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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 738, 740, 742, 745 and 774

[Docket No. 041221359-4359-01]

RIN 0694-AD25

#### Implementation of the Understandings Reached at the June 2004 Australia Group (AG) Plenary Meeting and Through a Subsequent AG Intersessional Decision; Clarifications to the Scope of ECCNs 1A004, 1A995, and 2B351; Corrections to Country Group D and ECCNs 1C355, 1C395, and 1C995; Additions to the List of States Parties to the Chemical Weapons Convention

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

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is publishing this final rule to amend the Export Administration Regulations (EAR) to implement the understandings reached at the June 2004 plenary meeting of the Australia Group (AG) and through a subsequent AG intersessional decision. Specifically, this final rule amends the EAR by adding three new bacteria and two new viruses to the list of AG-controlled plant pathogens described on the Commerce Control List (CCL). In addition, this rule amends the EAR to indicate that certain medical products identified on the CCL, which contain AG-controlled conotoxins, no longer require a license for chemical/biological (CB) reasons. The AG-related licensing policies in the EAR are amended by adding a new criterion to the list of factors that BIS will consider when determining what action should be taken on license applications for AG-listed items. This rule also amends the EAR to reflect the addition of five new member countries to the Australia Group. This rule corrects an inadvertent omission from a previous AG plenary rule (published on May 31, 2002) by removing Bulgaria from the EAR list of countries of concern for chemical and biological reasons. This rule also

amends the EAR to implement an AG intersessional decision, which was adopted after the June 2004 AG plenary meeting, by adding nine precursor chemicals to the list of AG-controlled precursor chemicals described on the CCL.

In addition to the amendments to the EAR resulting from the AG understandings described above, this rule amends the EAR by revising a CCL entry containing protective and detection equipment identified on the Wassenaar Arrangement dual-use list to indicate that chemical/biological (CB) controls in the EAR apply to certain chemical detection systems and dedicated detectors therefor, described in that entry, because such systems and detectors also are included on the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology." A related AG entry on the CCL is revised to indicate that it does not control any of the chemical detection systems described in the Wassenaar list entry, thereby eliminating any appearance of an overlap between the two CCL entries.

This rule also amends three CCL entries, which control certain precursor chemicals and/or mixtures and test kits containing such chemicals, to restore the text of the license requirements notes that were inadvertently omitted from these ECCNs in a rule that BIS published on July 30, 2004.

Finally, this rule updates the list of countries that currently are States Parties to the Chemical Weapons Convention (CWC) by adding seven countries that recently became States Parties.

**DATES:** This rule is effective December 29, 2004.

**ADDRESSES:** Written comments should be addressed to Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, e-mailed to [wfisher@bis.doc.gov](mailto:wfisher@bis.doc.gov), or faxed to (202) 482-3355.

**FOR FURTHER INFORMATION CONTACT:** Douglas Brown, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, telephone: (202) 482-7900.

**SUPPLEMENTARY INFORMATION:**

## Background

### A. Revisions to the EAR Based on Understandings Reached at the June 2004 Plenary Meeting of the Australia Group and Through a Subsequent AG Intersessional Decision

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the understandings reached at, and subsequent to, the annual plenary meeting of the Australia Group (AG) that was held in Paris on June 7-10, 2004. The Australia Group is a multilateral forum, consisting of 38 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

The understandings reached at the June 2004 plenary meeting included a decision to add five pathogens to the AG "List of Plant Pathogens for Export Controls." This final rule implements these changes by amending the EAR to add three bacteria and two viruses to the AG list of plant pathogens described in Export Control Classification Number (ECCN) 1C354 on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR).

Specifically, this rule adds the following three bacteria to the AG-listed plant pathogens described in ECCN 1C354.a on the CCL: *Xanthomonas oryzae* pv. *oryzae* (syn. *Pseudomonas campestris* pv. *oryzae*), *Clavibacter michiganensis* subspecies *sepedonicus* (syn. *Corynebacterium michiganensis* subspecies *sepedonicum* or *Corynebacterium sepedonicum*), and *Ralstonia solanacearum* Races 2 and 3 (syn. *Pseudomonas solanacearum* Races 2 and 3 or *Burkholderia solanacearum* Races 2 and 3). In addition, this rule amends ECCN 1C354 by adding a new 1C354.c that controls the following two viruses: Potato Andean latent tymovirus and Potato spindle tuber viroid. These AG-listed bacteria and viruses, along with all other items controlled by ECCN 1C354, require a license for export or reexport to all destinations, worldwide.

Another understanding reached at the June 2004 AG plenary meeting was the removal of certain medical products containing conotoxins from the AG list of biological agents (*i.e.*, human and zoonotic pathogens and toxins). This rule amends the EAR to implement this understanding by revising ECCN

1C991.c to control medical products, as defined in that ECCN, that contain conotoxins controlled by ECCN 1C351.d.3–1C991.c also controls medical products that contain botulinum toxins controlled by 1C351.d.1. This rule also makes a conforming change to ECCN 1C991.d to indicate that 1C991.d no longer controls medical products containing conotoxins. As a result of the changes made by this rule, medical products containing conotoxins no longer require a license to those countries indicated under CB Column 3 on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). However, such medical products continue to require a license to certain destinations for anti-terrorism (AT) reasons.

The understandings reached at the June 2004 plenary meeting also included the addition of a new licensing factor to the AG “Guidelines for Transfers of Sensitive Chemical or Biological Items” (Guidelines). This new factor requires that, when evaluating export license applications for AG-listed items, the export licensing authorities of AG participating countries must take into consideration the extent and effectiveness of the export control system in the importing country and in any intermediary country through which the items being exported or reexported will transit or be transhipped en route to the importing country. This rule revises the AG-related licensing policies in the EAR to conform with this new requirement by amending Section 742.2(b)(2) of the EAR to include the new licensing factor in the list of factors that BIS will consider when determining what action should be taken on license applications to export or reexport AG-listed items identified on the Commerce Control List (CCL).

In addition, this rule amends the EAR to add Estonia, Latvia, Lithuania, Malta, and Slovenia as the newest participating countries in the Australia Group (which now includes a total of 38 countries). Supplement No. 1 to Part 740 (Country Groups) is revised to add these five countries to Country Group A:3 (Australia Group) and Supplement No. 1 to Part 738 (Commerce Country Chart) is revised to remove the licensing requirements for these countries under CB Column 2, in conformance with the licensing policy that applies to other AG participating countries.

Finally, this rule amends the EAR to implement an AG intersessional decision, which was adopted after the June 2004 AG plenary meeting, by adding nine precursor chemicals to the list of AG-controlled precursor

chemicals described in Export Control Classification Number (ECCN) 1C350 on the Commerce Control List (CCL). Specifically, this rule adds four precursor chemicals (Methylphosphonic acid; Diethyl methylphosphonate; N,N-dimethylamino-phosphoryl dichloride; and Methylphosphonothioic dichloride) to ECCN 1C350.b and one precursor chemical (Ethyl-diethanolamine) to ECCN 1C350.c, which describe dual-use AG-listed precursor chemicals also identified as Schedule 2 chemicals and Schedule 3 chemicals, respectively, under the Chemical Weapons Convention (CWC). This rule also adds the following four precursor chemicals to the list of chemicals in ECCN 1C350.d that may be used as precursors to toxic chemical agents: Tri-isopropyl phosphite; O,O-diethyl phosphorothioate; O,O-diethyl phosphorodithioate; and Sodium hexafluorosilicate.

#### *B. Clarification of Controls on Chemical Detection Equipment in ECCNs 1A004, 1A995, and 2B351*

This final rule amends ECCNs 1A004 and 2B351 on the Commerce Control List (CCL) to clarify the scope of these ECCNs and to provide an accurate description of the items in each entry that are subject to the chemical/biological (CB) controls in the EAR that apply to the toxic gas monitoring systems included on the Australia Group (AG) “Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology.”

Specifically, this rule amends ECCN 1A004 on the CCL by revising the License Requirements section of the ECCN to add a chemical/biological (CB) reason for control paragraph, which indicates that CB controls apply to chemical detection systems and certain components thereof (*i.e.*, dedicated detectors), in 1A004.c, that also have the technical characteristics described in ECCN 2B351.a. A license is required, for CB reasons, to export or reexport such systems and detectors to destinations indicated under CB Column 3 on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). These systems and detectors in 1A004.c also require a license for national security (NS) and anti-terrorism (AT) reasons to destinations indicated under NS Column 2 and AT Column 1, respectively, on the Commerce Country Chart.

In addition, this rule amends ECCN 2B351 by revising the heading of the entry to indicate that this ECCN does not control toxic gas monitoring systems and dedicated detectors therefor that are controlled under ECCN 1A004.c. This

change, coupled with the addition of a CB Reason for Control paragraph in the License Requirements section of ECCN 1A004, means that toxic gas monitoring systems and dedicated detectors therefor that have the technical characteristics of both 1A004.c and 2B351.a are now controlled under ECCN 1A004 for NS, CB, and AT reasons. ECCN 2B351 controls toxic gas monitoring systems, and dedicated detectors therefor, that are not controlled by ECCN 1A004.c and that have the technical characteristics described in 2B351.a.

This rule also revises the Related Controls paragraph in the List of Items Controlled section of ECCN 2B351 to provide more specific references to the chemical detection systems that are controlled under related ECCNs 1A004 and 1A995. To further clarify the relationship between ECCNs 2B351 and 1A995, this rule revises the heading of ECCN 1A995 to indicate that 1A995 controls certain detection equipment not controlled under ECCN 2B351.

Finally, this rule revises Section 742.2(a)(3)(i) to include a reference to the chemical detection systems in ECCN 1A004.c that are controlled for CB reasons and require a license to destinations and countries indicated under CB Column 3 on the Commerce Country Chart.

#### *C. Correction to Country Group D (Supplement No. 1 to Part 740—Country Groups)*

This rule also makes a correction, in Country Group D of Supplement No. 1 to Part 740 (Country Groups), by removing the “X” under the column labeled “[D:3] Chemical & Biological” in the entry for Bulgaria. Bulgaria was admitted to the Australia Group in 2001. A final rule published by BIS on May 31, 2002 (67 FR 37977) added Bulgaria to Country Group A:3 (Australia Group) and removed the licensing requirements for Bulgaria, under CB Column 2 and CB Column 3 of the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR), in conformance with the licensing policy that applies to other AG participating countries. However, the rule did not remove Bulgaria from Country Group D:3 (*i.e.*, countries of concern for chemical and biological reasons). This final rule corrects that oversight.

#### *D. Corrections to ECCNs 1C355, 1C395, and 1C995*

This rule amends ECCNs 1C355, 1C395, and 1C995 (which control certain chemical precursors and/or mixtures and test kits containing precursor chemicals) to restore the

license requirements notes in each ECCN that were inadvertently removed by an interim final rule that BIS published in the **Federal Register** on July 30, 2004 (69 FR 46069). The July 30th rule revised the License Requirements section in ECCNs 1C355 and 1C395, by removing anti-terrorism (AT) controls for exports and reexports to Iraq, and also revised the language in the AT controls paragraph of ECCN 1C995, which retained AT controls on Iraq. These revisions to the License Requirements section in ECCNs 1C355, 1C395, and 1C995, which were intended to affect only the language in the anti-terrorism (AT) controls paragraphs, inadvertently omitted the text of the existing license requirements notes for these ECCNs.

*E. Revisions to the EAR Based on the Addition of New States Parties to the Chemical Weapons Convention (CWC)*

This rule revises Supplement No. 2 to Part 745 of the EAR (titled "States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction") by adding the names of seven countries that recently have become States Parties to the CWC (*i.e.*, Chad, Madagascar, Marshall Islands, Rwanda, Saint Kitts and Nevis, Sierra Leone, and Solomon Islands).

**Savings Clause**

Exports and reexports that did not require a license or that were eligible for a License Exception prior to publication of this rule and for which this rule imposes a new license requirement or removes that License Exception availability may be made without a license or under that License Exception if the items being exported or reexported were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export or reexport, on or before January 13, 2005, and exported or reexported January 28, 2005. Any such exports or reexports not meeting those deadlines require a license in accordance with this regulation.

**Rulemaking Requirements**

1. 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 shall any person be 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 Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694-0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal

comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

**List of Subjects**

*15 CFR Part 738*

Administrative practice and procedure, Exports, Foreign trade.

*15 CFR Part 740*

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

*15 CFR Part 742*

Exports, Foreign trade.

*15 CFR Part 745*

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Part 774*

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, Parts 738, 740, 742, 745 and 774 of the Export Administration Regulations (15 CFR Parts 730-799) are amended as follows:

**PART 738—[AMENDED]**

■ 1. The authority citation for 15 CFR Part 738 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; 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 6, 2004, 69 FR 48763 (August 10, 2004).

■ 2. Supplement No. 1 to Part 738 is amended by revising the entries for "Estonia", "Latvia", "Lithuania", "Malta", and "Slovenia" to read as follows:

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART  
[Reason for control]

Countries	Chemical & biological weapons			Nuclear nonproliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB1	CB2	CB3	NP1	NP2	NS1	NS2	MT1	RS1	RS2	FC1	CC1	CC2	CC3	AT1	AT2
Estonia	X		*	X		X	X	X	X			*				*
Latvia	X		*			X	X	X	X			*				*
Lithuania	X		*	X		X	X	X	X			*				*
Malta	X		*	X		X	X	X	X	X		X		X		*
Slovenia	X		*			X	X	X	X			*				*
			*			*		*			*					*

**PART 740—[AMENDED]**

■ 3. The authority citation for 15 CFR part 740 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L.

106–387; 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 6, 2004, 69 FR 48763 (August 10, 2004).

■ 4. In Supplement No. 1 to Part 740, Country Groups, Country Group A is

amended by adding, in alphabetical order, new entries for “Estonia”, “Lithuania”, and “Malta” and by revising the entries for “Latvia” and “Slovenia” to read as follows:

SUPPLEMENT NO. 1 TO PART 740—COUNTRY GROUPS  
[Country Group A]

Country	[A:1]	Missile technology control regime [A:2]	Australia group [A:3]	Nuclear suppliers group [A:4]
Estonia	*	*	X	*
Latvia	*	*	X	X
Lithuania	*	*	X	*
Malta	*	*	X	*
Slovenia	*	*	X	X
	*	*	*	*

■ 5. In Supplement No. 1 to Part 740, Country Groups, Country Group D is amended by removing the “X” under the column labeled “[D:3] Chemical & Biological” in the entry for Bulgaria.

**PART 742—[AMENDED]**

■ 6. The authority citation for 15 CFR Part 742 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; 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 October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 7. Section 742.2 is amended by revising paragraph (a)(3)(i), by redesignating paragraphs (b)(2)(iv) through (b)(2)(ix) as paragraphs (b)(2)(v)

through (b)(2)(x), respectively, and by adding a new paragraph (b)(2)(iv) to read as follows:

**§ 742.2 Proliferation of chemical and biological weapons.**

(a) \* \* \*

(3) \* \* \*

(i) Equipment and materials identified in ECCN 2B350 or 2B351 on the CCL, chemical detection systems controlled by 1A004.c for detecting chemical warfare agents and having the characteristics of toxic gas monitoring systems described in 2B351.a, and valves controlled by ECCN 2A226 or ECCN 2A292 having the characteristics of those described in 2B350.g, which can be used in the production of chemical weapons precursors or chemical warfare agents.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) The extent and effectiveness of the export control system in the importing country and in any intermediary country through which the items being exported or reexported will transit or be transhipped en route to the importing country;

\* \* \* \* \*

**PART 745—[AMENDED]**

■ 8. The authority citation for 15 CFR Part 745 is revised to read as follows:

**Authority:** 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347.

■ 9. Supplement No. 2 to Part 745 is amended by revising the undesignated center heading “List of States Parties as of March 1, 2004” to read “List of States Parties as of December 1, 2004” and by adding, in alphabetical order, the countries “Chad”, “Madagascar”, “Marshall Islands”, “Rwanda”, “Saint Kitts and Nevis”, “Sierra Leone”, and “Solomon Islands”.

**PART 774—[AMENDED]**

■ 10. The authority citation for 15 CFR Part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; 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 6, 2004, 69 FR 48763 (August 10, 2004).

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—“Materials, Chemicals, ‘Microorganisms’ & ‘Toxins’”, ECCN 1A004 is amended by revising the License Requirements section of the ECCN to read as follows:

1A004 Protective and detection equipment and components not specially designed for military use as follows (see List of Items Controlled).

**License Requirements**

*Reason for Control:* NS, CB, AT

<i>Control(s)</i>	<i>Country Chart</i>
NS applies to entire entry ..... CB applies to chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristics described in 2B351.a.	NS Column 2. CB Column 3.
AT applies to entire entry .....	AT Column 1.

\* \* \* \* \*

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—“Materials, Chemicals, ‘Microorganisms’ & ‘Toxins’”, the heading of ECCN 1A995 is revised to read as follows:

1A995 Protective and detection equipment and components not specially designed for military use and not controlled by ECCN 1A004 or ECCN 2B351, as follows (see List of Items Controlled).

\* \* \* \* \*

■ 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—“Materials, Chemicals, ‘Microorganisms’ & ‘Toxins’”, ECCN 1C350 is amended by revising the List of Items Controlled to read as follows:

1C350 Chemicals that may be used as precursors for toxic chemical agents.

\* \* \* \* \*

**List of Items Controlled**

*Unit:* Liters or kilograms, as appropriate.

*Related Controls:* The chemicals 0-Ethyl-2-diisopropylaminoethyl methyl phosphonite (QL) (C.A.S. #57856–11–8); Ethyl phosphonyl difluoride (C.A.S. #753–98–0); and Methyl phosphonyl difluoride (C.A.S. #676–99–3); methylphosphinyl dichloride (C.A.S. 676–83–5); methylphosphinyl difluoride (C.A.S. #753–59–3); and methylphosphonyl dichloride (C.A.S. #676–97–1) are subject to the licensing jurisdiction of the Directorate of Defense Trade Controls, U.S. Department of State.

*Related Definitions:* See § 770.2(k) of the EAR for synonyms for the chemicals listed in this entry.

*Items*

- a. [RESERVED]
- b. Australia Group-controlled precursor chemicals also identified as Schedule 2 chemicals under the CWC, as follows, and mixtures in which at least one of the following chemicals constitutes 30 percent or more of the weight of the mixture:
  - b.1. (C.A.S. #7784–34–1) Arsenic trichloride;
  - b.2. (C.A.S. #76–93–7) Benzilic acid;
  - b.3. (C.A.S. #78–38–6) Diethyl ethylphosphonate;
  - b.4. (C.A.S. #15715–41–0) Diethyl methylphosphonite;
  - b.5. (C.A.S. #2404–03–7) Diethyl-N,N-dimethylphosphoroamide;
  - b.6. (C.A.S. #5842–07–9) N,N-Diisopropyl-beta-aminoethane thiol;
  - b.7. (C.A.S. #4261–68–1) N,N-Diisopropyl-beta-aminoethyl chloride hydrochloride;
  - b.8. (C.A.S. #96–80–0) N,N-Diisopropyl-beta-aminoethanol;
  - b.9. (C.A.S. #96–79–7), N,N-Diisopropyl-beta-aminoethyl chloride;
  - b.10. (C.A.S. #6163–75–3) Dimethyl ethylphosphonate;
  - b.11. (C.A.S. #756–79–6) Dimethyl methylphosphonate;
  - b.12. (C.A.S. #1498–40–4) Ethyl phosphonous dichloride [Ethyl phosphinyl dichloride];
  - b.13. (C.A.S. #430–78–4) Ethyl phosphonous difluoride [Ethyl phosphinyl difluoride];
  - b.14. (C.A.S. #1066–50–8) Ethyl phosphonyl dichloride;
  - b.15. [RESERVED]
  - b.16. [RESERVED]
  - b.17. [RESERVED]
  - b.18. (C.A.S. #464–07–3) Pinacolyl alcohol;
  - b.19. (C.A.S. #1619–34–7) 3-Quinuclidinol;
  - b.20. (C.A.S. #111–48–8) Thiodiglycol;
  - b.21. (C.A.S. #993–13–5) Methylphosphonic acid;
  - b.22. (C.A.S. #683–08–9) Diethyl methylphosphonate;
  - b.23. (C.A.S. #667–43–0) N,N-dimethylamino-phosphoryl dichloride;
  - b.24. (C.A.S. #676–98–2) Methylphosphonothioic dichloride.
- c. Australia Group-controlled precursor chemicals also identified as Schedule 3 chemicals under the CWC, as follows, and mixtures in which at least one of the following chemicals constitutes 30 percent or more of the weight of the mixture:
  - c.1. (C.A.S. #762–04–9) Diethyl phosphite;
  - c.2. (C.A.S. #868–85–9) Dimethyl phosphite (dimethyl hydrogen phosphite);
  - c.3. (C.A.S. #10025–87–3) Phosphorus oxychloride;
  - c.4. (C.A.S. #10026–13–8) Phosphorus pentachloride;
  - c.5. (C.A.S. #7719–12–2) Phosphorus trichloride;
  - c.6. (C.A.S. #10025–67–9) Sulfur monochloride;
  - c.7. (C.A.S. #10545–99–0) Sulfur dichloride;
  - c.8. (C.A.S. #7719–09–7) Thionyl chloride;
  - c.9. (C.A.S. #102–71–6) Triethanolamine;
  - c.10. (C.A.S. #122–52–1) Triethyl phosphite;
  - c.11. (C.A.S. #121–45–9) Trimethyl phosphite;
  - c.12. (C.A.S. #139–87–7) Ethyldiethanolamine.

d. Other Australia Group-controlled precursor chemicals not also identified as Schedule 1, 2, or 3 chemicals under the CWC, as follows, and mixtures in which at least one of the following chemicals constitutes 30 percent or more of the weight of the mixture:

- d.1. (C.A.S. #1341-49-7) Ammonium hydrogen fluoride;
- d.2. (C.A.S. #107-07-3) 2-Chloroethanol;
- d.3. (C.A.S. #100-37-8) N,N-Diethylaminoethanol;
- d.4. (C.A.S. #108-18-9) Di-isopropylamine;
- d.5. (C.A.S. #124-40-3) Dimethylamine;
- d.6. (C.A.S. #506-59-2) Dimethylamine hydrochloride;
- d.7. (C.A.S. #7664-39-3) Hydrogen fluoride;
- d.8. (C.A.S. #3554-74-3) 3-Hydroxyl-1-methylpiperidine;
- d.9. (C.A.S. #76-89-1) Methyl benzilate;
- d.10. (C.A.S. #1314-80-3) Phosphorus pentasulfide;
- d.11. (C.A.S. #75-97-8) Pinacolone;
- d.12. (C.A.S. #151-50-8) Potassium cyanide;
- d.13. (C.A.S. #7789-23-3) Potassium fluoride;
- d.14. (C.A.S. #7789-29-9) Potassium bifluoride;
- d.15. (C.A.S. #3731-38-2) 3-Quinuclidone;
- d.16. (C.A.S. #1333-83-1) Sodium bifluoride;
- d.17. (C.A.S. #143-33-9) Sodium cyanide;
- d.18. (C.A.S. #7681-49-4) Sodium fluoride;
- d.19. (C.A.S. #1313-82-2) Sodium sulfide;
- d.20. (C.A.S. #637-39-8) Triethanolamine hydrochloride;
- d.21. (C.A.S. #116-17-6) Tri-isopropyl phosphite;
- d.22. (C.A.S. #2465-65-8) O,O-diethyl phosphorothioate;
- d.23. (C.A.S. #298-06-6) O,O-diethyl phosphorodithioate;
- d.24. (C.A.S. #16893-85-9) Sodium hexafluorosilicate.

■ 14. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms” & “Toxins,” ECCN 1C354 is amended by revising the List of Items Controlled to read as follows:

1C354 Plant pathogens, as follows (see List of Items Controlled).

\* \* \* \* \*

#### List of Items Controlled

Unit: \$ Value.

Related Controls: All vaccines are excluded from the scope of this entry. See ECCN 1C991.

Related Definitions: N/A

#### Items

a. Bacteria, as follows:

- a.1. *Xanthomonas albilineans*;
- a.2. *Xanthomonas campestris* pv. *citri* including strains referred to as *Xanthomonas campestris* pv. *citri* types A,B,C,D,E or otherwise classified as *Xanthomonas citri*, *Xanthomonas campestris* pv. *aurantifolia* or *Xanthomonas campestris* pv. *citrumelo*;
- a.3. *Xanthomonas oryzae* pv. *oryzae* (syn. *Pseudomonas campestris* pv. *oryzae*);
- a.4. *Clavibacter michiganensis* subspecies *sepedonicus* (syn. *Corynebacterium*

*michiganensis* subspecies *sepedonicum* or *Corynebacterium sepedonicum*);

- a.5. *Ralstonia solanacearum* Races 2 and 3 (syn. *Pseudomonas solanacearum* Races 2 and 3 or *Burkholderia solanacearum* Races 2 and 3);
- b. Fungi, as follows:
  - b.1. *Colletotrichum coffeanum* var. *virulans* (*Colletotrichum kahawae*);
  - b.2. *Cochliobolus miyabeanus* (*Helminthosporium oryzae*);
  - b.3. *Microcyclus ulei* (syn. *Dothidella ulei*);
  - b.4. *Puccinia graminis* (syn. *Puccinia graminis* f. sp. *tritici*);
  - b.5. *Puccinia striiformis* (syn. *Puccinia glumarum*);
  - b.6. *Magnaporthe grisea* (*pyricularia grisea*/ *pyricularia oryzae*);
- c. Viruses, as follows:
  - c.1. Potato Andean latent tymovirus;
  - c.2. Potato spindle tuber viroid.

■ 15. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms” & “Toxins,” ECCN 1C355 is amended by revising the License Requirements section to read as follows:

1C355 Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals and families of chemicals not controlled by ECCN 1C350 or by the Department of State under the ITAR.

#### License Requirements

Reason for Control: CW, AT

#### Control(s)

CW applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required to export or reexport CWC Schedule 2 chemicals and mixtures identified in 1C355.a to States not Party to the CWC (*i.e.*, destinations *not* listed in Supplement No. 2 to part 745 of the EAR). A license is required to export CWC Schedule 3 chemicals and mixtures identified in 1C355.b to States not Party to the CWC, unless an End-Use Certificate issued by the government of the importing country is obtained by the exporter, prior to export. A license is required to reexport CWC Schedule 3 chemicals and mixtures identified in 1C355.b from a State not Party to the CWC (to any other State not Party to the CWC. (See § 742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons.)

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C355. A license is required, for AT reasons, to export or reexport items controlled by 1C355 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, Libya, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba and Iran. See Supplement No. 1 to part 736 of the EAR for export controls on Syria.)

#### License Requirements Notes

1. *Mixtures*: a. Mixtures containing toxic and precursor chemicals identified in ECCN 1C355, in concentrations that are below the control levels indicated in 1C355.a and .b, are controlled by ECCN 1C995 and are subject to the license requirements specified in that ECCN.

b. Mixtures containing chemicals identified in this entry are not controlled by ECCN 1C355 when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use or packaged for individual use. Such consumer goods are classified as EAR99.

**Note to mixtures:** Calculation of concentrations of CW-controlled chemicals: a. *Exclusion*. No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. *Percent Weight Calculation*. When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents.

2. *Compounds*: Compounds created with any chemicals identified in this ECCN 1C355 may be shipped NLR (No License Required), without obtaining an End-Use Certificate, unless those compounds are also identified in this entry or require a license for reasons set forth elsewhere in the EAR.

*Technical Notes*: For purposes of this entry, a “mixture” is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

\* \* \* \* \*

■ 16. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms” & “Toxins,” ECCN 1C395 is amended by revising the License Requirements section to read as follows:

1C395 Mixtures and medical, analytical, diagnostic, and food testing kits not controlled by ECCN 1C350, as follows (See List of Items Controlled).

#### License Requirements

Reason for Control: CB, CW, AT

#### Control(s)

CB applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CB reasons in 1C395. A license is required, for CB reasons, to export or reexport mixtures controlled by 1C395.a and test kits controlled by 1C395.b to States not Party to the CWC (*i.e.*, destinations not listed in Supplement No. 2 to part 745 of the EAR).

CW applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required for CW reasons, as follows, to States not Party to the CWC (*i.e.*, destinations not listed in Supplement No. 2 to part 745 of the EAR): (1) Exports and reexports of mixtures controlled by 1C395.a, (2) exports and reexports of test kits controlled by 1C395.b

that contain CWC Schedule 2 chemicals controlled by ECCN 1C350, (3) exports of test kits controlled by 1C395.b that contain CWC Schedule 3 chemicals controlled by ECCN 1C350, except that a license is not required, for CW reasons, to export test kits containing CWC Schedule 3 chemicals if an End-Use Certificate issued by the government of the importing country is obtained by the exporter prior to export, and (4) reexports from States not Party to the CWC of test kits controlled by 1C395.b that contain CWC Schedule 3 chemicals. (See § 742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons.)

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C395. A license is required, for AT reasons, to export or reexport items controlled by 1C395 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, Libya, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba and Iran. See Supplement No. 1 to part 736 of the EAR for information on export controls that apply to Syria.)

**License Requirements Notes**

1. 1C395.b does not control mixtures that contain precursor chemicals identified in ECCN 1C350.b or .c in concentrations below the control levels for mixtures indicated in 1C350.b or .c. 1C395.a and 1C995.a.1 and a.2.a control such mixtures, unless they are consumer goods, as described in License Requirements Note 2 of this ECCN.

2. This ECCN does not control mixtures when the controlled chemicals are normal ingredients in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

\* \* \* \* \*

■ 17. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms” & “Toxins,” ECCN 1C991 is amended by revising the List of Items Controlled to read as follows:

1C991 Vaccines, immunotoxins, medical products, diagnostic and food testing kits, as follows (see List of Items Controlled).

\* \* \* \* \*

**List of Items Controlled**

Unit: \$ value.

Related Controls: Medical products containing ricin or saxitoxin, as follows, are controlled for CW reasons under ECCN 1C351:

- (1) Ricinus Communis Agglutinin<sub>II</sub> (RCA<sub>II</sub>), also known as ricin D, or Ricinus Communis Lectin<sub>III</sub> (RCL<sub>III</sub>);
- (2) Ricinus Communis Lectin<sub>IV</sub> (RCL<sub>IV</sub>), also known as ricin E; or
- (3) Saxitoxin identified by C.A.S. #35523–89–8.

**Related Definitions:** For the purpose of this entry, “immunotoxin” is defined as an antibody-toxin conjugate intended to destroy specific target cells (e.g., tumor cells) that bear antigens homologous to the antibody. For the purpose of this entry, “medical products” are: (1) Pharmaceutical formulations designed for human administration in the treatment of medical conditions, (2) prepackaged for distribution as medical products, and (3) approved by the U.S. Food and Drug Administration to be marketed as medical products. For the purpose of this entry, “diagnostic and food testing kits” are specifically developed, packaged and marketed for diagnostic or public health purposes. Biological toxins in any other configuration, including bulk shipments, or for any other end-uses are controlled by ECCN 1C351. For the purpose of this entry, “vaccine” is defined as a medicinal (or veterinary) product in a pharmaceutical formulation, approved by the U.S. Food and Drug Administration or the U.S. Department of Agriculture to be marketed as a medical (or veterinary) product or for use in clinical trials, that is intended to stimulate a protective immunological response in humans or animals in order to prevent disease in those to whom or to which it is administered.

**Items**

- a. Vaccines against items controlled by ECCN 1C351, 1C352, 1C353, or 1C354;
- b. Immunotoxins containing items controlled by 1C351.d;
- c. Medical products containing botulinum toxins controlled by ECCN 1C351.d.1 or conotoxins controlled by ECCN 1C351.d.3;
- d. Medical products containing items controlled by ECCN 1C351.d, except botulinum toxins controlled by ECCN 1C351.d.1, conotoxins controlled by ECCN 1C351.d.3, and items controlled for CW reasons under 1C351.d.5 or .d.6; and
- e. Diagnostic and food testing kits containing items controlled by ECCN 1C351.d, except items controlled for CW reasons under ECCN 1C351.d.5 or .d.6.

■ 18. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms” & “Toxins,” ECCN 1C995 is amended by revising the License Requirements section to read as follows:

1C995 Mixtures not controlled by ECCN 1C350, ECCN 1C355 or ECCN 1C395 that contain chemicals controlled by ECCN 1C350 or ECCN 1C355 and medical, analytical, diagnostic, and food testing kits not controlled by ECCN 1C350 or ECCN 1C395 that contain chemicals controlled by ECCN 1C350.d, as follows (see List of Items Controlled).

**License Requirements**

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry .....	AT Column 1 and Iraq.

**License Requirement Notes**

1. This ECCN does not control mixtures containing less than 0.5% of any single toxic or precursor chemical controlled by ECCN 1C350.b, .c, or .d or ECCN 1C355 as unavoidable by-products or impurities. Such mixtures are classified as EAR99.

2. 1C995.c does not control mixtures that contain precursor chemicals identified in 1C350.d in concentrations below the levels for mixtures indicated in 1C350.d. 1C995.a.2.b controls such mixtures, unless they are consumer goods as described in License Requirements Note 3 of this ECCN.

3. This ECCN does not control mixtures when the controlled chemicals are normal ingredients in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

\* \* \* \* \*

■ 19. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B351 is amended by revising the List of Items Controlled to read as follows:

2B351 Toxic gas monitoring systems that operate on-line and dedicated detectors thereof, except those systems and detectors controlled by ECCN 1A004.c.

\* \* \* \* \*

**List of Items Controlled**

Unit: Equipment in number.

Related Controls: Also see ECCN 1A004, which controls chemical detection systems and specially designed components thereof that are specially designed or modified for detection or identification of chemical warfare agents, but not specially designed for military use, and ECCN 1A995, which controls certain detection equipment and components not controlled by ECCN 1A004 or by this ECCN.

Related Definitions: For the purposes of this entry, the term “continuous operation” describes the capability of the equipment to operate on line without human intervention. The intent of this entry is to control toxic gas monitoring systems capable of collection and detection of samples in environments such as chemical plants, rather than those used for batch-mode operation in laboratories.

**Items**

- a. Designed for continuous operation and usable for the detection of chemical warfare agents or chemicals controlled by 1C350 at concentrations of less than 0.3 mg/m<sup>3</sup>; or
- b. Designed for the detection of cholinesterase-inhibiting activity.

Dated: December 23, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

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