office will certify Form BIS-647P only where the import is made under a warehouse or consumption entry.

(3) Disposition of certified Delivery Verification Certificates. The importer must send the original certified Delivery Verification Certificate to the foreign exporter or otherwise dispose of it in accordance with the instructions of the exporting country. The duplicate copy will be retained by the U.S. customs office.

(4)(i) Issuance of a U.S. Delivery Compliance Notice in lieu of a Delivery Verification Certificate. If you are requested to provide a Delivery Verification Certificate but do not wish to disclose the name of your customer to the foreign exporter (e.g., in the event that the items are resold or transferred to another person or firm before the items enter the U.S.), you may submit an originally completed Form BIS-647P together with an explanatory letter requesting a Delivery Compliance Notice, to BIS at the address listed in (a)(2)(i) of this supplement.

(ii) BIS will provide you with a notice signifying that the items were imported into the U.S. and that a satisfactory DV has been submitted to BIS. You must then forward the original notice to your foreign exporter for submission to the foreign government. A copy of the notice should be retained in your files in accordance with the recordkeeping provisions stated in part 762 of the EAR.

(5)(i) Lost or destroyed Delivery Verification Certificate. When a Delivery Verification Certificate is lost or destroyed, the U.S. importer must submit a letter to BIS at the address listed in paragraph (a)(2)(i) of this supplement certifying that:

(A) The original Delivery Verification Certificate has been lost or destroyed;

- (B) The circumstances under which it was lost or destroyed;
  - (C) The type of customs entry (warehouse or consumption), entry number, and date of entry; and
  - (D) The number and date of the related U.S. International Import Certificate.
- (ii) BIS will, in applicable cases, notify the exporting government that a Delivery Verification Certificate been issued.

(c) Penalties and sanctions for violations. The enforcement provisions of part 764 and Supplement No. 2 to part 736 of the EAR apply to transactions involving imports into the U.S. covered by this supplement and to both foreign and U.S. parties involved in a violation of this supplement. Any provisions of part 764 and Supplement No. 2 to part 736 of the EAR which, by their terms, relate to “exports” or “exports from the U.S.” are also deemed to apply and extend to imports into the U.S., applications for U.S. International Import Certificates (Forms BIS-645P presented to U.S. Department of Commerce for certification), U.S. International Import Certificates, and Delivery Verification Certificates, described in this supplement. (Applications the documents described in this supplement, are included within the definition of export control documents provided in part 772 of the EAR.) Refer to §764.3 of the EAR for more information.

[61 FR 12812, Mar. 25, 1996, as amended at 61 FR 64285, Dec. 4, 1996; 62 FR 25463, May 9, 1997; 73 FR 37, Jan. 2, 2008; 78 FR 13470, Feb. 28, 2013]

## **§762.5 Reproduction of original records.**

- (a) The regulated person may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.
- (b) In order to maintain the records required by §762.2 of this part, the regulated persons defined in §762.1 of this part may use any photographic, photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:
- (1) The system must be capable of reproducing all records on paper.
  - (2) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides of paper documents in legible form.
  - (3) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. (For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.)
  - (4) The system must preserve the initial image (including both obverse and reverse sides of paper documents) and record all changes, who made them and when they were made. This information

must be stored in such a manner that none of it may be altered once it is initially recorded.

(5) The regulated person must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(6) The regulated person must establish written procedures for inspection and quality assurance of records in the system and document the implementation of those procedures.

(7) The system must be complete and contain all records required to be kept by this part or the regulated person must provide a method for correlating, identifying and locating records relating to the same transaction(s) that are kept in other record keeping systems.

(8) The regulated person must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(9) Upon request by the Office of Export Enforcement, the Office of Antiboycott Compliance, or any other agency of competent jurisdiction, the regulated person must furnish, at the examination site, the records, the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record in the system.

(c) Requirements applicable to systems based on the storage of digital images. For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. With respect to records of transactions, including those involving restrictive trade practices or boycott requirements or requests. The system must be able to locate and reproduce all records relating to a particular transaction based on any one of the following criteria:

(1) The name(s) of the parties to the transaction;

(2) Any country(ies) connected with the transaction; or

(3) A document reference number that was on any original document.

(d) Requirements applicable to a system based on photographic processes. For systems based on photographic, photostatic, or miniature photographic processes, the regulated person must maintain a detailed index of all records in the system that is arranged in such a manner as to allow immediate location of any particular record in the system.

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## **§762.6 Period of retention.**

(a) Five year retention period. All records required to be kept by the EAR must be retained for five years from the latest of the following times:

(1) The export from the United States of the item involved in the transaction to which the records pertain or the provision of financing, transporting or other service for or on behalf of end-users of proliferation concern as described in §§736.2(b)(7) and 744.6 of the EAR;

(2) Any known reexport, transshipment, or diversion of such item;

(3) Any other termination of the transaction, whether formally in writing or by any other means; or

(4) In the case of records of pertaining to transactions involving restrictive trade practices or boycotts described in part 760 of the EAR, the date the regulated person receives the boycott-related request or requirement.

(b) Destruction or disposal of records. If the Bureau of Industry and Security or any other government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned. This prohibition applies to records pertaining to voluntary disclosures made to BIS in accordance with §764.5(c)(4)(ii) and other records even if such records have been retained for a period of time exceeding that required by paragraph (a) of this section.

[61 FR 12900, Mar. 25, 1996, as amended at 72 FR 3946, Jan. 29, 2007]

Editorial Note: The following amendment could not be incorporated into §762.6 because of an inaccurate amendatory instruction:

At 72 FR 43532, Aug. 6, 2007, §762.6(b) is amended by removing the citation “§765.5(c)(4)(ii)” and adding “§764.5(c)(4)(ii)” in its place.

## **§764.2 Violations.**

(a) Engaging in prohibited conduct. No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by, the EAA, the EAR, or any order, license or authorization issued thereunder.

(b) Causing, aiding, or abetting a violation. No person may cause or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder.

(c) Solicitation and attempt. No person may solicit or attempt a violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(d) Conspiracy. No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(e) Acting with knowledge of a violation. No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in



connection with the item.

(f) Possession with intent to export illegally. No person may possess any item controlled for national security or foreign policy reasons under sections 5 or 6 of the EAA:

(1) With intent to export or reexport such item in violation of the EAA, the EAR, or any order, license or authorization issued thereunder; or

(2) With knowledge or reason to believe that the item would be so exported or reexported.

(g) Misrepresentation and concealment of facts. (1) No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to BIS, the United States Customs Service, or an official of any other United States agency, or indirectly through any other person:

(i) In the course of an investigation or other action subject to the EAR; or

(ii) In connection with the preparation, submission, issuance, use, or maintenance of any export control document as defined in §772.1, or any report filed or required to be filed pursuant to §760.5 of the EAR; or

(iii) For the purpose of or in connection with effecting an export, reexport or other activity subject to the EAR.

(2) All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify BIS and any other relevant agency, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention has occurred or may occur in the future.

(h) Evasion. No person may engage in any transaction or take any other action with intent to evade the provisions of the EAA, the EAR, or any order, license or authorization issued thereunder.

(i) Failure to comply with reporting, recordkeeping requirements. No person may fail or refuse to comply with any reporting or recordkeeping requirement of the EAR or of any order, license or authorization issued thereunder.

(j) License alteration. Except as specifically authorized in the EAR or in writing by BIS, no person may alter any license, authorization, export control document, or order issued under the EAR.

(k) Acting contrary to the terms of a denial order. No person may take any action that is prohibited by a denial order. See §764.3(a)(2) of this part.

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997; 70 FR 8250, Feb. 18, 2005]