

recordkeeping requirements for returning an Import Certificate retained by the applicant.

[64 FR 17973, Apr. 13, 1999, as amended at 70 FR 8250, Feb. 18, 2005]

§ 748.15 Authorization Validated End-User (VEU).

Authorization Validated End-User (VEU) permits the export, reexport, and transfer to validated end-users of any eligible items that will be used in a specific eligible destination. Validated end-users are those who have been approved in advance pursuant to the requirements of this section. To be eligible for authorization VEU, exporters, reexporters, and potential validated end-users must adhere to the conditions and restrictions set forth in paragraphs (a) through (f) of this section. If a request for VEU authorization for a particular end-user is not granted, no new license requirement is triggered. In addition, such a result does not render the end-user ineligible for license approvals from BIS.

(a) *Eligible end-users.* The only end-users to whom eligible items may be exported, reexported, or transferred under VEU are those validated end-users identified in Supplement No. 7 to Part 748, according to the provisions in this section and those set forth in Supplement Nos. 8 and 9 to this part that have been granted VEU status by the End-User Review Committee (ERC) according to the process set forth in Supplement No. 9 to this part.

(1) Requests for authorization must be submitted in the form of an advisory opinion request, as described in § 748.3(c)(2), and should include a list of items (items for purposes of authorization VEU include commodities, software and technology, except as excluded by paragraph (c) of this section), identified by ECCN, that exporters or reexporters intend to export, reexport or transfer to an eligible end-user, once approved. To ensure a thorough review, requests for VEU authorization must include the information described in Supplement No. 8 to this part. Requests for authorization will be accepted from exporters, reexporters or end-users. Submit the request to: The Office of Exporter Services, Bureau of Industry and Security, U.S. Department

of Commerce, 14th Street and Pennsylvania Avenue, NW., Room 2099B, Washington, DC 20230. Mark the package "Request for Authorization Validated End-User."

(2) In evaluating an end-user for eligibility under authorization VEU, the ERC will consider a range of information, including such factors as: the entity's record of exclusive engagement in civil end-use activities; the entity's compliance with U.S. export controls; the need for an on-site review prior to approval; the entity's capability of complying with the requirements of authorization VEU; the entity's agreement to on-site reviews to ensure adherence to the conditions of the VEU authorization by representatives of the U.S. Government; and the entity's relationships with U.S. and foreign companies. In addition, when evaluating the eligibility of an end-user, the ERC will consider the status of export controls and the support and adherence to multilateral export control regimes of the government of the eligible destination.

(3) The VEU authorization is subject to revision, suspension or revocation entirely or in part.

(4) Information submitted in a VEU request is deemed to constitute continuing representations of existing facts or circumstances. Any material or substantive change relating to the authorization must be promptly reported to BIS, whether VEU authorization has been granted or is still under consideration.

(b) *Eligible destinations.* Authorization VEU may be used for the following destinations:

(1) The People's Republic of China.

(2) India.

(c) *Item restrictions.* Items controlled under the EAR for missile technology (MT) and crime control (CC) reasons may not be exported or reexported under this authorization.

(d) *End-use restrictions.* Items obtained under authorization VEU may be used only for civil end-uses and may not be used for any activities described in part 744 of the EAR. Exports, reexports, or transfers made under authorization VEU may only be made to an end-user listed in Supplement No. 7 to this part if the items will be consigned to and for use by the validated end-

user. Eligible end-users who obtain items under VEU may only:

(1) Use such items at the end-user's own facility located in an eligible destination or at a facility located in an eligible destination over which the end-user demonstrates effective control;

(2) Consume such items during use; or

(3) Transfer or reexport such items only as authorized by BIS.

NOTE TO PARAGRAPH (d): Authorizations set forth in Supplement No. 7 to this part are country-specific. Authorization as a validated end-user for one country specified in paragraph (b) of this section does not constitute authorization as a validated end-user for any other country specified in that paragraph.

(e) *Certification and recordkeeping.* Prior to an initial export or reexport to a validated end-user under authorization VEU, exporters or reexporters must obtain certifications from the validated end-user regarding end-use and compliance with VEU requirements. Such certifications must include the contents set forth in Supplement No. 8 to this part. Certifications and all records relating to VEU must be retained by exporters or reexporters in accordance with the recordkeeping requirements set forth in part 762 of the EAR.

(f) *Reporting and review requirements—*(1)(i) *Reports.* Reexporters who make use of authorization VEU are required to submit annual reports to BIS. These reports must include, for each validated end-user to whom the exporter or reexporter exported or reexported eligible items:

(A) The name and address of each validated end-user to whom eligible items were reexported;

(B) The eligible destination to which the items were reexported;

(C) The quantity of such items;

(D) The value of such items; and

(E) The ECCN(s) of such items.

(ii) Reports are due by February 15 of each year, and must cover the period of January 1 through December 31 of the prior year. Reports must be sent to: Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 2099B, Wash-

ington, DC 20230. Mark the package "Authorization Validated End-User Reports".

(2) *Reviews.* Records related to activities covered by authorization VEU that are maintained by exporters, re-exporters, and validated end-users who make use of authorization VEU will be reviewed on a periodic basis. Upon request by BIS, exporters, reexporters, and validated end-users must allow review of records, including on-site reviews covering the information set forth in paragraphs (e) and (f)(1) of this section.

(g) *Notification requirement.* Exporters and reexporters shipping under Authorization VEU and persons transferring (in-country) under Authorization VEU are required to provide the VEU to which they are shipping or transferring notice of the shipment or transfer. Such notification must be conveyed to the VEU in writing and must include a list of the VEU-authorized contents of the shipment or transfer and a list of the ECCNs under which the VEU-authorized items in the shipment or transfer are classified, as well as a statement that the items are being, will be, or were shipped or transferred pursuant to Authorization VEU. Notification of the export, reexport or transfer (in-country) to the VEU must be made within a timeframe agreed to in writing by the VEU and the person exporting, reexporting or transferring (in-country). The VEU and the person exporting, reexporting or transferring (in-country) must agree to the notification timeframe prior to the initial shipment or transfer under Authorization VEU. Depending on the agreement between the VEU and the person exporting, reexporting or transferring (in-country), a notification may be for individual shipments or for multiple shipments. Exporters, reexporters and VEUs are required to maintain the notifications they send or receive in accordance with their recordkeeping requirements.

(h) *Termination of Conditions on VEU Authorizations.* VEUs that are subject to item-specific conditions and have received items subject to such conditions under Authorization VEU are no longer bound by the conditions associated with the items if the items no longer

require a license for export or reexport to the PRC or India, as applicable, or become eligible for shipment under a license exception to the destination. Items that become eligible for a License Exception are subject to the terms and conditions of the applicable License Exception and the restrictions in §740.2 of the EAR. Items that become eligible for export without a license and that remain subject to the EAR may only be exported, reexported, transferred (in-country) or disposed of in accordance with the requirements of the EAR. Termination of VEU conditions does not relieve a validated end-user of its responsibility for violations that occurred prior to the availability of a license exception or prior to the removal of license requirements.

(i) *Records.* Records of items that were shipped under Authorization VEU prior to the removal of a license requirement or the availability of a license exception remain subject to the review requirements of paragraph (f)(2) of this section on and after the date that the license requirement was removed or the license exception became applicable.

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SUPPLEMENT NO. 1 TO PART 748—BIS-748P, BIS-748P-A; ITEM APPENDIX, AND BIS-748P-B; END-USER APPENDIX; MULTIPURPOSE APPLICATION INSTRUCTIONS

All information must be legibly typed within the lines for each Block or Box, except where a signature is required. Enter only one typed line of text per Block or line. Where there is a choice of entering telephone numbers or facsimile numbers, and you wish to provide a facsimile number instead of a telephone number, identify the facsimile number with the letter “F” immediately after the number (e.g., 022-358-0-123456F). If you are completing this form to request classification of your item, you must complete Blocks 1 through 5, 14, 22 (a), (b), (c), (d), and (i), 24, and 25 only.

Block 1: Contact Person. Enter the name of the person who can answer questions concerning the application.

Block 2: Telephone. Enter the telephone number of the person who can answer questions concerning the application.

Block 3: Facsimile. Enter the facsimile number, if available, of the person who can answer questions concerning the application.

Block 4: Date of Application. Enter the current date.

Block 5: Type of Application. *Export.* If the items are located within the United States, and you wish to export those items, mark the Box labeled “Export” with an (X). *Reexport.* If the items are located outside the United States, mark the Box labeled “Reexport” with an (X). *Classification.* If you are requesting BIS to classify your item against the Commerce Control List (CCL), mark the Box labeled “Classification Request” with an (X). *Encryption Registration.* If you are requesting encryption registration under License Exception ENC (§740.17 of the EAR) or “mass market” encryption provisions (§742.15(b) of the EAR), mark the Box labeled “Encryption Registration” with an (X). *Special Comprehensive License.* If you are submitting a Special Comprehensive License application in accordance with the procedures described in part 752 of the EAR, mark the Box labeled “Special Comprehensive License” with an (X). If you are submitting a License Exception STA eligibility request pursuant to §740.20(g), mark the box labeled “Export” with an (X) and then proceed to Block 6 of this supplement for instructions specific to such requests.

Block 6: Documents submitted with Application. Review the documentation you are required to submit with your application in accordance with the provisions of part 748 of the EAR, and mark all applicable Boxes with an (X).

Mark the Box “Foreign Availability” with an (X) if you are submitting an assertion of foreign availability with your license application. See part 768 of the EAR for instructions on foreign availability submissions.

If you are *not* making a foreign availability assertion under part 768 of the EAR, you may still mark the box “Foreign Availability” with an (X), if you are submitting an assertion of foreign availability with your license application. Foreign availability assertions covered under part 768 are limited to items controlled for national security reasons. However, if an applicant intends to include foreign availability support material for items not controlled for national security reasons, applicants are permitted to do this as part of the license application by marking the box “Foreign Availability” with an (X) and including the foreign availability information, along with the support material for the license application. Applicants must clearly label this support material as “Foreign availability information—outside the scope of part 768”. Although this information is outside the scope of part 768, applicants should still use Supplement No. 1 to part 768 for general guidance regarding what types of