

■ 2. Section 742.2 is amended by revising paragraphs (a)(3) and (b) to read as follows:

§ 742.2 Proliferation of chemical and biological weapons.

(a) * * *

(3) If CB Column 3 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to Country Group D:3 (*see* Supplement No. 1 to part 740 of the EAR) for the following:

(i) Equipment and materials identified in ECCN 2B350 or 2B351 on the CCL, 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;

(ii) Equipment and materials identified in ECCN 2B352, which can be used in the production of biological agents;

(iii) Medical products identified in ECCN 1C991.d;

(iv) Technology identified in ECCN 2E001, 2E002, or 2E301 for:

(A) The development, production, or use of items controlled by ECCN 2B350, 2B351, or 2B352; or

(B) The development or production of valves controlled by ECCN 2A226 or 2A292 having the characteristics of those described in ECCN 2B350.g; and

(v) Technology identified in ECCN 2E201 or 2E290 for the use of valves controlled by ECCN 2A226 or 2A292 having the characteristics of those described in 2B350.g.

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(b) *Licensing policy.* (1) License applications for the items described in paragraph (a) of this section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the design, development, production, stockpiling or use of chemical or biological weapons. When an export or reexport is deemed to make such a material contribution, the license will be denied. When an export or reexport 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. The factors listed in paragraph (b)(2) of this section are among those that will be considered to determine what action should be taken on license applications for these items.

(2) The following factors are among those that will be considered to determine what action should be taken on license applications for the items

described in paragraph (a) of this section:

(i) The specific nature of the end-use, including the appropriateness of the stated end-use;

(ii) The significance of the export and reexport in terms of its potential contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The nonproliferation credentials of the importing country, including the importing country's chemical and biological capabilities and objectives;

(iv) The risk that the items will be diverted for use in a chemical weapons or biological weapons program, or for chemical weapons or biological weapons terrorism purposes;

(v) The reliability of the parties to the transaction, including whether:

(A) An export or reexport license application involving any such parties has previously been denied;

(B) Any such parties have been engaged in clandestine or illegal procurement activities;

(C) The end-user is capable of securely handling and storing the items to be exported or reexported;

(vi) Relevant information about proliferation and terrorism activities, including activities involving the design, development, production, stockpiling, or use of chemical or biological weapons by any parties to the transaction;

(vii) The types of assurances or guarantees against the design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case, including any relevant assurances provided by the importing country or the end-user;

(viii) 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; and

(ix) The existence of a pre-existing contract.

(3) BIS will review license applications in accordance with the licensing policy described in paragraph (b)(1) of this section for items not described in paragraph (a) of this section that:

(i) Require a license for reasons other than short supply; *and*

(ii) Could be destined for the design, development, production, stockpiling, or use of chemical or biological weapons, or for a facility engaged in such activities.

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PART 745—[AMENDED]

■ 4. The authority citation for 15 CFR part 745 continues 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 November 9, 2000, 65 FR 68063, 3 CFR, 2000 Comp., p. 408.

■ 5. Supplement No. 2 to part 745 is amended by revising the undesignated center heading “List of States Parties as of May 1, 2002” to read “List of States Parties as of April 1, 2003” and by adding, in alphabetical order, the countries “Andorra”, “Guatemala”, “Palau”, “Saint Vincent and the Grenadines”, “Samoa” and “Thailand”.

PART 774—[AMENDED]

■ 6. 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 14, 2002, 67 FR 53721, August 16, 2002.

■ 7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms” & “Toxins,” ECCN 1C351 is amended by revising the heading of the ECCN and the List of Items Controlled to read as follows:

1C351 Human and zoonotic pathogens and “toxins”, as follows (*see* List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Value.

Related Controls: Certain forms of ricin and saxitoxin in 1C351.d.5. and d.6 are CWC Schedule 1 chemicals (*see* § 742.18 of the EAR). The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. *see* § 745.1 of the EAR for notification procedures. *see* 22 CFR part 121, Category XIV and § 121.7 for additional CWC Schedule 1 chemicals controlled by the Department of State. All vaccines and “immunotoxins” are excluded from the scope of this entry. Certain medical products and diagnostic and food testing kits that contain biological toxins controlled under paragraph (d) of this entry, with the exception of toxins controlled for CW reasons under d.5 and d.6, are excluded