

additional factors not previously listed in the EAR. The additional licensing factors that are now identified in the EAR include: (1) The reliability of the parties to the transaction (including previous licensing history, information on any clandestine or illegal procurement activities, and the end-user's ability to securely handle and store the items to be exported); (2) relevant information about proliferation and terrorism activities (including those involving any parties to the transaction); (3) the risk of diversion of the items; and (4) the applicability of other multilateral export control or nonproliferation agreements (e.g., the Chemical Weapons Convention and the Biological and Toxin Weapons Convention) to the transaction.

In addition, this rule clarifies the circumstances under which BIS would deny license applications to export or reexport AG-listed chemical and biological items. Specifically, this rule amends section 742.2(b)(1) of the EAR to show that where an export is intended to be used in a chemical weapons or biological weapons program, or for chemical or biological weapons terrorism purposes, it is deemed to make a material contribution to the design, development production, stockpiling, or use of chemical or biological weapons. Note that certain AG-listed chemicals also are controlled for Chemical Weapons Convention (CW) reasons and, therefore, are subject to the licensing requirements and policies described in section 742.18 of the EAR, as well as those in section 742.2 of the EAR.

B. Additional Understandings Reached at the June 2002 Plenary Meeting of the Australia Group That Conform With Existing Provisions in the EAR

Certain understandings reached at the June 2002 plenary meeting of the Australia Group (AG) do not require any regulatory action by the BIS, because they are adequately addressed by existing provisions in the EAR. These understandings are important because they represent a significant step by AG participating countries to further harmonize controls on AG-listed items and related technology.

Participating countries in the AG reached an understanding, at the June 2002 plenary meeting, to control transfers of technology for the "development" or "production" of AG-listed dual-use biological equipment. Since this technology currently is controlled by the EAR under ECCNs 2E001 and 2E002, this rule makes no changes in existing EAR controls on such technology.

The AG participating countries also agreed, for the first time, to establish AG controls on the intangible transfer of information and knowledge that could be used for chemical or biological weapons purposes. The transfer of such information and knowledge currently is defined in the EAR as "technical assistance," which may take such forms as instruction, skills, training, working knowledge, and consulting services and may involve the transfer of "technical data" ("technical assistance" is described in the note that follows the definition of "technology" in section 772.1 of the EAR). Since the EAR currently define "technology" (e.g., technology for AG-listed items) to include "technical data" or "technical assistance," this rule makes no changes in existing EAR controls that apply to the provision of "technical assistance."

Finally, the AG participating countries agreed to expand the license requirement for exports of AG-listed biological agents to apply to all destinations, with an exception for intra-European Union (EU) trade. In accordance with section 742.2(a)(1) of the EAR, these AG-listed biological agents currently are controlled under ECCNs 1C351, 1C352, 1C353, and 1C354 on the CCL and require a license, for CB (chemical/biological) reasons, to all of the destinations indicated under CB Column 1 in the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR), i.e., all destinations, worldwide. Since the EAR currently have a worldwide licensing requirement for these biological agents, this rule makes no changes in the existing EAR licensing provisions for these agents. In addition, please note that the EAR continue to require a license for reexports of U.S.-origin AG-listed biological agents to all destinations, including reexports among EU member countries.

C. Revisions to the EAR Based on an Intersessional Decision by the Australia Group

BIS is amending the EAR to implement an intersessional decision by the AG that was made prior to the June 2002 plenary meeting. Specifically, this rule revises AG controls on cross (tangential) flow filtration equipment by amending ECCN 2B352.d to lower the control threshold for such equipment from a total filtration area equal to or greater than 5 square meters (5 m²) to a total filtration area equal to or greater than 1 square meter (1 m²). In addition, this rule revises 2B352.d to indicate that the ECCN controls not only cross (tangential) flow filtration equipment capable of in-situ sterilization, but also

such equipment capable of being disinfected in-situ. A technical note is added to 2B352.d to define the terms "sterilized" and "disinfected" and to demonstrate how the processes of "disinfection" and "sterilization" are distinct from the process of "sanitization." This rule also adds a *nota bene* (i.e., N.B.) to 2B352.d that excludes reverse osmosis equipment, as specified by the manufacturer, from control under this ECCN.

In addition, this rule amends 2B352.d to control cross (tangential) flow filtration components that: (1) have a filtration area equal to or greater than 0.2 square meters (0.2 m²) for each component and (2) are designed for use with the cross (tangential) flow filtration equipment described in 2B352.d.

D. Corrections to ECCN 1C353 (Genetic Elements and Genetically Modified Organisms) and ECCN 2B350 (Chemical Manufacturing Facilities and Equipment)

This rule amends the heading and the List of Items Controlled in ECCN 1C353 to correct errors in the use of the terms "organism" and "microorganism." The revisions to this ECCN that were made in a final rule published by BIS on May 31, 2002 (67 FR 37977) incorrectly used the term "organisms" in 1C353.a.1 and .b.1 when referring to "microorganisms" controlled by 1C351.a. to .c. In addition, that rule did not revise the heading of the ECCN to include the term genetically modified "organisms." This rule corrects these errors.

In addition, this rule amends the heading in ECCN 2B350 to indicate that this entry does not control valves described in ECCN 2A292. BIS published a rule, on August 29, 2002 (67 FR 55594), that revised the heading of ECCN 2B350 to exclude valves controlled by ECCN 2A226; however, an exclusion for valves controlled by ECCN 2A292 was unintentionally omitted. This rule corrects that omission. Valves controlled by ECCN 2A226 or ECCN 2A292, which also meet or exceed the technical parameters described in ECCN 2B350.g, continue to be subject to CB controls (as well as NP and AT controls) even though they are not controlled under ECCN 2B350.

This rule also amends the List of Items Controlled in ECCN 2B350 to clarify that 2B350.b controls only those agitators that are for use in reaction vessels or reactors described in 2B350.a.

E. Corrections to § 742.2 (Proliferation of Chemical and Biological Weapons) and ECCNs 2E001 and 2E002

This rule revises § 742.2(a)(3) of the EAR, which identifies ECCNs