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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742, 748 and 762

Docket No. 131018874-5199-02

RIN 0694-AG00

Revisions to Support Document Requirements for License Applications under the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule finalizes changes to the support document requirements for license applications submitted to the Bureau of Industry and Security (BIS) and is part of BIS's

retrospective regulatory review under Executive Order 13563. In addition to clarifying and streamlining the support document requirements for license applications in part 748 of the Export Administration Regulations (EAR), this final rule removes the requirement to obtain an International Import Certificate or Delivery Verification in connection with a license application and limits the requirement to obtain a Statement by Ultimate Consignee and Purchaser to exports, reexports, and transfers (in-country) of 600 Series Major Defense Equipment. Revisions to the EAR affecting BIS's participation in issuing documents for the Import Certificate and Delivery Verification system for imports into the United States will be addressed in a future final rule, as will potential substantive changes to information collections under the Paperwork Reduction Act.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of National Security and Technology Transfer Controls, 202-482-4479, patricia.muldonian@bis.doc.gov, or Steven Emme, Office of the Assistant Secretary for Export Administration, 202-482-5491, steven.emme@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2014, the Bureau of Industry and Security (BIS) published a proposed rule (79 FR 19552) (hereinafter, the “April 9 rule”) to revise the support document requirements of the Export Administration Regulations (EAR). This proposed rule was part of BIS’s retrospective regulatory review being undertaken under Executive Order 13563, which requires each agency to “periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.” The EAR’s support document requirements are largely premised on the Import Certificate/Delivery Verification (IC/DV) system. As described in the proposed rule, the IC/DV system, while intended to prevent diversion and increase awareness among participating countries of potential enforcement concerns, has limited utility today and imposes unnecessary burdens on license applicants and BIS.

To further the aims of Executive Order 13563, BIS proposed to streamline and clarify the support document requirements as well as reduce unnecessary burdens for license applicants by removing the requirement to obtain International Import Certificates (ICs) for applications and by increasing the value threshold for requiring a Statement by Ultimate Consignee and Purchaser for an application. In addition, BIS proposed to eliminate the agency’s participation in issuing United States ICs, ICs with triangular transaction stamp, and DV certificates. The proposals to change BIS’s participation in issuing U.S. ICs and DVs will be addressed in a subsequent final rule. In addition, any other changes that substantively affect information collection burden hour estimates under the Paperwork Reduction Act will also be addressed in the subsequent, final rule.

In response to the proposed rule, BIS received eight public comments. Generally, commenters believed that the proposed rule provided greater clarity and flexibility, streamlined requirements, and ended outdated and ineffective requirements under the IC/DV system. However, to address public comments and to further the aims of Executive Order 13563, BIS is making additional changes to the proposed rule, as described herein. This final rule changes the implementation of the IC/DV system. That system is not addressed in the Wassenaar Arrangement Initial Elements nor is there an applicable U.S. statutory requirement for the system. A summary of the public comments and changes made to the proposed rule are addressed below.

Support Document Requirements for License Applications Submitted to BIS

Elimination of Import Certificate Requirement and Changes to Requirement to Obtain Statement by Ultimate Consignee and Purchaser

The April 9 rule would have eliminated the requirement to obtain an IC in conjunction with a BIS license application, and instead proposed the imposition of a requirement to obtain a Statement by Ultimate Consignee and Purchaser for certain license applications for commodities destined for countries (other than the People’s Republic of China (PRC)) or territories not in the “Americas” (as proposed to be defined in § 772.1). This final rule maintains the elimination of Import Certificates but also limits the scope of applications requiring a Statement by Ultimate Consignee and Purchaser.

Commenters largely supported the proposal to eliminate the requirement to obtain ICs. They stated that the proposal would eliminate an outdated, burdensome requirement that creates red tape and obstacles for U.S. exporters that are not faced by exporters in other countries. One commenter, however, disagreed and stated that some U.S. exporters and their foreign affiliates have established timely procedures for obtaining ICs. Further, the commenter stated that the IC notifies the government that items controlled for national security reasons are being imported and that the government commits to take responsibility for any subsequent exports of the items. While some U.S. exporters may have developed efficient procedures for handling the IC requirement, such procedures do not justify the imposition of a burdensome requirement that provides little utility. In addition, BIS believes that the commenter overstates the purpose of the IC requirement. The IC only notifies the government of the importing country that the national security controlled items are planned to be imported into the country. Also, it is not the role of the government to take responsibility for subsequent exports; under U.S. law, the exporter must comply with any applicable requirements for the subsequent export of items subject to the EAR or other applicable regulations.

While commenters largely supported the elimination of the IC requirement, some commenters expressed concerns about requiring a Statement by Ultimate Consignee and Purchaser for commodities controlled for national security reasons valued over \$50,000 and destined for a location not in the PRC or the “Americas.” Three commenters stated that the proposed requirement would still be more restrictive than the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130. The commenters stated that under the ITAR, the DSP-83 Nontransfer and Use Certificate is the equivalent support document for license applications to

the Department of State's Directorate of Defense Trade Controls (DDTC), and the DSP-83 is only required for significant military equipment (SME), as defined in § 120.7 of the ITAR. Thus, for 600 series items and 9x515 spacecraft items transitioning from the USML to the CCL, the proposed support document requirements would actually be more burdensome under the EAR than the ITAR. Further, one commenter also stated that requiring a Statement by Ultimate Consignee and Purchaser would prevent industry in allied countries from optimizing procurement of U.S. equipment for "long lead items or bulk procurement" in advance of identifying a customer. The commenter stated that such capability is necessary for affordability and timeliness of space and military assets for U.S. allies and that imposing a more strict support document requirement than the ITAR is inconsistent for items that have been deemed to not require the strictest controls of the ITAR.

In order to address these concerns, commenters provided different suggestions. Two commenters suggested requiring a Statement by Ultimate Consignee and Purchaser for items on the Wassenaar Very Sensitive List. One commenter suggested the requirement be tied to countries in Country Group D:5 and that the value threshold be raised to \$1 million. Also, one commenter suggested amending the scope of locations subject to the requirement by pointing out that many allied countries, such as those in NATO, would be subject to the requirement as they are not part of the exclusion for the "Americas."

BIS agrees that the EAR should not impose additional or more burdensome requirements than the ITAR, and has repeated this assertion in many Federal Register publications pertaining to Export Control Reform (*see e.g.*, Proposed Revisions to the Export Administration Regulations:

Implementation of Export Control Reform; Revisions to License Exceptions After Retrospective Regulatory Review, 77 FR 37524 (June 21, 2012); Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform, 78 FR 22660 (Apr. 16, 2013)). The support document requirements should not hinder the benefits articulated under ECR by imposing more strict requirements for items moving to the EAR that do not warrant the controls of the ITAR. In addition, non-munitions items subject to the EAR should not have more onerous support document requirements than those items providing a critical military or intelligence capability that are listed on the USML. Consequently, in addition to removing the IC requirement, BIS is amending § 748.11(a)(1) to limit the requirement to obtain a Statement by Ultimate Consignee and Purchaser to commodities that are “600 Series Major Defense Equipment.” BIS agrees with the approach stated by one commenter that the requirement should match the ITAR in focusing on the type of item rather than situational parameters, such as value. BIS believes that using “600 Series Major Defense Equipment” best follows this approach and avoids requiring greater support document requirements for items subject to the EAR than items subject to the ITAR.

With this change to the requirement for providing a Statement by Ultimate Consignee and Purchaser, BIS is also eliminating the proposed \$50,000 value threshold and the exclusion for locations in the “Americas.” All commodities that are “600 Series Major Defense Equipment,” as defined in § 772.1, will require a Statement by Ultimate Consignee and Purchaser to any destination other than the PRC, regardless of value. However, BIS will maintain discretion to require applicants to obtain a Statement by Ultimate Consignee and Purchaser for a license application that would not otherwise require one. Also, BIS may add, as a condition on a

license, a requirement to obtain a Statement by Ultimate Consignee and Purchaser or a purchase order prior to shipment. Such requests may be common for license applications involving items controlled for Nuclear Nonproliferation, Chemical and Biological Weapons, or Missile Technology reasons to countries in Country Group D:2, D:3, or D:4, respectively. Additional changes to the proposed rule on the requirement to obtain a Statement by Ultimate Consignee and Purchaser are reflected below under changes to § 748.11.

Because this final rule removes the requirement to obtain an IC in conjunction with a license application submitted to BIS, this final rule also removes the requirement to obtain a DV in conjunction with a license application. This is reflected in the removal of text in prior § 748.13 and Supplement No. 4 to part 748. BIS did not receive any public comments on this topic.

Section 748.6 – General Instructions for License Applications

The April 9 rule proposed to revise § 748.6(a) to provide greater clarity on general instructions for license applications and support documents, reference the specific requirements for support documents in proposed §§ 748.9 through 748.13, and refer to a new chart in Supplement No. 4 to part 748. BIS did not receive any public comments on § 748.6, and this final rule adopts that language with one exception. Because this final rule removes the proposed chart in Supplement No. 4 (as further explained herein), the sentence referencing the chart has been deleted.

Section 748.9 – General Instructions for Support Documents

In the proposed rule, § 748.9 described the scope of support document requirements for license applications; the type of applications requiring a support document (i.e., PRC End-User Statement, Statement by Ultimate Consignee and Purchaser, or Firearms Convention (FC) Import Certificate); exceptions to such requirements; content requirements; recordkeeping requirements; and other general requirements. This final rule largely adopts the description set forth in § 748.9 with additional modifications based on public comments and other changes, as described below.

Two commenters requested that BIS insert a clarifying note that applicants are not required to obtain support documents from end users. BIS did not accept this recommendation because the proposed rule did not include a requirement that applicants must obtain a support document from end users. However, if an end user is also an ultimate consignee on the license application, then that end user would be subject to applicable support document requirements. In addition, BIS notes that the agency may request additional information from any party listed on the license application, including end users.

Two commenters recommended that BIS delete the phrase, “for certain transactions” from proposed § 748.9(b)(1), which described the support document requirements for license applications involving the PRC. BIS does not accept this recommendation as not all license applications involving the PRC require a PRC End-User Statement. Thus, the qualifying phrase is needed. With respect to the scope of the requirements for a Statement by Ultimate Consignee and Purchaser and for an FC Import Certificate, two commenters recommended that the Organization of American States (OAS) be made new Country Group A:7 and that “Americas”

be replaced with “destinations not identified in Country Group A:7.” BIS rejects these recommendations as the term “Americas” is removed under this final rule due to the changes to requirements for the Statement by Ultimate Consignee and Purchaser, as described above. Further, since the OAS is only used in conjunction with one requirement under the EAR, BIS believes it is inappropriate to make it a Country Group so this final rule continues to list the countries in § 748.12.

One commenter pointed out that proposed § 748.9(b)(1)-(b)(3) used the term “ultimately destined” with respect to the PRC End-User Statement and Statement by Ultimate Consignee and Purchaser, but only used “destined” for the FC Import Certificate. Under this final rule, this wording no longer appears in new § 748.9(b) because the description for the requirements to obtain a support document has been further streamlined. However, this final rule only uses “destined” in §§ 748.10(a), 748.11(a), and 748.12(a) when describing the requirements for the three support documents.

One commenter stated that the final rule should remove any ambiguity over whether support documents must be submitted as part of the license application, and the commenter cited to differing requirements in § 748.9(f), (g), and (i). Additionally, with respect to PRC End-User Statements, two commenters recommended that proposed § 748.10(d)(1) be revised to allow for applications requiring a PRC End-User Statement to be submitted to BIS prior to the PRC’s issuance of the statement, and condition the license such that no items may be shipped under the license until the statement is obtained by the applicant.

BIS agrees that the final rule should remove ambiguity on this topic, but BIS only partially accepts the recommendation regarding the PRC End-User Statement. This final rule adds new § 748.9(e)(1), which applies to all support documents required under the EAR. Unless BIS informs an applicant that a support document must be submitted with a specific application, the applicant may submit an application prior to receipt of a copy of the support document. However, rather than conditioning the license, new § 748.9(e)(1) provides that the license holder may not ship items authorized on the license until obtaining a copy of the support document. Thus, for those applications BIS believes require support documentation in addition to that specified in part 748, BIS will have discretion to consider a support document contemporaneous with the license application. For all other applications, applicants may obtain the support document after submitting the application. However, applicants may not ship prior to receipt of a copy of the support document, and they must retain the original or a copy of the document in conformance with the recordkeeping requirements of the EAR (see further below for a discussion on allowing retention of copies).

One commenter noted that there was no exception to the support document requirements when the U.S. Government is an end user in a foreign country in proposed § 748.9(d)(1). BIS agrees that for transactions for which License Exception GOV is not available, the U.S. Government should not have to supply a support document. Therefore, this final rule adds a new exception in new § 748.9(c)(1) for when the purchaser or ultimate consignee is an “Agency of the United States Government,” as defined in § 740.11(b)(1). If another party listed on the license application is an ultimate consignee or purchaser and does not qualify for an exception listed

under new § 748.9(c)(1), then such party is still subject to any applicable support document requirements.

One commenter requested guidance on a situation where a support document may be required under proposed § 748.9(d)(1)(i), which described the exception to support document requirements for foreign governments excluding the PRC. Under this final rule, if a license application involving the export of 600 series MDE lists a non-governmental entity as a purchaser and a foreign government agency (excluding an agency of the PRC) as an ultimate consignee and end user, then a Statement by Ultimate Consignee and Purchaser would be required from the purchaser but not the ultimate consignee. One commenter questioned whether the English translation requirement for proposed § 748.9(e)(1), should be included in that section. BIS confirms that the English translation requirement should be in § 748.9 as the requirement applies to all support documents.

For proposed § 748.9(f)(1), two commenters stated that obtaining an electronic copy of a support document should suffice and thus the requirement to obtain an original support document should be removed. BIS agrees and has removed references to obtaining an original version of the support document throughout this final rule. Two commenters recommended striking the reference to “import certificate” in proposed § 748.9(h). Proposed § 748.9(h) applied to the grace period for complying with the support document requirements following a regulatory change. Given that this final rule removes the requirement to obtain an IC for any license application, BIS is changing the reference from “import certificate” to “FC Import Certificate” since future regulatory changes may affect the requirements for that support document.

To further streamline and clarify the support document requirements, BIS is making additional changes to this section. First, since the final rule further simplifies the support document requirements, BIS eliminated much of the text in new § 748.9(b) to eliminate redundancy. The specific requirements triggering a support document requirement are now fully described in the applicable section applying to the specific support document. Also, this final rule adds a new note to § 748.9(b) to make more clear that BIS may request that an applicant obtain a support document for any application.

This final rule also removes the distinction for support document requirements applying to reexport and in-country transfer license applications. This change simplifies the requirements, and given the changes for ICs and Statements by Ultimate Consignee and Purchaser described above, the only impact would be to require a Statement by Ultimate Consignee and Purchaser for 600 series MDE destined for a country not in Country Group D:1 or E:1. New § 748.9(d)(2)(i), which addresses responsibility for full disclosure, has been revised from the proposed rule. As proposed, that provision indicated that support documents do not have to be submitted to BIS as part of the application unless the applicant is informed by BIS to do so. In addition to the revisions described above, that section has also been updated to provide that information contained in a support document obtained after submission of a license application and not submitted to BIS as part of the application cannot be construed as modifying the specific information supplied in a license application or a license. This change is made in accordance with BIS's policy on license conditions, which began on December 8, 2014. New § 748.9(h)(2) has been revised to indicate BIS retains discretion to require additional information for

applications filed during the 45-day grace period for complying with the support document requirements.

As part of the simplification effort, this final rule also harmonizes certain support document requirements that varied slightly among the documents. New § 748.9(e)(2) describes the requirements to follow in SNAP-R for license applications requiring a support document, regardless of whether BIS has informed the applicant that the document must be submitted as part of the application. Further, new § 748.9(f) describes the recordkeeping requirements for all support documents, and this final rule removes references to original document requirements, random sampling of documents (which is redundant of other sections of the EAR that apply to BIS's ability to request documents), and returning support documents to foreign importers (which is now obsolete due to the ability to retain copies).

Section 748.10 – PRC End-User Statement

The proposed rule described the requirements for obtaining a PRC End-User Statement under § 748.10. This final rule largely adopts the requirements under the proposed rule, with the following changes described below.

Two commenters stated that it was unclear whether the value threshold requirement for any commodity requiring a license for any reason on the Commerce Control List (CCL) applies to one unit, line item value, or total license value in proposed § 748.10(a)(3). That value threshold requirement applies to the aggregate value for all commodities listed in the application that

require a license to the PRC based on any reason on the CCL. To make this requirement clearer, BIS is revising that description, under new § 748.10(a)(3), to indicate that the license application includes “any commodity(ies) requiring a license to the PRC for any reason on the Commerce Control List, and the total value of such commodity(ies) requiring a license exceeds \$50,000.”

One commenter recommended removing the last sentence in proposed § 748.10(b)(1) that required obtaining an original PRC End-User Statement. As described above, BIS accepts this comment throughout this final rule and has revised the text accordingly. Two commenters suggested putting the contact information for the PRC’s Ministry of Commerce (MOFCOM) on the BIS website, which would be referred to by the EAR. BIS has added a reference to the BIS website in new § 748.10(b)(2) to obtain the current contact information for MOFCOM.

Two commenters stated that proposed § 748.10(d)(5), which required that the first application used in conjunction with a PRC End-User Statement be submitted within six months from the date the statement was signed does not take into account the impact of multi-year programs and MOFCOM’s reluctance to issue new statements until all items identified in the original statement have been shipped. In place of the six-month validity period, the commenters requested that BIS use a validity period based on whether the quantities identified on the statement have been shipped. BIS accepts this recommendation, which is addressed in new § 748.10(d)(3). To reflect this change, BIS has also amended new § 748.10(d)(1), which describes the requirements for using a PRC End-User Statement for multiple applications.

One commenter recommended removing the requirement under proposed § 748.10(e)(1) to obtain an original support document, and two commenters suggested eliminating the requirement under proposed § 748.10(e)(2), which described the requirements for returning a PRC End-User Statement to the foreign importer. As previously addressed, BIS is removing the requirement to obtain an original support document, which makes the text in proposed §§ 748.10(e)(1)-(e)(2) and 748.9(f)(2) obsolete. Thus, this final rule removes those paragraphs. All recordkeeping requirements for PRC End-User Statements, as well as the other support documents, are now reflected in new § 748.9(f).

To further streamline and clarify the support document requirements, BIS is making additional changes to this section. First, all information regarding corrections, additions, or alterations has been moved to new § 748.10(d)(2), including a revised requirement that if the PRC End-User Statement contains any inaccuracies, then the applicant should note any necessary corrections in a statement on file with the applicant rather than submitting such a statement with the application. In addition, the requirement to provide a certification on quantities of items in Block 24 of the application when using a PRC End-User Statement with multiple applications has been removed. This requirement is redundant and unnecessary. Also, this rule revises the wording in new § 748.10(a)(1) and (a)(2) to clarify that the requirement for a PRC End-User Statement applies to 6A003 cameras and computers if there are any license requirements under the EAR for those commodities to the PRC, not just for reasons on the Commerce Control List. This revised text conforms to the prior requirements for PRC End-User Statements. Other changes to new § 748.10, including to recordkeeping and retention of original documents, are addressed above under new § 748.9.

Section 748.11 – Statement by Ultimate Consignee and Purchaser

The proposed rule put forward new requirements for obtaining a Statement by Ultimate Consignee and Purchaser. The proposed rule increased the value threshold for requiring a Statement by Ultimate Consignee and Purchaser from \$5,000 to \$50,000, and it proposed to require the statement in place of an IC for most license applications that currently require an IC. As addressed above, commenters expressed concerns that these changes would make the support document requirements of the EAR more burdensome than the ITAR. Consequently, this final rule limits the requirement to obtain a Statement by Ultimate Consignee and Purchaser to exports, reexports, or in-country transfers of “600 Series Major Defense Equipment,” regardless of value and destination (excluding the PRC). In addition to the comparison to the ITAR’s support document requirements, commenters also raised additional concerns.

One commenter suggested that the permissive use of a Statement by Ultimate Consignee and Purchaser for the PRC, as described in proposed § 748.11(a)(2), be moved to § 748.10 so that all support document requirements pertaining to the PRC reside in one section. While BIS understands the concern, the agency did not accept this recommendation because the support document requirements are organized by document rather than by destination. However, this final rule adds a new note to new § 748.10(a) to provide a cross-reference to new § 748.11(a)(2).

Two commenters requested clarification or examples on proposed Note 2 to § 748.11(a). That proposed note, which is retained in this final rule, states that BIS has discretion to require a

Statement by Ultimate Consignee and Purchaser for an application even though the EAR would not normally require one. For example, under this final rule, BIS may require a statement for an application not involving the PRC for items that are not “600 Series Major Defense Equipment.” BIS may make this request when additional information is needed to help verify the bona fides of a party involved in the transaction.

One commenter expressed concerns regarding proposed § 748.11(b)(5)(iii), which, *inter alia*, requires that the consignee and/or purchaser “promptly send a new statement to the applicant if changes in the facts or intentions contained in the statement(s) occur after the statement(s) have been forwarded to the applicant.” The commenter stated it was unclear which party is responsible for reporting changes to the license applicant, especially if the changes are a result of the actions of a different party involved in the transaction. BIS notes that an individual party is responsible for ensuring that its representations are true and correct to the best of the party’s knowledge. Further, all parties participating in a transaction subject to the EAR must comply with the EAR, including the requirement that a party not proceed with a transaction with knowledge that a violation has occurred or is about to occur as a result of actions by another party.

Two commenters recommended moving proposed § 748.11(c), which describes the content requirements of the statement, to a new supplement to make § 748.11 easier to read. BIS accepts this recommendation and moved the information that was in proposed § 748.11(c) to newly revised Supplement No. 3 to part 748.

One commenter stated that the Form BIS-711 and the information required for a letter on company letterhead vary in the following ways: the letter allows for naming any country while the BIS-711 limits action to a single country (the country of residence of the ultimate consignee); the letter requires indicating whether the Statement by Ultimate Consignee and Purchaser is for a single transaction or multiple transactions while the BIS-711 does not require this; the letter requires identifying the name of the license applicant while the BIS-711 does not; and the letter does not require naming a party that assisted in preparing the letter while the BIS-711 does so in block 5. With respect to the country scope of the letter versus the BIS-711, BIS notes that the BIS-711 is not limited to a single country in that boxes B and D under block 2 allow for the identification of other countries, so BIS believes no changes are necessary to either the letter or BIS-711 requirements. The additional issues identified by the commenter will be addressed in a different rule. BIS will evaluate these concerns as part of the agency's separate review of Information Collection 0694-0021 under the Paperwork Reduction Act, which authorizes BIS to collect the information described in § 748.11. Any substantive changes to Information Collection 0694-0021 will be finalized under an additional rule.

Two commenters stated that the validity period for a Statement by Ultimate Consignee and Purchaser to be used for multiple license applications should be increased from two years to four years, which would correlate with the new license validity period in the EAR. BIS accepts this recommendation, which is reflected in new § 748.11(d)(1)(ii) and Supplement No. 3 to part 748. One commenter also suggested that the name "Statement by Ultimate Consignee and Purchaser" be changed to "Recipient Statement" to better identify the appropriate parties to make the relevant representations on the document. BIS does not accept this recommendation as part of

this final rule. While using the term “recipient” would provide greater flexibility, it may also increase ambiguity since “recipient” is not a defined term, unlike both “ultimate consignee” and “purchaser.” BIS will, however, monitor the effects this final rule will have on support document requirements and will re-evaluate if further clarifications or changes are warranted.

To further streamline and clarify the support document requirements, BIS is making additional changes to this section. First, the term “sub-assemblies” has been replaced with “components” under new § 748.11(a)(2) since “components” is a defined term in part 772 and reflects the intent of the scope of “sub-assemblies.” Also, new § 748.11(d) has been revised to extend the validity period by allowing an applicant to submit the first license application within one year from the date the statement was signed rather than the prior six months. This change reflects the increased license validity period for BIS licenses and DDTC’s practice of allowing purchase orders for DSP-5 licenses to be used within one year.

Section 748.12 – Firearms Convention Import Certificate

The proposed rule made no substantive changes to the scope of the support document requirements for firearms and related commodities, but it did propose changing certain submission requirements to recordkeeping requirements and clarifying the name of the support document as a Firearms Convention (FC) Import Certificate. BIS did not receive any public comments specific to the FC Import Certificate requirements, and this final rule largely adopts the proposed requirements in § 748.12, as well as references to the revised name in § 742.17.

However, to further clarify and streamline the proposed rule, BIS is making additional changes in this final rule.

This final rule revises new § 748.12(b)(1) to reflect that obtaining a copy of the FC Import Certificate or equivalent official document is permissible and that the application may be submitted prior to receipt of the original or copy. New § 748.12(b)(2) has been revised to incorporate text on the procedure to follow if the government of the importing country will not issue a document; this information was previously in proposed § 748.12(d)(1)(ii). New § 748.12(d)(2) has been revised to incorporate similar wording in prior sections addressing alterations, and new § 748.12(d)(3) has been revised to more closely harmonize, to the extent possible, the validity period on an FC Import Certificate (or equivalent official document) to that of a Statement by Ultimate Consignee and Purchaser. Unless the Certificate or equivalent official document has an expiration date, the new validity period will be four years rather than the prior limit of one year. Multiple license applications may be submitted using the same Certificate or equivalent official document so long as the document is still valid.

Section 748.13 – Granting of Exceptions to the Support Document Requirements

The proposed rule suggested moving the information on granting exceptions to the support document requirements into § 748.13 and made no substantive changes to the existing text, which was previously in § 748.12(c) and (d). One commenter believed that the EAR's requirements for granting an exception are too onerous, and two commenters suggested replacing the process with a requirement for the applicant to keep a letter on file or provide such letter with

the application describing why a required support document could not be obtained. BIS believes that a recordkeeping requirement would not be sufficient for utilizing an exception. However, this final rule revises new § 748.13 to streamline the process by requiring that information supporting the request be in or referred to in Block 24 of the application. Thus, a separate letter is not required. Additionally, this final rule revises new § 748.13 to give the agency greater discretion on adjudicating such requests.

Additional Public Comments on Support Document Requirements for License Applications and Additional Conforming Changes

Two commenters believed that the table in proposed Supplement No. 4 to part 744, which provided informal guidance on support document requirements, was confusing; one commenter believed that the proposed table was helpful. Because of changes described above to the requirements for obtaining a Statement by Ultimate Consignee and Purchaser, BIS believes that the support document requirements are sufficiently clear without the need for the table. Thus, this final rule removes the proposed table.

One commenter requested that BIS clarify the definition of “ultimate consignee” since it affects which party must fill out the Statement by Ultimate Consignee and Purchaser. The commenter further proposed a new definition for the term. BIS does not accept this comment as it is outside the scope of the proposed rule. The proposed changes to the support document requirements were premised on the existing definition of “ultimate consignee.” Moreover, any changes to the

definition of that term should go through the proposed rulemaking process. Accordingly, at this time, BIS does not believe that such a proposal is warranted.

One commenter recommended that BIS add and define the term “support document” in part 772 to avoid inconsistency with the existing definition of “export control document.” BIS does not accept this recommendation. Support documents already fall under the definition of “export control document,” and BIS believes that new §§ 748.6(a)(3) and 748.9(a) provide sufficient guidance to applicants on the use of the term “support documents.”

Finally, due to the removal of Import Certificate and Delivery Verification requirements, as well as the revised name for FC Import Certificates, this rule finalizes the references to support document names in § 762.2.

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014) has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is part of BIS's retrospective regulatory review being undertaken under Executive Order 13563. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This final rule affects two collection numbers: Statement by Ultimate Consignee and Purchaser (0694-0021) and Import Certificates And End-User Certificates (0694-0093).

This final rule amends the requirements for support documents required in conjunction with a license application. Collection number 0694-0093 addresses Import Certificates and End-User Certificates, changes to Import Certificates and End-User Certificates, exception requests to Import Certificates and End-User Certificates, Delivery Verifications, exception requests to

Delivery Verifications, and related recordkeeping. This final rule eliminates the requirement for obtaining a Delivery Verification in conjunction with a license application submitted to BIS.

This results in an annual reduction in burden of 361 hours for Delivery Verifications and 0.5 hours for Delivery Verification exception requests. Also, this rule eliminates the requirement to obtain an Import Certificate in conjunction with a license application. This change results in the reduction of the following annual burden hour estimates: 354.5 hours for preparing the Import Certificate, 23.6 hours for recordkeeping related to the Import Certificate, 99 hours for changes to Import Certificates, and 7 hours for Import Certificate exception requests.

The changes to support documents required in conjunction with a license application also impact collection number 0694-0021, which addresses the Statement by Ultimate Consignee and Purchaser. This final rule limits the requirement to obtain a Statement by Ultimate Consignee and Purchaser to license applications involving “600 Series Major Defense Equipment,” as defined in part 772 of the EAR. Since Export Control Reform was initially implemented in October 2013, BIS has not received an application to export, reexport, or transfer (in-country) “600 Series Major Defense Equipment.” Therefore, BIS estimates this final rule will result in one application per year requiring a Statement by Ultimate Consignee and Purchaser. Based on the aggregate number of license applications in SNAP-R that have the entry for “Statement by Ultimate Consignee and Purchaser / BIS 711” checked, and those applications BIS believes were mistakenly checked as “Import Certificate or End User Certificate” but in fact were also Statements by Ultimate Consignee and Purchaser due to the destination of the application, BIS believes the changes in this final rule will decrease the burden hours measured under collection number 0694-0021 by approximately 1160.5 hours.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare an initial regulatory flexibility analysis (IRFA) for any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. However, under section 605(b) of the RFA, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the RFA does not require the agency to prepare a regulatory flexibility analysis. BIS does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number by reducing the burden of having to obtain certain support documents for certain license applications. Therefore, the impact on any affected small entities will be wholly positive. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that this final rule, will not have a significant impact on a substantial number of small entities. No comments were received on the certification and therefore no regulatory flexibility analysis is required. Pursuant to 5 U.S.C. 553(d)(1) good cause exists to waive the otherwise applicable 30 day delay in effectiveness. Because the information obtained through the pertinent support documents is collected elsewhere, there is no need for regulated entities to come into compliance with any regulatory

requirements. Furthermore, there is a strong public interest in making these changes. The information contained in the support documents is collected in the license applications themselves, so there is no government or public interest in a duplicative collection. In addition, this rule decreases the burden on the regulated parties. A primary goal of the President's Export Control Reform Initiative is that the transition to jurisdiction under BIS should be no more burdensome under the EAR than the ITAR. However, under the existing regulations, the EAR's support document requirements are more restrictive than the ITAR, which control articles that provide the United States with a critical military or intelligence advantage or otherwise warrant more restrictive controls. There is no need for items subject to the EAR to have more restrictive requirements than defense articles under the ITAR. Indeed, any ongoing requirement that these documents be collected would undermine public policy goals.

There is also a public interest in moving this process along to ensure that entities that are transitioning from being regulated by the ITAR to being regulated by the EAR are not temporarily burdened by having to comply with a requirement that they did not previously have to comply with under the ITAR. For all these reasons, BIS finds good cause to waive the 30 day delay in effective date and implement this rule upon publication in the Federal Register.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Export Administration Regulations (15 CFR parts 730-774) are amended as follows:

PART 742 – [AMENDED]

1. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

2. Section 742.17 is amended by:

- a. Revising the last sentence of paragraph (a);
- b. Removing “Import Certificate” and adding in its place “FC Import Certificate” in paragraph (b); and
- c. Revising paragraph (g), to read as follows:

§ 742.17 Exports of firearms to OAS member countries.

(a) *** Licenses will generally be issued on a Firearms Convention (FC) Import Certificate or equivalent official document, satisfactory to BIS, issued by the government of the importing OAS member country.

(g) *Validity period for licenses.* Although licenses generally will be valid for a period of four years, your ability to ship items that require an FC Import Certificate or equivalent official document under this section may be affected by the validity of the FC Import Certificate or equivalent official document (see § 748.12(d)(4) of the EAR).

PART 748 – [AMENDED]

3. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

4. Section 748.6 is amended by revising paragraph (a) to read as follows:

§ 748.6 General instructions for license applications.

(a) *Instructions.* (1) General instructions for filling out license applications are in Supplement No. 1 to this part.

(2) License applications may require additional information due to the type of items requested in the application or the characteristics of the transaction. Special instructions for applications requiring such additional information are listed in § 748.8 and described fully in Supplement No. 2 to this part.

(3) License applications may also require additional information for evaluation of the parties in the transaction. Special instructions for applications requiring such additional information are listed in §§ 748.9 through 748.13.

5. Section 748.9 is revised to read as follows:

§ 748.9 Support documents for evaluation of foreign parties in license applications.

(a) *Scope.* License applicants may be required to obtain support documents concerning the foreign parties and the disposition of the items intended for export, reexport, or transfer (in-country). Some support documents are issued by foreign governments, while other support documents are signed and issued by the purchaser and/or ultimate consignee. For support documents issued by foreign governments, any foreign legal restrictions or obligations exercised by the government issuing the support document are in addition to the conditions and restrictions placed on the transaction by BIS. However, the laws and regulations of the United States are in no way modified, changed, or superseded by the issuance of a support document by a foreign government.

(b) *Requirements to obtain support documents for license applications.* Unless an exception in paragraph (c) of this section applies, a support document is required for certain license applications for the People’s Republic of China (PRC) (see §§ 748.10 and 748.11(a)(2)), “600 Series Major Defense Equipment” (see § 748.11), and firearms and related commodities to member countries of the Organization of American States (see § 748.12).

Note 1 to paragraph (b): On a case-by-case basis, BIS may require license applicants to obtain a support document for any license application.

Note 2 to paragraph (b): For End-Use Certificate requirements under the Chemical Weapons Convention, see § 745.2 of the EAR.

(c) *Exceptions to requirements to obtain support documents.* (1) Even if a support document requirement is imposed by paragraph (b) of this section, no support document is required for any of the following situations:

(i) The ultimate consignee or purchaser is an “Agency of the United States Government” (see § 740.11(b)(1) for definition). If either the ultimate consignee or purchaser is not an agency of the United States government, however, a support document may still be required from the non-U.S. governmental party;

(ii) 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 in a transaction meet the definition of “foreign government agency,” refer to the definition contained in part 772 of the EAR. If either the ultimate consignee or purchaser is not a foreign government or foreign government agency, however, a support document may still be required from the nongovernmental party;

(iii) 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;

(iv) The license application is submitted for commodities for temporary exhibit, demonstration, or testing purposes;

(v) The license application is submitted for commodities controlled for short supply reasons (see part 754 of the EAR);

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

(vii) The license application is submitted for software or technology; or

(viii) The license application is submitted for encryption commodities controlled under ECCN 5A002 or 5B002.

(2) BIS will consider granting an exception to the requirement for obtaining a support document where the requirements cannot be met due to circumstances beyond the applicant's control. An exception will not be granted contrary to the objectives of the U.S. export control laws and regulations. Refer to § 748.13 of this part for specific instructions on procedures for requesting an exception.

(d) *Content of support documents.* In addition to specific requirements described for each support document in §§ 748.10, 748.11, and 748.12, the use and submission of support documents must comply with the following requirements.

(1) *English translation.* 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 the applicant to be correct. Explanations or translations should be provided on a separate piece of paper, and not entered on the support documents themselves.

(2) *Responsibility for full disclosure.* (i) The license application covering the transaction discloses all facts pertaining to the transaction. Information contained in a support document obtained after submission of a license application and not submitted to BIS as part of the application cannot be construed as extending or expanding or otherwise modifying the specific information supplied in a license application or license issued by BIS. The authorizations contained in the resulting license are not extended by information contained in the support document regarding reexport from the country of destination, transfer (in-country), or any other facts relative to the transaction that are not reported on the license application.

(ii) Misrepresentations, either through failure to disclose facts, concealing a material fact, or furnishing false information, may subject responsible parties to administrative or criminal action by BIS.

(iii) In obtaining the required support document, the applicant is not relieved of the responsibility for full disclosure of any other information concerning the ultimate destination, end use, or end user of which the applicant knows, even if inconsistent with the representations made in the applicable support document. The applicant is responsible for promptly notifying BIS of any change in the facts contained in the support document that comes to the applicant's attention.

(e) Procedures for using support document with license application.—(1) Timing for obtaining support document. When a support document is required for a license application in §§ 748.10, 748.11, and 748.12, license applicants may submit the application prior to receipt of a copy of the support document, unless BIS informs the applicant that the support document must be submitted with the application. However, if the license is granted, items authorized on the license may not be exported, reexported, or transferred (in-country) until the license holder obtains a copy of the support document.

(2) Information necessary for license application. When a support document is required for a license application, applicants should mark the appropriate box in Block 7, regardless of whether a copy of the support document is on file with the applicant at the time of submission.

(f) *Recordkeeping provisions.* License applicants must retain on file the original or a copy of any support document issued in support of a license application submitted to BIS. All recordkeeping provisions in part 762 of the EAR apply to this requirement.

(g) *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 a support document has been issued. If a support document was 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 support document 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.

(h) *Grace period for complying with requirements following regulatory change.* (1) Whenever the requirement for a PRC End-User Statement, Statement by Ultimate Consignee or Purchaser, or Firearms Convention Import Certificate 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.

(2) License applications filed during the 45-day grace period may require the submission of evidence available to the applicant that will support representations concerning the ultimate consignee, ultimate destination, and end use, such as copies of the order, letters of credit, correspondence between the applicant and ultimate consignee, or other documents received from

the ultimate consignee. If such evidence is required, applicants must also identify the regulatory change (including its effective date) that justifies exercise of the 45-day grace period.

6. Section 748.10 is revised to read as follows:

§ 748.10 People's Republic of China (PRC) End-User Statement.

(a) *Requirement to obtain document.* Unless the provisions of §§ 748.9(c) or 748.11(a)(2) apply, a PRC End-User Statement is required for license applications including any of the following commodities destined for the PRC:

(1) Cameras classified under ECCN 6A003 requiring a license to the PRC for any reason, and the value of such cameras exceeds \$5,000;

(2) Computers requiring a license to the PRC for any reason, regardless of the value of the computers; or

(3) Any commodity(ies) requiring a license to the PRC for any reason on the Commerce Control List, and the total value of such commodity(ies) requiring a license exceeds \$50,000.

Note 1 to paragraph (a): If an order meets the commodity(ies) and value requirements listed above, then a PRC End-User Statement is required. An order may not be split into multiple license applications solely to avoid a requirement to obtain a PRC End-User Statement.

Note 2 to paragraph (a): *If an order includes both items that do require a license to the PRC and items that do not require a license to the PRC, the value of the latter items should not be factored into the value thresholds described above. Also, if a license application includes 6A003 cameras and other items requiring a license to the PRC, then the value of the 6A003 cameras should be factored into the value threshold described in paragraph (a)(3).*

Note 3 to paragraph (a): *See § 748.11(a)(2) for permissive use of a Statement by Ultimate Consignee and Purchaser in place of a PRC End-User Statement.*

Note 4 to paragraph (a): *On a case-by-case basis, BIS may require license applicants to obtain a PRC End-User Statement for a license application that would not otherwise require a PRC End-User Statement under the requirements of paragraph (a) of this section.*

(b) *Obtaining the document.* (1) If a PRC End-User Statement is required for any reason under paragraph (a) of this section, then applicants must request that the importer obtain a PRC End-User Statement for all items on a license application that require a license to the PRC for any reason listed on the CCL.

(2) PRC End-User Statements are issued and administered by the Ministry of Commerce; Department of Mechanic, Electronic and High Technology Industries; Export Control Division I; Chang An Jie No. 2; Beijing 100731 China; Phone: (86)(10) 6519 7366 or 6519 7390; Fax:

(86)(10) 6519 7543; <http://zzyhzm.mofcom.gov.cn/>. See the BIS website (www.bis.doc.gov) for the current contact information.

(c) *Content of the document.* (1) The license applicant's name must appear on the PRC End-User Statement submitted to BIS as the applicant, supplier, or order party.

(2) License applicants 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 commodity, quantity and dollar value; and

(v) Signature of the importer and date.

Note to paragraph (c): *The license applicant should furnish the consignee with the commodity description contained in the CCL to be used in applying for the PRC End-User*

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

(d) Procedures for using document with license application. (1) Using a PRC End-User Statement for multiple applications. A PRC End-User Statement may cover more than one purchase order and more than one item. Where the Statement includes items for which more than one license application will be submitted, the applicant should ensure that the total quantities on the license application(s) do not exceed the total quantities shown on the PRC End-User Statement.

(2) Alterations. After a PRC End-User Statement is issued by the Government of the People's Republic of China, no corrections, additions, or alterations may be made on the certificate by any person. Any necessary corrections, additions, or alterations should be noted by the applicant in a separate statement on file with the applicant.

(3) Validity period. A PRC End-User Statement is valid until the quantities of items identified on the Statement have been shipped.

7. Section 748.11 is revised to read as follows:

§ 748.11 Statement by Ultimate Consignee and Purchaser.

(a) Requirement to obtain document. (1) General requirement for all countries excluding the People's Republic of China (PRC). Unless an exception in § 748.9(c) or paragraph (a)(3) of this section applies, a Statement by Ultimate Consignee and Purchaser is required if the license application includes “600 Series Major Defense Equipment” (600 series MDE) requiring a license for any reason on the Commerce Control List and such items are destined for a country other than the PRC.

(2) Permissive substitute of Statement by Ultimate Consignee and Purchaser in place of PRC End-User Statement. The requirement to obtain a support document for license applications involving the PRC is generally determined by § 748.10(a) of the EAR. However, a Statement by Ultimate Consignee and Purchaser may be substituted in place of a PRC End-User Statement when the commodities to be exported (i.e., replacement parts and components) are valued at \$75,000 or less and are for servicing previously exported commodities.

(3) Exception to general requirement. The general requirement described in paragraph (a)(1) of this section does not apply if 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, however, where the applicant and consignee are separate entities, such as parent and subsidiary, or affiliated or associated firms.

Note 1 to paragraph (a): *An order may not be split into multiple license applications solely to avoid a requirement to obtain a Statement by Ultimate Consignee and Purchaser.*

Note 2 to paragraph (a): On a case-by-case basis, BIS may require license applicants to obtain a Statement by Ultimate Consignee and Purchaser for a license application that would not otherwise require a Statement by Ultimate Consignee and Purchaser under the requirements of paragraph (a) of this section.

(b) *Obtaining the document.* (1) The ultimate consignee and purchaser must complete either a statement on company letterhead, or Form BIS-711, Statement by Ultimate Consignee and Purchaser, as described in paragraph (c) of this section. Unless otherwise specified, any reference in this section to “Statement by Ultimate Consignee and Purchaser” applies to both the statement on company letterhead and to Form BIS-711.

(2) 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.

(3) If the ultimate consignee and purchaser are separate entities, separate statements must be prepared and signed.

(4) If the ultimate consignee and purchaser elect to complete Form BIS-711, only one Form BIS-711 (containing the signatures of the ultimate consignee and purchaser) need be completed.

(5) Whether the ultimate consignee and purchaser sign a written statement or complete Form BIS-711, the following constraints apply:

(i) Responsible officials representing the ultimate consignee or 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.

(ii) 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 United States or in a foreign country. The official title of the person signing the statement must also be included.

(iii) 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.

(c) *Content of the document.* See Supplement No. 3 to this part for the information necessary to complete a statement on company letterhead or on Form BIS-711.

(d) *Procedures for using document with license application.*—(1) *Validity period.* (i) If a Statement by Ultimate Consignee and Purchaser is obtained prior to submission of the license application and the Statement is required to support one or more license applications, an applicant must submit the first license application within one year from the date the statement was signed.

(ii) All subsequent license applications supported by the same Statement by Ultimate Consignee and Purchaser must be submitted within four years of signature by the consignee or purchaser, whichever was last.

(2) [Reserved]

8. Section 748.12 is revised to read as follows:

§ 748.12 Firearms Convention (FC) Import Certificate.

(a) *Requirement to obtain document.* Unless an exception in § 748.9(c) applies, an FC Import Certificate is required for license applications for firearms and related commodities, regardless of value, that are destined for member countries of the Organization of American States (OAS). This requirement is consistent with the OAS Model Regulations described in § 742.17 of the EAR.

(1) *Items subject to requirement.* Firearms and related commodities are those commodities controlled for “FC Column 1” reasons under ECCNs 0A984, 0A986, or 0A987.

(2) *Countries subject to requirement.* (i) OAS member countries include: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

(ii) [Reserved]

(3) *Equivalent official document in place of FC Import Certificate.* For those OAS member countries that have not yet established or implemented an FC Import Certificate procedure, BIS will accept an equivalent official document (e.g., import license or letter of authorization) issued by the government of the importing country as supporting documentation for the export of firearms.

(b) *Obtaining the document.* (1) Applicants must request that the importer (e.g., ultimate consignee or purchaser) obtain the FC Import Certificate or an equivalent official document from the government of the importing country, and that it be issued covering the quantities and types of firearms and related items that the applicant intends to export. (See Supplement No. 6 to this part for a list of the OAS member countries’ authorities administering the FC Import Certificate

System.) Upon receipt of the FC Import Certificate, its official equivalent, or a copy, the importer must provide the original or a certified copy of the FC Import Certificate or the original or a certified copy of the equivalent official document to the license applicant.

(2) If the government of the importing country will not issue an FC Import Certificate or its official equivalent, the applicant must supply the information described in paragraphs (c)(1) and (c)(6) through (c)(8) of this section on company letterhead.

(c) *Content of the document.* The FC Import Certificate or its official equivalent must contain the following information:

(1) Applicant's name and address. The applicant may be either the exporter, supplier, or order party.

(2) FC Import Certificate Identifier/Number.

(3) Name of the country issuing the certificate or unique country code.

(4) Date the FC Import Certificate was issued, in international date format (e.g., 24/12/12 for 24 December 2012, or 3/1/99 for 3 January 1999).

(5) Name of the agency issuing the certificate, address, telephone and facsimile numbers, signing officer name, and signature.

(6) Name of the importer, address, telephone and facsimile numbers, country of residence, representative's name if commercial or government body, citizenship, and signature.

(7) Name of the end user(s), if known and different from the importer, address, telephone and facsimile numbers, country of residence, representative's name if commercial (authorized distributor or reseller) or government body, citizenship, and signature. Note that BIS does not require the identification of each end user when the firearms and related commodities will be resold by a distributor or reseller if unknown at the time of export.

(8) Description of the commodities approved for import including a technical description and total quantity of firearms, parts and components, ammunition and parts.

Note to paragraph (c)(8): You must furnish the consignee with a detailed technical description of each commodity to be given to the government for its use in issuing the FC Import Certificate. For example, for shotguns, provide the type, barrel length, overall length, number of shots, the manufacturer's name, the country of manufacture, and the serial number for each shotgun. For ammunition, provide the caliber, velocity and force, type of bullet, manufacturer's name and country of manufacture.

(9) Expiration date of the FC Import Certificate in international date format (e.g., 24/12/12) or the date the items must be imported, whichever is earlier.

(10) Name of the country of export (i.e., United States).

(11) Additional information. Certain countries may require the tariff classification number, by class, under the Brussels Convention (Harmonized Tariff Code) or the specific technical description of a commodity. For example, shotguns may need to be described in barrel length, overall length, number of shots, manufacturer's name and country of manufacture. The technical description is not the Export Control Classification Number (ECCN).

(d) *Procedures for using document with license application.*—(1) *Information necessary for license application.* The license application must include the same commodities as those listed on the FC Import Certificate or the equivalent official document.

(2) *Alterations.* After an FC Import Certificate or equivalent official document is used to support the issuance of a license, no corrections, additions, or alterations may be made on the FC Import Certificate by any person. Any necessary corrections, additions, or alterations should be noted by the applicant in a separate statement on file with the applicant.

(3) *Validity period.* FC Import Certificates or equivalent official documents issued by an OAS member country will be valid until the expiration date on the Certificate or for a period of four years, whichever is shorter.

9. Section 748.13 is revised to read as follows:

§ 748.13 Granting of exceptions to the support documentation requirements.

(a) *Overview.* A request for 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.

(b) *Procedure for requesting an exception.* The request for an exception must be submitted with the license application to which the request relates, and the reason(s) for requesting the exception must be described in Block 24 or referred to in Block 24. 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.

(c) *Action by BIS.—(1) 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 the applicant.

(2) *Multiple transactions request.* Where multiple transactions are involved, BIS will advise the applicant of the action taken on the exception request. The response from BIS 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.

§ 748.14 [Removed and reserved]

10. Section 748.14 is removed and reserved.

11. Supplement No. 3 to part 748 is revised to read as follows:

**SUPPLEMENT NO. 3 TO PART 748 – STATEMENT BY ULTIMATE CONSIGNEE
AND PURCHASER CONTENT REQUIREMENTS**

If a statement on company letterhead will be used to meet the requirement to obtain a Statement by Ultimate Consignee and Purchaser, as described in § 748.11(a), follow the requirements described in paragraph (a) of this appendix. If Form BIS-711 will be used to meet the requirement, follow the requirements described in paragraph (b) of this appendix.

(a) *Statement on company 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 four 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 or transfer (in country) the items in the form in which received even though we may have indicated the intention to reexport or transfer (in country), and that authorization to reexport (or transfer in country) 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.

(b) *Form BIS-711*. Form BIS-711 is available at

[http://www.bis.doc.gov/index.php/component/rsform/form/21-request-bis-](http://www.bis.doc.gov/index.php/component/rsform/form/21-request-bis-forms?task=forms.edit)

[forms?task=forms.edit](http://www.bis.doc.gov/index.php/component/rsform/form/21-request-bis-forms?task=forms.edit). Instructions on completing Form BIS-711 are described below. The ultimate consignee and purchaser may sign a legible copy of Form BIS-711. It is not necessary to require the ultimate consignee and purchaser to sign an original Form BIS-711, provided all information contained on the copy is legible. All information must be typed or legibly printed in each appropriate Block or Box.

(1) Block 1: Ultimate Consignee. The Ultimate Consignee must be the person abroad who is actually to receive the material for the disposition stated in Block 2. A bank, freight forwarder, forwarding agent, or other intermediary is not acceptable as the Ultimate Consignee.

(2) Block 2: Disposition or Use of Items by Ultimate Consignee named in Block 1. Place an (X) in “A.,” “B.,” “C.,” “D.,” and “E.,” as appropriate, and fill in the required information.

(3) Block 3: Nature of Business of Ultimate Consignee named in Block 1. Complete both “A” and “B”. Possible choices for “A” include: broker, distributor, fabricator, manufacturer, wholesaler, retailer, value added reseller, original equipment manufacturer, etc. Possible choices for “B” include: contractual, franchise, distributor, wholesaler, continuing and regular individual business, etc.

(4) Block 4: Additional Information. Provide any other information not appearing elsewhere on the form such as other parties to the transaction, and any other material facts that may be of value in considering license applications supported by this statement.

(5) Block 5: Assistance in Preparing Statement. Name all persons, other than employees of the ultimate consignee or purchaser, who assisted in the preparation of this form.

(6) Block 6: Ultimate Consignee. Enter the requested information and sign the statement in ink. (For a definition of ultimate consignee, see §748.5(e) of this part.)

(7) Block 7: Purchaser. This form must be signed in ink by the Purchaser, if the Purchaser is not the same as the Ultimate Consignee identified in Block 1. (For a definition of purchaser, see §748.5(c) of this part.)

(8) Block 8: Certification for Exporter. This Block must be completed to certify that no correction, addition, or alteration on this form was made subsequent to the signing by the Ultimate Consignee in Block 6 and Purchaser in Block 7.

Supplement No. 4 to part 748 [Removed and reserved]

12. Supplement No. 4 to part 748 is removed and reserved.

PART 762 – [AMENDED]

13. The authority citation for part 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

14. Section 762.2 is amended by:

a. Revising paragraphs (b)(22) and (b)(24); and

b. Removing and reserving paragraph (b)(25), to read as follows:

§ 762.2 Records to be retained.

(b) ***

(22) § 748.10, PRC End-User Statement;

(24) § 748.12, Firearms Convention (FC) Import Certificate;

(25) [Reserved]

Dated: March 5, 2015.

Kevin J. Wolf

Assistant Secretary of Commerce for Export Administration

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