

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 040206045-4045-01]

RIN 0694-AC87

**Amendment to the Export
Administration Regulations:
Correction to ECCN 1C355 on the
Commerce Control List**

AGENCY: Bureau of Industry and
Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to correct the description of certain precursor chemicals on the Commerce Control List to make it consistent with the list of "Schedule 2" chemicals under the Chemical Weapons Convention (CWC).

DATES: This rule is effective May 4, 2004.

ADDRESSES: Written comments should be sent to Matthew Blaskovich, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ivan Rios, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482-7900.

SUPPLEMENTARY INFORMATION:

Background

This rule amends the Export Administration Regulations (EAR) by correcting the description of certain precursor chemicals in Export Control Classification Number (ECCN) 1C355 on the Commerce Control List (CCL) to make it consistent with the list of "Schedule 2" chemicals under the Chemical Weapons Convention (CWC). Specifically, this rule corrects ECCN 1C355a.2.a to be consistent with the description in Schedule 2.B(4) of the CWC, set forth in Supplement No. 1 to Part 745 of the EAR, by changing "* * * with no additional carbon atoms in the structure," to "* * * but not further carbon atoms" at the end of the description. This correction is necessary to clarify that all Schedule 2.B(4) chemicals are controlled for export under ECCN 1C355. This final rule also deletes the sub-heading "Family" of ECCN 1C355a.2.a to correct the description of this category of chemicals.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003), continues the Regulations in effect under the International Emergency Economic Powers Act.

Savings Clause

Shipments of items that are subject to a license requirement as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on May 4, 2004, pursuant to actual orders for export to a foreign destination, may proceed to that destination without a license so long as they have been exported from the United States before May 18, 2004. Any such items not actually exported before midnight, on May 18, 2004, 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, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

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 (Sec. 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 Matthew Blaskovich, 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 in 15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, Part 774 of the Export Administration Regulations (15 CFR Parts 730-799) is amended as follows:

PART 774—[AMENDED]

■ 1. 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 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms" & "Toxins," ECCN 1C355 is amended by revising the "items" paragraph in the List of Items Controlled 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.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. CWC Schedule 2 chemicals and mixtures containing Schedule 2 chemicals: a.1. Toxic chemicals, as follows, and mixtures containing toxic chemicals: a.1.a. PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene (C.A.S. 382-21-8) and mixtures in which PFIB constitutes more than 1 percent of the weight of the mixture;

a.1.b. [RESERVED]

a.2. Precursor chemicals, as follows, and mixtures in which at least one of the following precursor chemicals constitutes more than 10 percent of the weight of the mixture:

a.2.a. Chemicals, except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl, or propyl (normal or iso) group but not further carbon atoms.

Note: 1C355.a.2.a does not control Fonofos: O-Ethyl S-phenyl ethylphosphonothiolothionate (C.A.S. 944-22-9).

a.2.b. FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides;

a.2.c. FAMILY: Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr, or i-Pr)-phosphoramidates;

a.2.d. FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts;

a.2.e. FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts;

Note: 1C355.a.2.e. does not control N,N-Dimethylaminoethanol and corresponding protonated salts (C.A.S. 108-01-0) or N,N-Diethylaminoethanol and corresponding protonated salts (C.A.S. 100-37-8).

a.2.f. FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts.

b. CWC Schedule 3 chemicals and mixtures containing Schedule 3 chemicals:

b.1. Toxic chemicals, as follows, and mixtures in which at least one of the following toxic chemicals constitutes 30 percent or more of the weight of the mixture:

b.1.a. Phosgene: Carbonyl dichloride (C.A.S. 75-44-5);

b.1.b. Cyanogen chloride (C.A.S. 506-77-4);

b.1.c. Hydrogen cyanide (C.A.S. 74-90-8).

b.2. Precursor chemicals, as follows, and mixtures in which at least one of the following precursor chemicals constitutes 30 percent or more of the weight of the mixture:

b.2.a. Ethyldiethanolamine (C.A.S. 139-87-7);

b.2.b. Methyldiethanolamine (C.A.S. 105-59-9).

b.3. Mixtures containing chloropicrin (trichloronitromethane)(C.A.S. 76-06-2) transferred from the Department of State (see Related Controls).

Dated: April 27, 2004.

Peter Lichtenbaum,
Assistant Secretary for Export Administration.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR part 774

[Docket No. 040414116-4116-01]

RIN 0694-AD01

Revisions to the Export Administration Regulations Based on the 2003 Missile Technology Control Regime Plenary Agreements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulation Commerce Control List (CCL) to reflect changes to the Missile Technology Control Regime (MTCR) Annex agreed to at the September 2003 Plenary in Buenos Aires, Argentina. All revisions and additions are made to ensure that items that can be utilized in missiles of MTCR concern are appropriately controlled.

DATES: This rule is effective May 4, 2004.

FOR FURTHER INFORMATION CONTACT: Steven B. Clagett, Director, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Telephone: (202) 482-1641.

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR) is an export control arrangement among 33 nations, including the world's most advanced suppliers of ballistic missiles and missile-related materials and equipment. The regime establishes a common export control policy based on a list of controlled items and on guidelines that member countries follow to implement national export controls. The goal of maintaining the Annex and the Guidelines is to stem the flow of missile systems capable of delivering weapons of mass destruction to the global marketplace.

While the MTCR was originally created to prevent the spread of missiles

capable of carrying a nuclear warhead, it was expanded in January 1993 to also cover delivery systems for chemical and biological weapons. The only absolute prohibition in the regime's Guidelines is on the transfer of complete "production facilities" for specially designed items in Category I of the MTCR Annex.

MTCR members voluntarily pledge to adopt the regime's export Guidelines and to restrict the export of items contained in the regime's Annex. The implementation of the regime's Guidelines is effectuated through the national export control laws and policies of the regime members.

The Commerce Control List (CCL) is amended to reflect changes to the Missile Technology Control Regime (MTCR) Annex agreed to at the September 2003 Plenary in Buenos Aires, Argentina. The following ECCNs are affected:

1B118: Changing the 1B118.b parameter from reading "Capability to open the mixing chamber" to read "A single rotating shaft which oscillates and has kneading teeth/pins on the shaft as well as inside the casing of the mixing chamber"

1C111: Adding Inhibited Red Fuming Nitric Acid (IRFNA) to 1C111.a.3.e.

5A101:

—Clarifying heading to include the phrase "including ground equipment".

—Revising telemetry controls to capture only items designed or modified for missile or UAV systems capable of traveling at least 300km.

—Amending the technical note to add equipment that is not controlled by this entry, including: equipment designed or modified for manned aircraft or satellites; ground based equipment for terrestrial or marine applications; and equipment designed for commercial, civil, or safety of life (e.g., data integrity or flight safety) Global Navigation Satellite System services.

—Adding a note to specify, "Item 5A101 does not include items not designed or modified for unmanned aerial vehicles or rocket systems (including ballistic missile systems, space launch vehicles, sounding rockets, cruise missile systems, target drones, and reconnaissance drones) capable of a maximum "range" equal to or greater than 300km (e.g., telemetry circuit cards limited by design to reception only and designed for use in personal computers)."

9A115: Amending the heading to clarify that this entry captures equipment