

PUBLIC COMMENTS

**Implementation of the Chemical Weapons convention; Revisions to the
Export Administration Regulations**

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Company	Date Received
1. Air Products	June 16, 1999
2. Chemical Manufacturers Association	June 23, 1999
3. The National Council on International Trade Development	June 23, 1999
4. The Dow Chemical Company	June 28, 1999

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Part V

Department of Commerce

Bureau of Export Administration

15 CFR Part 734, et al.
Implementation of the Chemical Weapons
Convention; Revisions to the Export
Administration Regulations; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 734, 736, 738, 740, 742, 745, 748, 758, 772 and 774

[Docket No. 990416098-9098-01]

RIN 0694-AB67

Implementation of the Chemical Weapons Convention; Revisions to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: On April 25, 1997, the United States ratified the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The CWC identifies Schedule 1, Schedule 2 and Schedule 3 chemicals subject to certain trade restrictions. This interim rule implements the provisions of the Convention that affect exports and reexports of Schedule 1 chemicals and exports of Schedule 2 and Schedule 3 chemicals to countries that are not party to the Convention (non-States Parties) by amending the Export Administration Regulations (EAR). Specifically, this rule adds a requirement for U.S. persons to obtain an End-Use Certificate for exports of certain chemicals to those countries that are not party to the Convention, and submit a copy of that certificate to the Department of Commerce. This rule also adds licensing requirements for technology for the production of certain Schedule 2 and Schedule 3 chemicals subject to the Export Administration Regulations, and creates an advance notification and annual report requirement for all exports of Schedule 1 chemicals. To facilitate verification measures by the Organization for the Prohibition on Chemical Weapons (OPCW), this rule modifies an existing License Exception to permit the release of technology to the OPCW during inspections of chemical facilities in the United States and to permit the export or reexport of equipment for use in inspections in countries party to the Convention.

DATES: This rule is effective May 18, 1999. Comments on this rule must be received on or before June 17, 1999. Annual reports for exports of Schedule 1 chemicals during calendar years 1997 and 1998 must be received by the Department of Commerce by August 16, 1999.

ADDRESSES: Written comments should be sent to Nancy Crowe, Regulatory Policy Division, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Ave., NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe, Regulatory Policy Division, Bureau of Export Administration, at (202) 482-2440.

SUPPLEMENTARY INFORMATION:

Background

As a party to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention), the United States must, among other obligations, subject certain toxic chemicals and their precursors listed in the Convention to verification measures and control. This rule implements certain export-related provisions of the Convention. Regulations to implement other provisions of the Convention related to data declarations and inspections will be published by the Department of Commerce in the **Federal Register** at a later date.

The CWC-related toxic chemicals and their precursors are contained in three lists or "schedules." CWC Schedule 1 chemicals and precursors are those that have been developed, produced, stockpiled, or used as chemical weapons in the past, or that have high potential for use as chemical weapons, possess lethal or incapacitating toxicity, or may be used as precursors in the production of other Schedule 1 chemicals.

CWC Schedule 2 lists toxic chemicals and precursors that are not produced in large commercial quantities and that possess lethal or incapacitating toxicity that could enable them to be used as chemical weapons, may be used as precursors in one of the chemical reactions at the final stage of formation of a chemical listed in Schedule 1 or Schedule 2, or are important in the production of Schedule 1 or Schedule 2 chemicals.

CWC Schedule 3 lists toxic chemicals that may be produced in large commercial quantities for purposes not prohibited under the Convention and that have been produced, stockpiled, or used as chemical weapons, possess lethal or incapacitating toxicity that could enable them to be used as chemical weapons, or are important in the production of one or more chemicals listed in Schedule 1 or Schedule 2.

The Convention mandates trade restrictions on individual chemicals and

families of chemicals. The United States is a participant in the Australia Group (AG), a 30-nation multilateral chemical and biological weapons non-proliferation regime. All AG participants have national export controls on 54 precursor chemicals, some of which are listed on the CWC Schedules, and on chemical-related production equipment. Two Schedule 1 toxins, ricin and saxitoxin, are subject to the EAR, are listed in Export Control Classification Number (ECCN) 1C351 on the Commerce Control List (CCL), and currently require a license for chemical and biological (CB) non-proliferation reasons for export to all destinations except Canada. Three additional Schedule 1 chemicals, O-Ethyl-2-diisopropylaminoethyl methyl phosphonite (57856-11-8), Ethylphosphonyl difluoride (753-98-0) and Methylphosphonyl difluoride (676-99-3), are controlled by ECCN 1C350, and currently require a license for CB reasons for export to all destinations except AG-member countries. As a result of this rule, all five Schedule 1 chemicals subject to the EAR will require a license to all destinations, including Canada. All other Schedule 1 chemicals are considered defense articles under U.S. law and, as such, are controlled by the Department of State under the International Traffic in Arms Regulations (ITAR), (22 CFR 120, 121.7).

This rule establishes a new reason for control, "Chemical Weapons Convention", or CW, in Control Policy—Commerce Control List Based Controls (part 742 of the EAR). New § 742.18, sets forth the licensing requirements and policies for this new control, and applies to Schedule 1 chemicals identified under ECCNs 1C350 and 1C351 and Schedule 2 and Schedule 3 chemicals identified under ECCN 1C350 and new ECCN 1C355, and to technology identified under new ECCN 1E355.

New § 742.18 reflects the requirements of the Convention. Under the Convention, Schedule 1 chemicals may only be exported to other States Parties. States Parties exporting Schedule 1 chemicals must provide advance notification of exports of any quantity of a Schedule 1 chemical, and must submit annual reports of exports of such chemicals during the previous calendar year. The Convention also requires that prior to the export of a Schedule 2 or Schedule 3 chemical to a non-State Party, the exporter obtain an End-Use Certificate issued by the government of the importing country. No Schedule 2 chemical may be exported to a non-State Party after April

29, 2000. Specifically, this rule amends the EAR in the following ways:

Schedule 1 Chemical Requirements

Export license requirements for Schedule 1 chemicals. This rule imposes a license requirement for CW reasons for exports of CWC Schedule 1 chemicals controlled under ECCN 1C350.a.20, a.24, and a.31 and ECCN 1C351.d.5 and d.6. to all countries, including Canada. Reexports of Schedule 1 chemicals are prohibited. Note that since exports of Schedule 1 chemicals are controlled for more than one reason, licenses for such chemicals will be reviewed under the license review policy for all applicable reasons for control, including the license review policy set forth in § 742.2 and new § 742.18 of the EAR.

Advance notification and annual reporting of exports of Schedule 1 chemicals. This rule adds a new part 745 for CWC advance notification and certain other reporting requirements. Section 745.1 sets forth the notification and reporting requirements for exports of all Schedule 1 chemicals listed in new Supplement No. 1 to part 745. You must notify BXA at least 45 calendar days prior to exporting any quantity of a Schedule 1 chemical to another State Party. The advance notification requirement is in addition to the export license required for Schedule 1 chemicals controlled under ECCNs 1C350 or 1C351 and §§ 742.2 and 742.18 of the EAR, and for other Schedule 1 chemicals controlled by the State Department's International Traffic in Arms Regulations. You must also submit annual reports to BXA of all exports of any quantity of a Schedule 1 chemical to another State Party during the previous calendar year, starting with exports taking place during calendar year 1997. Annual reports for exports of Schedule 1 exports during calendar years 1997 and 1998 are due to the Department of Commerce August 16, 1999. If you exported Schedule 1 chemicals in calendar year 1997 and 1998, two reports are due by August 16, 1999. Thereafter, annual reports are due to the Department of Commerce by February 13th of each year. For example, annual reports for exports that were made during calendar year 1999 are due on February 13, 2000.

Schedule 2 and Schedule 3 Chemical Requirements

End-Use Certificate requirements for exports of Schedule 2 and Schedule 3 chemicals to countries that are not CWC States Parties. This rule adds to new § 745.2 a requirement for U.S. persons, as defined in § 744.6(c) of the EAR, to

obtain an End-Use Certificate from the government of the importing country and submit a copy of the End-Use Certificate to the Department of Commerce within 7 days of the date of export. This Certificate must be issued by the foreign government's agency responsible for foreign affairs or any other agency or department designated by the importing government for this purpose, and may be issued to cover aggregate quantities against which multiple shipments may be made to a single consignee. An End-Use Certificate covering multiple shipments may be used until the aggregate quantity is shipped. New Supplement No. 1 to part 745 includes a list of Schedule 2 and Schedule 3 chemicals subject to the End-Use Certificate requirement, and new Supplement No. 2 to part 745 includes a list of States Parties. New Supplement No. 3 to part 745 of the EAR includes foreign government agencies responsible for issuing End-Use Certificates. Additional foreign government entities will be added to Supplement No. 3 to part 745 when known.

An End-Use Certificate is required for exports of Schedule 2 and Schedule 3 chemicals to countries not included in Supplement No. 2 to part 745. Note that the End-Use Certificate requirement set forth in § 745.2 of the EAR applies to all Schedule 2 and Schedule 3 chemicals regardless of whether the chemical is subject to the export license requirements under the EAR or the International Traffic in Arms Regulations (ITAR). Note also that the End-Use Certificate requirement is in addition to any export license requirement under either the EAR or the ITAR.

License requirements. This rule imposes a license requirement for exports of Schedule 2 and Schedule 3 chemicals controlled for CW reasons under ECCNs 1C350 and 1C355, including sample shipments of such chemicals, to non-States Parties when an End-Use Certificate is not obtained. Such applications will generally be denied. Further, this rule imposes a license requirement for exports of Schedule 2 chemicals to non-States Parties on or after April 29, 2000, and imposes a general policy of denial for such exports.

Exports of technology to produce certain Schedule 2 and Schedule 3 chemicals. This rule adds to the CCL new ECCN 1E355 to control technology to produce PFIB, phosgene, cyanogen chloride and hydrogen cyanide. This rule also imposes a license requirement for CW reasons for exports and reexports of such technology when

destined to non-States Parties, except for Israel and Taiwan. Applications for such exports and reexports will be considered on a case-by-case basis. Note that once countries become State Parties, they will be eligible to receive production technology controlled under 1E355 without a license.

This interim rule also imposes anti-terrorism controls on technology controlled under ECCN 1E355 for Iran, Sudan and Syria, consistent with the provisions of the Export Administration Act after consultation with the Secretary of State.

Exports and reexports of equipment for use in inspections conducted by the OPCW and for the release of technology to the OPCW during inspections. This rule also revises License Exception GOV to permit the export and reexport of equipment for use in inspections in countries party to the Convention, and to permit the release of technology to the Organization for the Prohibition of Chemical Weapons (OPCW) during inspections of chemical facilities in the United States pursuant to the Convention. These exports and reexports are authorized only for the Organization for the Prohibition of Chemical Weapons (OPCW) for official international inspection and verification use under the terms of the Convention. This License Exception is available only on the condition that the information is strictly protected in accordance with applicable provisions of the EAR and other U.S. laws regarding the use and retransfer of U.S. goods and services. License Exception GOV does not authorize export of inspection samples. No samples collected in the United States pursuant to a CWC inspection may be transferred for analysis to any laboratory outside the United States.

This rule also makes conforming changes in § 734.5—Activities of U.S. and foreign persons subject to the EAR; § 736.2—General Prohibitions; and § 748.2—Unique license application requirements. Finally, this rule also revises the Shipper's Export Declaration (SED) provisions of § 758.3 to require exporters to enter the ECCN on the SED when exporting chemicals controlled under ECCN 1C355 under No License Required (NLR).

The Bureau of Export Administration submitted a foreign policy report to the Congress April 13, 1999 indicating the imposition of new foreign policy controls.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions

of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 13, 1998 (63 FR 55121, August 17, 1998).

Savings Clause

Shipments of items now subject to a licensing, advance notification or End-Use Certificate 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 pursuant to actual orders for export before May 18, 1999 may be exported without a license up to and including June 1, 1999. Any such items not actually exported before midnight June 1, 1999, require a license or are subject to the advance notification or End-Use Certificate requirements in accordance with this regulation.

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694-0088. This rule also contains two new information collection requirements subject to the PRA that has received emergency approval under OMB control number 0694-0117. The new information requirement and estimated public burden hours include: Preparing and submitting to BXA Schedule 1 notifications and annual reports (30 minutes each); obtaining the End-Use Certificate from the government of the importing destination; transmitting it to the exporter, and submitting it to BXA (30 minutes). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including, the use of automated collection techniques or other forms of information technology. Please send any comments to 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.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

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 interim 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. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim final form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close June 17, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection

and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6881, Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Henry Gaston, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482-0500.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Parts 736, 738, 742, 772 and 774

Exports, Foreign trade.

15 CFR Part 745

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

15 CFR Parts 740, 748 and 758

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

Accordingly, parts 734, 736, 738, 740, 742, 772 and 774 of the Export Administration Regulations (15 CFR Parts 730-799) are amended, and new part 745 is added, to read as follows:

1. The authority citation for part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 1701 *et seq.*; E.O. 12924, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1999 Comp., p. 294.

2. The authority citation for part 736 is amended to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 1701 *et seq.*; E.O. 12924, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1999 Comp., p. 294.

3. The authority citations for parts 738 and 774 are revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*, app 5; 10 U.S.C. 7420, 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*, 6004; Sec. 201, Pub. L. 104-58, 109 Stat. 557 (30 U.S.C. 185(s), 185(u)); 42 U.S.C. 2139a, 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 12924, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1999 Comp., p. 294.

4. The authority citation for parts 740 and 772 are revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*; E.O. 12924, 1994, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 3 CFR, 1996 Comp., p. 228 (1997); Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1999 Comp., p. 294; Pub. L. 105-85, 111 Stat. 1629.

5. The authority citation for part 742 is amended to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1999 Comp., p. 294.

6. The authority citation for part 758 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1999, Comp., p. 294.

PART 734—AMENDED

7. Section 734.5 is amended by revising paragraph (a) to read as follows:

§ 734.5 Activities of U.S. and foreign persons subject to the EAR.

* * * * *

(a) Certain activities of U.S. persons related to the proliferation of chemical or biological weapons or of missile technology as described in § 744.6 of the EAR and the proliferation of chemical weapons as described in part 745 of the EAR.

* * * * *

PART 736—AMENDED

8.-9. Section 736.2 is amended by revising paragraph (b)(7)(i) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

(a) * * *

(b) * * *

(7) *General Prohibition Seven—Support of proliferation activities (U.S. person proliferation activity).*—(i) *Support of proliferation activities (U.S. person proliferation activity).* (A) If you are a U.S. person as that term is defined in § 744.6(c) of the EAR, you may not engage in any activities prohibited by § 744.6(a) or (b) of the EAR, which prohibits the performance, without a license from BXA, of certain financing, contracting, service, support, transportation, freight forwarding, or employment that you know will assist in certain proliferation activities described further in part 744 of the EAR. There are no License Exceptions to this General Prohibition Seven in part 740 of the EAR unless specifically authorized in that part.

(B) If you are a U.S. person as that term is defined in § 744.6(c) of the EAR, you may not export a Schedule 2 or Schedule 3 chemical listed in Supplement No. 1 to part 745 to a destination not listed in Supplement No. 2 to part 745 without first submitting to the Department of Commerce a copy of the End-Use Certificate as required in § 745.2 of the EAR.

(C) If you are a U.S. person as that term is defined in § 744.6(c) of the EAR, you may not export a Schedule 1 chemical listed in Supplement No. 1 to part 745 without first complying with the provisions of §§ 742.16 and 745.2 of the EAR.

* * * * *

PART 738—AMENDED

10. Section 738.2 is amended by adding "CW Chemical Weapons Convention" in alphabetical order to the list of Reasons for Control in paragraph (d)(2)(i)(A).

PART 740—AMENDED

11. Section 740.11 is amended by revising the heading and introductory text and by adding new paragraph (c) to read as follows:

§ 740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).

This License Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel, and agencies of cooperating governments; and

international inspections under the Chemical Weapons Convention.

* * * * *

(c) *International inspections under the Chemical Weapons Convention (CWC or Convention).*

(1) The provisions of this paragraph (c) authorize exports and reexports to the Organization for the Prohibition of Chemical Weapons (OPCW) and exports and reexports by the OPCW for official international inspection and verification use under the terms of the Convention. The OPCW is an international organization that establishes and administers an inspection and verification regime under the Convention designed to ensure that certain chemicals and related facilities are not diverted from peaceful purposes to non-peaceful purposes. These provisions authorize exports and reexports for official OPCW use of the following:

(i) Commodities and software consigned to the OPCW at its headquarters in The Hague for official international OPCW use for the monitoring and inspection functions set forth in the Convention, and technology relating to the maintenance, repair, and operation of such commodities and software. The OPCW must maintain effective control of such commodities, software and technology.

(ii) Controlled technology relating to the training of the OPCW inspectorate.

(iii) Controlled technology relating to a CWC inspection site, including technology released as a result of:

(A) Visual inspection of U.S.-origin equipment or facilities by foreign nationals of the inspection team;

(B) Oral communication of controlled technology to foreign nationals of the inspection team in the U.S. or abroad; and

(C) The application to situations abroad of personal knowledge or technical experience acquired in the U.S.

(2) *Exclusions.* The following items may not be exported or reexported under the provisions of this paragraph (c):

(i) Computers with a Composite Theoretical Performance (CTP) greater than 10,000 MTOPS, except that no MTOPS limit applies to exports or reexports to those countries in Computer Tier 1 (see § 740.7(b)(1));

(ii) Inspection samples collected in the U.S. pursuant to the Convention; and

(iii) Commodities and software that are no longer in OPCW official use. Such items must be disposed of in accordance with the EAR.

(3) *Confidentiality.* The application of the provisions of this paragraph (c) is subject to the condition that the confidentiality of business information is strictly protected in accordance with applicable provisions of the EAR and other U.S. laws regarding the use and retransfer of U.S. goods and services.

PART 742—AMENDED

12. Section 742.2 is amended by revising the introductory text to paragraph (a) to read as follows:

§ 742.2 Proliferation of chemical and biological weapons.

(a) *License requirements.* The following controls are maintained in support of the U.S. foreign policy of opposing the proliferation and illegal use of chemical and biological weapons. (See also § 742.16 of this part for license requirements pursuant to the Chemical Weapons Convention).

* * * * *

§ 742.8 [Amended]

13. Section 742.8 is amended by revising the phrase "paragraphs (c)(6) through (c)(39)" in paragraph (a)(4)(ii) to read "paragraphs (c)(6) through (c)(41)".

§ 742.9 [Amended]

14. Section 742.9 is amended by revising the phrase "(c)(22) through (c)(39)" in paragraph (a)(3)(ii) to read "(c)(22) through (c)(41)".

§ 742.10 [Amended]

15. Section 742.10 is amended by revising the phrase "(c)(16) through (c)(39)" in paragraph (a)(4)(ii) to read "(c)(16) through (c)(41)".

16. Part 742 is amended by adding a new § 742.18 to read as follows:

§ 742.18 Chemical Weapons Convention (CWC or Convention).

States that are party to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention), undertake never to develop, produce, acquire, stockpile, transfer, or use chemical weapons. As a State Party to the Convention, the United States is subjecting certain toxic chemicals and their precursors listed in Schedules within the Convention to trade restrictions. Trade restrictions include a prohibition on the export of Schedule 1 chemicals to non-States Parties, license requirements for the export of Schedule 1 chemicals to all States Parties, End-Use Certificate requirements for exports of Schedule 2 and Schedule 3 chemicals to non-States

Parties, and a prohibition on the export of Schedule 2 chemicals to non-States Parties on or after April 29, 2000.

(a) *License requirements.* (1) *Schedule 1 chemicals identified in ECCNs 1C350 and 1C351.* A license is required for CW reasons for exports and reexports of Schedule 1 chemicals identified under ECCN 1C350.a.20, a.24, and a.31 and ECCN 1C351.d.5 and d.6 to all destinations *including* Canada. Also see the advance notification procedures and annual reporting requirements described in § 745.1 of the EAR.

(2) *Schedule 2 and Schedule 3 chemicals.* (i) *ECCN 1C350.* For all chemicals included in ECCN 1C350, other than 1C350.a.20, a.24 and a.31, a license is required for CW reasons unless an End-Use Certificate is obtained as described in § 745.2 of the EAR for exports to destinations *not* listed in Supplement No. 2 to part 745 of the EAR.

(ii) *ECCN 1C355.* Chemicals controlled under ECCN 1C355 are controlled for CW reasons. The following license requirements apply:

(A) *CWC States Parties.* Neither a license nor an End-Use Certificate is required for exports to CWC States Parties (destinations listed in Supplement No. 2 to part 745 of the EAR) for CW reasons. Note that a license may be required for other reasons set forth in the EAR. See in particular the end-use/end-user restrictions of part 744 and the restrictions that apply to embargoed countries in part 746 of the EAR.

(B) *CWC Non-States Parties.* A license is required for exports to non-States Parties (destinations not listed in Supplement No. 2 to part 745 of the EAR) for CW reasons unless the exporter obtains an End-Use Certificate described by § 745.2 of the EAR. Note that a license may be required for other reasons set forth in the EAR. See in particular the end-use/end-user restrictions of part 744 and the restrictions that apply to embargoed countries in part 746 of the EAR.

(iii) *Exports of Schedule 2 chemicals on or after April 29, 2000.* A license is required for CW reasons for exports of Schedule 2 chemicals listed in 1C350 and 1C355 when exported to non-States Parties on or after April 29, 2000, regardless whether the exporter has obtained an End-Use Certificate described in § 745.2 of the EAR.

(3) *Technology controlled under ECCN 1E355.* A license is required to non-States Parties (destinations not listed in Supplement No. 2 to part 745 of the EAR), except for Israel and Taiwan, for CW reasons.

(b) *Licensing policy.* (1) *Schedule 1 chemicals.* (i) Applications to export Schedule 1 chemicals to States Parties (destinations listed in Supplement No. 2 to part 745 of the EAR) will generally be approved, provided that all of the following conditions are met:

(A) The chemicals are destined for purposes not prohibited under the CWC (e.g., research, medical, pharmaceutical, or protective purposes);

(B) The types and quantities of chemicals are strictly limited to those that can be justified for those purposes;

(C) The aggregate amount of Schedule 1 chemicals in the country of destination at any given time for such purposes is equal to or less than one metric ton and receipt of the proposed export or reexport will not cause the limit to be exceeded.

(ii) Applications to export Schedule 1 chemicals to non-States Parties (destinations *not* listed in Supplement No. 2 to part 745 of the EAR) will generally be denied.

(iii) Applications to reexport Schedule 1 chemicals will generally be denied.

(2) *Schedule 2 and Schedule 3 chemicals.* (i) *CWC States Parties.* Applications to export and reexport Schedule 2 and Schedule 3 chemicals controlled under ECCN 1C350 to States Parties (destinations listed in Supplement No. 2 to part 745 of the EAR) will generally be approved to satisfactory end-users, provided the chemicals will only be used for purposes not prohibited by the CWC.

(ii) *CWC non-States Parties.* (A) *ECCN 1C350.* Applications to export Schedule 2 chemicals prior to April 29, 2000, and Schedule 3 Schedule chemicals controlled under ECCN 1C350 to CWC non-States Parties (destinations *not* listed in Supplement No. 2 to part 745 of the EAR) will generally be approved to satisfactory end-users, provided the chemicals will only be used for purposes not prohibited by the CWC (see paragraph (b)(2)(iv) of this section), when the exporter has obtained the End-Use Certificate required and described in § 745.2 of the EAR. If no end-user certificate is obtained, the application will generally be denied.

(B) *ECCN 1C355.* Applications to export Schedule 2 and Schedule 3 chemicals controlled under ECCN 1C355 will generally be denied.

(C) *Exports of Schedule 2 chemicals on or after April 29, 2000.* Applications to export Schedule 2 chemicals controlled under 1C350 and 1C355 to non-States Parties (destinations not listed in Supplement No. 2 to part 745 of the EAR) on or after April 29, 2000, will generally be denied.

(iii) Purposes not prohibited under the CWC include:

(A) Industrial, agricultural, research, medical, pharmaceutical, or other peaceful purposes; and

(B) Law enforcement purposes.

(3) *Technology controlled under ECCN 1E355.* Exports and reexports of technology controlled under ECCN 1E355 will be reviewed on a case-by-case basis.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

17–18. Supplement No. 2 to part 742 is amended by adding new paragraphs (c)(40) and (c)(41) to read as follows:

Supplement No. 2 To Part 742—Anti-Terrorism Controls: Iran, Syria and Sudan Contract Sanctity Dates and Related Policies

* * * * *

(c) * * *

(40) [Reserved]

(41) Production technology controlled under ECCN 1C355 on the CCL.

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied.

PART 745—[ADDED]

19. New Part 745 is added to read as follows:

PART 745—CHEMICAL WEAPONS CONVENTION REQUIREMENTS

Sec.

§ 745.1 Advance notification and annual report of all exports of Schedule 1 chemicals to other States Parties.

§ 745.2 End-Use Certificate reporting requirements under the Chemical Weapons Convention.

Supplement No. 1 to Part 745—Schedules of Chemicals

Supplement No. 2 to Part 745—States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction

Authority: 50 U.S.C. 1701 et seq.; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1999 Comp., p. 294.

§ 745.1 Advance notification and annual report of all exports of Schedule 1 chemicals to other States Parties.

Pursuant to the Convention, the United States is required to notify the Organization for the Prohibition of Chemical Weapons (OPCW) not less than 30 days in advance of every export of a Schedule 1 chemical, in any quantity, to another State Party. In addition, the United States is required to provide a report of all exports of Schedule 1 chemicals to other States Parties during each calendar year. If you plan to export any quantity of a Schedule 1 chemical controlled under the EAR and licensed by the Department of Commerce or controlled under the International Traffic in Arms Regulations (ITAR) and licensed by the Department of State, you are required under this section to notify the Department of Commerce in advance of this export. You are also required to provide an annual report of exports that actually occurred during the previous calendar year. The United States will transmit the advance notifications and an aggregate annual report to the OPCW of exports of Schedule 1 chemicals from the United States. Note that the notification and annual report requirements of this section do not relieve the exporter of any requirement to obtain a license from the Department of Commerce for the export of Schedule 1 chemicals subject to the EAR or from the Department of State for the export of Schedule 1 chemicals subject to the ITAR.

(a) *Advance notification of exports.* You must notify BXA at least 45 calendar days prior to exporting any quantity of a Schedule 1 chemical listed in Supplement No. 1 to this part to another State Party. This is in addition to the requirement to obtain an export license under the EAR for chemicals controlled by ECCN 1C350 or 1C351 for any reason for control, or from the Department of State for Schedule 1 chemicals controlled under the ITAR. Note that such notifications may be sent to BXA prior to or after submission of a license application to BXA for Schedule 1 chemicals controlled subject to the EAR and under ECCNs 1C350 or 1C351 or to the Department of State for Schedule 1 chemicals controlled on the ITAR. Such notices must be submitted separately from license applications.

(1) Such notification should be on company letterhead or must clearly identify the reporting entity by name of company, complete address, name of contact person and telephone and fax numbers, along with the following information:

(i) Common Chemical Name;

(ii) Structural formula of the chemical;

(iii) Chemical Abstract Service (CAS) Registry Number;

(iv) Quantity involved in grams;

(v) Planned date of export;

(vi) Purpose (end-use) of export;

(vii) Name of recipient;

(viii) Complete street address of recipient;

(ix) Export license or control number, if known; and

(x) Company identification number, once assigned by BXA.

(2) Send the notification by fax to (703) 235-1481 or to the following address, for mail and courier deliveries: Information Technology Team, Department of Commerce, Bureau of Export Administration, 1555 Wilson Boulevard, Suite 710, Arlington, VA 22209. Attn: "Advance Notification of Schedule 1 Chemical Export".

(3) Upon receipt of the notification, BXA will inform the exporter of the earliest date the shipment may occur under the notification procedure. To export the Schedule 1 chemical, the exporter must have applied for and been granted a license (see §§ 742.2 and 742.18 of the EAR, or the ITAR at 22 CFR part 121.

(b) *Annual report of exports.* (1) You must report all exports of any quantity of a Schedule 1 chemical to another State Party during the previous calendar year, starting with exports taking place during calendar year 1997. Reports for exports during calendar years 1997 and 1998 are due to the Department of Commerce August 16, 1999. Thereafter, annual reports of exports are due on February 13 of the following calendar year. The report should be on company letterhead or must clearly identify the reporting entity by name of company, complete address, name of contact person and telephone and fax numbers along with the following information for each export:

(i) Common Chemical Name;

(ii) Structural formula of the chemical;

(iii) CAS Registry Number;

(iv) Quantity involved in grams;

(v) Date of export;

(vi) Export license number;

(vii) Purpose (end-use) of export;

(viii) Name of recipient;

(ix) Complete address of recipient, including street address, city and country; and (x) Company identification number, once assigned by BXA.

(2) The report must be signed by a responsible party, certifying that the information provided in the annual report is, to the best of his/her knowledge and belief, true and complete.

(3) Send the report by fax to (703) 235-1481 or to the following address, for courier deliveries: Information Technology Team, Department of Commerce, Bureau of Export Administration, 1555 Wilson Boulevard, Suite 710, Arlington, VA 22209. Attn: "Annual Report of Schedule 1 Chemical Export".

§ 745.2 End-Use Certificate reporting requirements under the Chemical Weapons Convention.

Note: The End-Use Certificate requirement of this section does not relieve the exporter of any requirement to obtain a license from the Department of Commerce for the export of Schedule 2 or Schedule 3 chemicals subject to the Export Administration Regulations or from the Department of State for the export of Schedule 2 or Schedule 3 chemicals subject to the International Traffic in Arms Regulations.

(a)(1) No U.S. person, as defined in § 744.6(c) of the EAR, may export from the United States any Schedule 2 or Schedule 3 chemical identified in Supplement No. 1 to this part to

countries not party to the Chemical Weapons Convention (destinations *not* listed in Supplement No. 2 to this part) unless the U.S. person obtains from the consignee an End-Use Certificate issued by the government of the importing destination. This Certificate must be issued by the foreign government's agency responsible for foreign affairs or any other agency or department designated by the importing government for this purpose. Supplement No. 3 to this part includes foreign government entities responsible for issuing End-Use Certificates pursuant to this section. Additional foreign government departments or agencies responsible for issuing End-Use Certificates will be included in Supplement No. 3 to this part when known. End-Use Certificates may be issued to cover aggregate quantities against which multiple shipments may be made to a single consignee. An End-Use Certificate covering multiple shipments may be used until the aggregate quantity is shipped. End-Use Certificates must be

submitted separately from license applications.

(2) Submit a copy of the End-Use Certificate to the Department of Commerce by fax at (703) 235-1481 or to the following address no later than 7 days after the date of export, for mail and courier deliveries: Information Technology Team, Department of Commerce, Bureau of Export Administration, 1555 Wilson Boulevard, Suite 710, Arlington, VA 22209. Attn: CWC End-Use Certificate Report.

(b) The End-Use Certificate described in paragraph (a) of this section must state the following:

- (1) That the chemicals will be used only for purposes not prohibited under the Chemical Weapons Convention;
- (2) That the chemicals will not be transferred to other end-user(s) or end-use(s);
- (3) The types and quantities of chemicals;
- (4) Their specific end-use(s); and
- (5) The name(s) and complete address(es) of the end-user(s).

SUPPLEMENT NO. 1 TO PART 745—SCHEDULES OF CHEMICALS

	C.A.S. Registry No.
Schedule 1	
A. Toxic chemicals:	
(1) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates e.g. Sarin: O-Isopropyl methylphosphonofluoridate	107-44-8
Soman: O-Pinacolyl methylphosphonofluoridate	96-64-0
(2) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate	77-81-6
(3) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts e.g. VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate	50782-69-9
(4) Sulfur mustards: 2-Chloroethylchloromethylsulfide	2625-76-5
Mustard gas: Bis(2-chloroethyl)sulfide	505-60-2
Bis(2-chloroethylthio)methane	63869-13-6
Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane	3563-36-8
1,3-Bis(2-chloroethylthio)-n-propane	63905-10-2
1,4-Bis(2-chloroethylthio)-n-butane	142868-93-7
1,5-Bis(2-chloroethylthio)-n-pentane	142868-94-8
Bis(2-chloroethylthiomethyl)ether	63918-90-1
O-Mustard: Bis(2-chloroethylthioethyl)ether	63918-89-8
(5) Lewisites: Lewisite 1: 2-Chlorovinyl dichloroarsine	541-25-3
Lewisite 2: Bis(2-chlorovinyl)chloroarsine	40334-69-8
Lewisite 3: Tris(2-chlorovinyl)arsine	40334-70-1
(6) Nitrogen mustards: HN1: Bis(2-chloroethyl)ethylamine	538-07-8
HN2: Bis(2-chloroethyl)methylamine	51-75-2
HN3: Tris(2-chloroethyl)amine	555-77-1
(7) Saxitoxin	35523-89-8
(8) Ricin	9009-86-3
B. Precursors:	
(9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides e.g. DF: Methylphosphonyldifluoride	676-99-3
(10) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) O-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts e.g. QL: O-Ethyl O-2-diisopropylaminoethyl methylphosphonite	57856-11-8
(11) Chlorosarin: O-Isopropyl methylphosphonochloridate	1445-76-7
(12) Chlorosoman: O-Pinacolyl methylphosphonochloridate	7040-57-5

SUPPLEMENT NO. 1 TO PART 745—SCHEDULES OF CHEMICALS—Continued

	C.A.S. Registry No.
Schedule 2	
A. Toxic chemicals:	
(1) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts	78-53-5
(2) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene	382-21-8
(3) BZ: 3-Quinuclidinyl benzilate	6581-06-2
B. Precursors:	
(4) 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, e.g. Methylphosphonyl dichloride	676-97-1
Dimethyl methylphosphonate	756-79-6
Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphono-thiolothionate	944-22-9
(5) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides	
(6) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidates	
(7) Arsenic trichloride	7784-34-1
(8) 2,2-Diphenyl-2-hydroxyacetic acid	76-93-7
(9) Quinuclidine-3-ol	1619-34-7
(10) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts	
(11) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts	
Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts	108-01-0
N,N-Diethylaminoethanol and corresponding protonated salts	100-37-8
(12) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts	
(13) Thiodiglycol: Bis(2-hydroxyethyl)sulfide	111-48-8
(14) Pinacoly alcohol: 3,3-Dimethylbutane-2-ol	464-07-3

Schedule 3

A. Toxic chemicals:	
(1) Phosgene: Carbonyl dichloride	75-44-5
(2) Cyanogen chloride	506-77-4
(3) Hydrogen cyanide	74-90-8
(4) Chloropicrin: Trichloronitromethane	76-06-2
B. Precursors:	
(5) Phosphorus oxychloride	10025-87-3
(6) Phosphorus trichloride	7719-12-2
(7) Phosphorus pentachloride	10026-13-8
(8) Trimethyl phosphite	121-45-9
(9) Triethyl phosphite	122-52-1
(10) Dimethyl phosphite	868-85-9
(11) Diethyl phosphite	762-04-9
(12) Sulfur monochloride	10025-67-9
(13) Sulfur dichloride	10545-99-0
(14) Thionyl chloride	7719-09-7
(15) Ethyldiethanolamine	139-87-7
(16) Methyl-diethanolamine	105-59-9
(17) Triethanolamine	102-71-6

Supplement No. 2 to Part 745—States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction

List of States Parties as of May 18, 1999

Albania	Brazil	Finland
Algeria	Brunel Darussalam	France
Argentina	Bulgaria	Gambia
Armenia	Burkina Faso	Georgia
Australia	Burundi	Germany
Austria	Cameroon	Ghana
Bahrain	Canada	Greece
Bangladesh	Chile	Guinea
Belarus	China	Guyana
Belgium	Cook Islands	Hungary
Benin	Costa Rica	Iceland
Bolivia	Cote d'Ivoire (Ivory Coast)	India
Bosnia-Herzegovina	Croatia	Indonesia
Botswana	Cuba	Iran
	Cyprus	Ireland
	Czech Republic	Italy
	Denmark	Japan
	Ecuador	Jordan
	El Salvador	Kenya
	Equatorial Guinea	Korea (Republic of)
	Ethiopia	Kuwait
	Fiji	Laos (P.D.R.)

Latvia
 Lesotho
 Lithuania
 Luxembourg
 Macedonia
 Malawi
 Maldives
 Mali
 Malta
 Mauritius
 Mauritania
 Mexico
 Moldova (Republic of)
 Monaco
 Mongolia
 Morocco
 Namibia
 Nepal
 Netherlands
 New Zealand
 Niger
 Norway
 Oman
 Pakistan
 Panama
 Papua New Guinea
 Paraguay
 Peru
 Philippines
 Poland
 Portugal
 Qatar
 Romania
 Russian Federation
 Saint Lucia
 Saudi Arabia
 Senegal
 Seychelles
 Singapore
 Slovak Republic
 Slovenia
 South Africa
 Spain
 Sri Lanka
 Suriname
 Swaziland
 Sweden
 Switzerland
 Tajikistan
 Tanzania
 Togo
 Trinidad and Tobago
 Tunisia
 Turkey
 Turkmenistan
 United Kingdom
 Ukraine

United States
 Uruguay
 Uzbekistan
 Venezuela
 Vietnam
 Zimbabwe

Supplement No. 3 to Part 740—Foreign Government Agencies Responsible for Issuing End-Use Certificates Pursuant to § 745.2

Israel
 Chemical, Environment Technology Administration, Ministry of Industry & Trade, 30 Agron Street, Jerusalem 94190, Israel
 Contact: Josef Dancona, Deputy Director, Telephone: 972-2-6220193, Fax: 972-2-6241987

Taiwan
 Industrial Development Bureau, Ministry of Economic Affairs, 41-3, Sinyi Road Sec 3, Taipei, Taiwan, ROC
 Contact: Ms. Yea-Ling Shiou, Telephone: 886-2-27541255, Ext. 2329

PART 748—[AMENDED]

19. Section 748.8 is amended by adding paragraph (q) to read as follows:

§ 748.8 Unique license application requirements.

* * * * *

(q) Exports of chemicals controlled for CW reasons by ECCN 1C350 to countries not listed in Supplement No. 2 to part 745 of the EAR.

20. Supplement No. 2 to part 748 is amended by adding paragraph (q) to read as follows:

Supplement No. 2 to Part 748—Unique License Application Requirements

(q) *Chemicals controlled for CW reasons under ECCN 1C350.* In addition to any supporting documentation required by part 748, you must also obtain from your consignee an End-Use Certificate for the export of chemicals controlled for CW reasons by ECCN 1C350 (except 1C350.a.20., a.24, and a.31) to non-States Parties (destinations not listed in Supplement No. 2 to part 745 of the EAR). See § 745.2 of the EAR.

In addition to the End-Use Certificate, you may still be required to obtain a Statement by Ultimate Consignee and Purchaser (Form BXA-711P) as support documentation. Consult §§ 748.9 and 748.11 of the EAR.

PART 758—[AMENDED]

21. Section 758.3 is amended by revising the phrase "that have the column identifier" in paragraph (h)(2) to read "that are controlled for "CW" reasons or that have the column identifier".

22. Part 772 is amended by adding definitions of "Chemical Weapons Convention (CWC)" and "Organization for the Prohibition of Chemical Weapons (OPCW)" in alphabetical order to read as follows:

PART 772—[AMENDED]

* * * * *

Chemical Weapons Convention (CWC). Means "The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction", opened for signature on January 13, 1993.

* * * * *

Organization for the Prohibition of Chemical Weapons (OPCW). Means the international organization, located in The Hague, Netherlands, that administers the Chemical Weapons Convention.

PART 774—[AMENDED]

23. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1, is amended by revising ECCN 1C350 to read as follows:

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

License Requirements

Reason for Control: CB, CW, AT

Control(s)	Country chart
CB applies to entire entry	CB Column 2
CW applies to 1C350.a.2, a.3, a.5, a.6, a.7, a.8, a.10, a.11, a.12, a.13, a.15, a.16, a.17, a.20, a.21, a.22, a.23, a.24, a.28, a.29, a.30, a.31, a.32, a.33, a.35, a.37, a.41, a.47, a.48, a.49, a.50, a.51, a.53, or a.54. For 1C350.a.20, a.24 and a.31, a license is required for CW reasons for all destinations, including Canada. For all other chemicals controlled for CW reasons, a license is required for export to countries not listed in Supplement No. 2 to part 745, unless an End-Use Certificate is obtained by the exporter. See § 742.18 of the EAR. Also, see § 745.2 of the EAR for End-Use Certificate requirements. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.	
AT applies to entire entry	AT Column 1

License Requirement Notes

1. *Sample Shipments:* Certain sample shipments of chemicals controlled under ECCN 1C350 may be made

without a license, as provided by the following:

a. Chemicals Not Eligible: The following CWC Schedule 1 chemicals are not eligible for sample shipments: 0-

Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856-11-8), Ethylphosphonyl difluoride (C.A.S. #753-98-0), and

Methylphosphonyl difluoride (C.A.S. #676-99-3).

b. Countries Not Eligible: The following countries are *not* eligible to receive any sample shipments: Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria.

c. Sample Shipments: A license is not required for sample shipments when the cumulative total of these shipments does not exceed a 55-gallon container or 200 kg of each chemical to any one consignee per calendar year. Multiple sample shipments, in any quantity, not exceeding the totals indicated in this paragraph may be exported without a license, in accordance with the provisions of this Note 1. A consignee that receives a sample shipment under this exclusion may not resell, transfer, or reexport the sample shipment, but may use the sample shipment for any other legal purpose unrelated to chemical weapons. However, a sample shipment exported and received under this exclusion remains subject to all General Prohibitions including the end-use restriction described in § 744.4 of the EAR. Sample shipments of chemicals controlled for CW reasons to non-States Parties (destinations *not* listed in Supplement No. 2 to part 745 of the EAR) may not be made without first obtaining an End-Use Certificate, as described in § 745.2 of the EAR. If no End-Use Certificate is obtained pursuant to § 745.2 of the EAR, a license is required for sample shipments of chemicals controlled under ECCN 1C350 for CW reasons.

d. The exporter is required to submit a quarterly written report for shipments of samples made under this Note 1. The report must be on company letterhead stationery (titled "Report of Sample Shipments of Chemical Precursors" at the top of the first page) and identify the chemical(s), Chemical Abstract Service Registry (C.A.S.) number(s), quantity(ies), the ultimate consignee's name and address, and the date exported. The report must be sent to the U.S. Department of Commerce, Bureau of Export Administration, P.O. Box 273, Washington, DC 20044, Attn: "Report of Sample Shipments of Chemical Precursors".

2. *Mixtures:* Mixtures controlled by this entry that contain certain concentrations of precursor and intermediate chemicals are subject to the following licensing requirements:

a. A license is required, regardless of the concentrations in the mixture, for the following chemicals: O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856-11-8), Ethylphosphonyl difluoride (C.A.S. #753-98-0) and

Methylphosphonyl difluoride (C.A.S. #676-99-3);

b. A license is required when at least one of the following chemicals constitutes more than 10 percent of the weight of the mixture: Arsenic trichloride (C.A.S. #7784-34-1), Benzilic acid (C.A.S. #76-93-7), Diethyl ethylphosphonate (C.A.S. #78-38-6), Diethyl methylphosphonite (C.A.S. #15715-41-0), Diethyl-N,N-dimethylphosphoroamidate (C.A.S. #2404-03-7), N,N-Diisopropyl-beta-aminoethane thiol (C.A.S. #5842-07-9), N,N-Diisopropyl-2-aminoethyl chloride hydrochloride (C.A.S. #4261-68-1), N,N-Diisopropyl-beta-aminoethanol (C.A.S. #96-80-0), N,N-Diisopropyl-beta-aminoethyl chloride (C.A.S. #96-79-7), Dimethyl ethylphosphonate (C.A.S. #6163-75-3), Dimethyl methylphosphonate (C.A.S. #756-79-6), Ethylphosphonous dichloride [Ethylphosphinyl dichloride] (C.A.S. #1498-40-4), Ethylphosphonous difluoride [Ethylphosphinyl difluoride] (C.A.S. #430-78-4), Ethylphosphonyl dichloride (C.A.S. #1066-50-8), Methylphosphonous dichloride [Methylphosphinyl dichloride] (C.A.S. #676-83-5), Methylphosphonous difluoride [Methylphosphinyl difluoride] (C.A.S. #753-59-3), Methylphosphonyl dichloride (C.A.S. #676-97-1), Pinacolyl alcohol (C.A.S. #464-07-3), 3-Quinuclidinol (C.A.S. #1619-34-7), and Thiodiglycol (C.A.S. #111-48-8) (Related ECCN: 1C995);

c. A license is required when at least one of all other chemicals in the List of Items Controlled constitutes more than 25 percent of the weight of the mixture (related ECCN: 1C995); *and*

d. A license is not required under this entry for mixtures when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

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

b. Absolute 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;

c. Example.
11% chemical listed in paragraph b. of Note 2.
39% chemical not listed in Note 2
50% Solvent
100% Mixture
11/100=11% chemical listed in paragraph b. of Note 2.

In this example, a license is required because a chemical listed in paragraph

b. of Note 2 constitutes more than 10 percent of the weight of the mixture.

3. *Compounds.* A license is not required under this entry for chemical compounds created with any chemicals identified in this entry, unless those compounds are also identified in this entry.

Technical Notes: 1. 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.

2. The scope of this control applicable to Hydrogen Fluoride (Item 25 in List of Items Controlled) includes its liquid, gaseous, and aqueous phases, and hydrates.

License Exceptions

LVS: N/A.

GBS: N/A.

CIV: N/A.

List of Items Controlled

Unit: Liters or kilograms, as appropriate.

Related Controls: 1C350.a.20, a.24, and a.31 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 §§ 742.18 and 745.1 of the EAR for notification and annual report requirements. See also ECCN 1C355. See 22 CFR part 121, Category XIV and § 121.7 for additional CWC Schedule 1 chemicals controlled by the Department of State.

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

Items:

- a. Precursor Chemicals, as follows:
- a.1. (C.A.S. #1341-49-7) Ammonium hydrogen fluoride;
 - a.2. (C.A.S. #7784-34-1) Arsenic trichloride;
 - a.3. (C.A.S. #76-93-7) Benzilic acid;
 - a.4. (C.A.S. #107-07-3) 2-Chloroethanol;
 - a.5. (C.A.S. #78-38-6) Diethyl ethylphosphonate;
 - a.6. (C.A.S. #15715-41-0) Diethyl methylphosphonite;
 - a.7. (C.A.S. #2404-03-7) Diethyl-N,N-dimethylphosphoroamidate;
 - a.8. (C.A.S. #762-04-9) Diethyl phosphite;
 - a.9. (C.A.S. #100-37-8) N,N-Diethylaminoethanol;
 - a.10. (C.A.S. #5842-07-9) N,N-Diisopropyl-beta-aminoethane thiol;
 - a.11. (C.A.S. #4261-68-1) N,N-Diisopropyl-beta-aminoethyl chloride hydrochloride;
 - a.12. (C.A.S. #96-80-0) N,N-Diisopropyl-beta-aminoethanol;
 - a.13. (C.A.S. #96-79-7), N,N-

Diisopropyl-beta-aminoethyl chloride;	benzilate;	bifluoride;
a.14. (C.A.S. #108-18-9) Diisopropylamine;	a.28. (C.A.S. #667-83-5) Methyl phosphonous dichloride [Methyl phosphinyl dichloride];	a.44. (C.A.S. #143-33-9) Sodium cyanide;
a.15. (C.A.S. #6163-75-3) Dimethyl ethylphosphonate;	a.29. (C.A.S. #753-59-3) Methyl phosphonous difluoride [Methyl phosphinyl difluoride];	a.45. (C.A.S. #7681-49-4) Sodium fluoride;
a.16. (C.A.S. #756-79-6) Dimethyl methylphosphonate;	a.30. (C.A.S. #767-97-1) Methyl phosphonyl dichloride;	a.46. (C.A.S. #1313-82-2) Sodium sulfide;
a.17. (C.A.S. #868-85-9) Dimethyl phosphite (dimethyl hydrogen phosphite);	a.31. (C.A.S. #676-99-3) Methyl phosphonyl difluoride;	a.47. (C.A.S. #10025-67-9) Sulfur monochloride;
a.18. (C.A.S. #124-40-3) Dimethylamine;	a.32. (C.A.S. #10025-87-3) Phosphorus oxychloride;	a.48. (C.A.S. #10545-99-0) Sulfur dichloride;
a.19. (C.A.S. #506-59-2) Dimethylamine hydrochloride;	a.33. (C.A.S. #10026-13-8) Phosphorus pentachloride;	a.49. (C.A.S. #111-48-8) Thiodiglycol;
a.20. (C.A.S. #57856-11-8) O-Ethyl-2-diisopropylaminoethyl methyl ¹ phosphonite (QL);	a.34. (C.A.S. #1314-80-3) Phosphorus pentasulfide;	a.50. (C.A.S. #7719-09-7) Thionyl chloride;
a.21. (C.A.S. #1498-40-4) Ethyl phosphonous dichloride [Ethyl phosphinyl dichloride];	a.35. (C.A.S. #7719-12-2) Phosphorus trichloride;	a.51. (C.A.S. #102-71-6) Triethanolamine;
a.22. (C.A.S. #430-78-4) Ethyl phosphonous difluoride [Ethyl phosphinyl difluoride];	a.36. (C.A.S. #75-97-8) Pinacolone;	a.52. (C.A.S. #637-39-8) Triethanolamine hydrochloride;
a.23. (C.A.S. #1066-50-8) Ethyl phosphonyl dichloride;	a.37. (C.A.S. #464-07-3) Pinacolyl alcohol;	a.53. (C.A.S. #122-52-1) Triethyl phosphite; and
a.24. (C.A.S. #753-98-0) Ethyl phosphonyl difluoride;	a.38. (C.A.S. #151-50-8) Potassium cyanide;	a.54. (C.A.S. #121-45-9) Trimethyl phosphite.
a.25. (C.A.S. #7664-39-3) Hydrogen fluoride;	a.39. (C.A.S. #7789-23-3) Potassium fluoride;	b. Reserved.
a.26. (C.A.S. #3554-74-3) 3-Hydroxyl-1-methylpiperidine;	a.40. (C.A.S. #7789-29-9) Potassium bifluoride;	24-25. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 is amended by revising ECCN 1C351 to read as follows:
a.27. (C.A.S. #76-89-1) Methyl	a.41. (C.A.S. #1619-34-7) 3-Quinuclidinol;	1C351 Human pathogens, zoonoses, and "toxins".
	a.42. (C.A.S. #3731-38-2) 3-Quinuclidone;	License Requirements
	a.43. (C.A.S. #1333-83-1) Sodium	<i>Reason for Control:</i> CB, CW, AT.

Control(s)

Country chart

CB applies to entire entry CB Column 1

CW applies to 1C351.d.5 and d.6. See §742.18 of the EAR for licensing information pertaining to chemicals subject to restriction pursuant to the CWC. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.

AT applies to entire entry AT Column 1

License Exceptions

LVS: N/A.

GBS: N/A.

CIV: N/A.

List of Items Controlled

Unit: Liters or kilograms, as appropriate.

Related Controls: 1C351.d.5. and d.6 are CWC Schedule 1 chemicals (see §742.18 of the EAR).

a.7. Japanese encephalitis virus;

a.8. Junin virus;

The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. See §743.2 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. See also 1C991.

Related Definitions: (1) For the purposes 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.

(2) For the purposes of this entry "subunit" is defined as a portion of the "toxin".

Items:

a. Viruses, as follows:

a.1. Chikungunya virus;

a.2. Congo-Crimean haemorrhagic fever virus;

a.3. Dengue fever virus;

a.4. Eastern equine encephalitis virus;

a.5. Ebola virus;

a.6. Hantaan virus;

a.9. Lassa fever virus;

a.10. Lymphocytic choriomeningitis virus;

a.11. Machupo virus;

a.12. Marburg virus;

a.13. Monkey pox virus;

a.14. Rift Valley fever virus;

a.15. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);

a.16. Variola virus;

a.17. Venezuelan equine encephalitis virus;

a.18. Western equine encephalitis virus;

a.19. White pox; or

a.20. Yellow fever virus.

b. Rickettsiae, as follows:

b.1. Bartonella quintana (Rochalimea quintana, Rickettsia quintana);

b.2. Coxiella burnetii;

b.3. Rickettsia prowasecki; or

b.4. Rickettsia rickettsii.

c. Bacteria, as follows:

c.1. Bacillus anthracis;

c.2. Brucella abortus;

c.3. Brucella melitensis;

c.4. Brucella suis;

c.5. Burkholderia mallei

(Pseudomonas mallei);

c.6. Burkholderia pseudomallei

(Pseudomonas pseudomallei);

c.7. Chlamydia psittaci;

c.8. Clostridium botulinum;

c.9. Francisella tularensis;

c.10. Salmonella typhi;

c.11. Shigella dysenteriae;

c.12. Vibrio cholerae;

- c.13. *Yersinia pestis*.
 d. "Toxins", as follows: and subunits thereof:
 d.1. Botulinum toxins;
 d.2. Clostridium perfringens toxins;
 d.3. Conotoxin;
 d.4. Microcystin (cyanginosin);
 d.5. Ricin;
 d.6. Saxitoxin;
 d.7. Shiga toxin;
 d.8. Staphylococcus aureus toxins;
 d.9. Tetrodotoxin;
 d.10. Verotoxin; or
 d.11. Aflatoxins.

26. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 is amended by adding new ECCN 1C355 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.

Control(s)

CW applies to entire entry. A license is required for CW reasons only to CWC non-States Parties (destinations not listed in Supplement No. 2 to part 745), unless an End-Use Certificate is obtained by the exporter (see § 742.18 of the EAR). See § 745.2 of the EAR for End-Use Certificate requirements, and the License Requirements Notes of this entry. Also note the export clearance requirements of § 758.3 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.

License Requirements Notes

- Chemicals listed in this entry may be shipped NLR (No License Required) when destined to most CWC States Parties (countries listed in Supplement No. 2 to part 745). Also see License Requirement Note 3.
- Chemicals listed in this entry may be shipped NLR when destined to most non-States Parties (destinations not listed in Supplement No. 2 to part 745) if supported by an End-Use Certificate described by § 745.2 of the EAR and if the ECCN is indicated on the Shipper's Export Declaration in the appropriate space as provided in § 758.3 of the EAR. Chemicals listed in this entry require a license when exported to non-States Parties if the export is not supported by an End-Use Certificate described by § 745.2 of the EAR.
- Chemicals listed in this entry may not be shipped NLR if restrictions of other sections of the EAR apply (e.g., see the end-use and end-user restrictions of

part 744 of the EAR and the restrictions that apply to embargoed countries in part 746 of the EAR).

4. *Mixtures:* Mixtures controlled by this entry that contain certain concentrations of precursor and intermediate chemicals are subject to the following requirements:

a. Mixtures are controlled under this entry when containing at least one of the chemicals controlled under 1C355.a when the chemical constitutes more than 10 percent of the weight of the mixture.

b. Mixtures are controlled under this entry when containing at least one of the chemicals controlled under 1C355.b when the chemical constitutes more than 25 percent of the weight of the mixture.

c. 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. Such consumer goods are classified as EAR99.

Note to mixtures: Calculation of concentrations.

a. Exclusion. No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations:

b. Absolute 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;

c. Example.
 11% chemical listed in 1C355.a
 39% chemical not listed in 1C355.a
 50% Solvent
 100% Mixture
 $11/100 = 11\%$ chemical listed in 1C355.a

In this example, the mixture is controlled under this entry because a chemical listed in 1C355.a. constitutes more than 10 percent of the weight of the mixture.

5. *Compounds.* Compounds created with any chemicals identified in this ECCN 1C355 may be shipped NLR, unless those compounds are also identified in this entry.

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.

License Exceptions

LVS: N/A.
 GBS: N/A.
 CIV: N/A.

List of Items Controlled

Unit: Liters or kilograms, as appropriate.

Related Controls: See also ECCNs 1C350 and 1C351. See §§ 742.18 and

745.2 of the EAR for End-Use Certification requirements. See 22 CFR part 121, Category XIV and § 121.7 for chloropicrin (trichloronitromethane)(76-06-2) (Schedule 3). Mixtures containing chloropicrin (trichloronitromethane) that have been transferred to the Department of Commerce from the Department of State through a commodity jurisdiction determination are controlled under this entry unless exempt by paragraph 4.b. of Licensing Requirements Notes.

Related Definitions: N/A.

Items:

a. CWC Schedule 2 chemicals:

- Toxic chemicals:
 - a.1.a. PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene (382-21-8);
 - a.1.b. [Reserved]
- Precursors:
 - a.2.a. FAMILY: 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 with no additional carbon atoms in the structure;

Note: 1C355.a.2.a does not control Fonofos: O-Ethyl S-phenyl ethylphosphonothiolothionate (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 (108-01-0) or N,N-Diethylaminoethanol and corresponding protonated salts (100-37-8).

- a.2.f. FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts;
- CWC Schedule 3 chemicals:
 - Toxic chemicals:
 - a.1.a. Phosgene: Carbonyl dichloride (75-44-5);
 - a.1.b. Cyanogen chloride (506-77-4);
 - a.1.c. Hydrogen cyanide (74-90-8).
 - Precursors:
 - a.2.a. Ethyldiethanolamine (139-87-7);
 - a.2.b. Methyl-diethanolamine (105-59-9).
 - Mixtures containing chloropicrin (trichloronitromethane)(76-06-2) transferred from the Department of State (see Related Controls).

27. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1, is amended by revising the heading of ECCN 1E001 to read as follows:

1E001 "Technology" according to the General Technology Note for the "development" or "production" of items controlled by 1A001.b., 1A001.c., 1A002, 1A003, 1A005, 1A102, 1B or 1C (except 1C355, 1C980, 1C981, 1C982, 1C983, 1C984, 1C988, 1C991, 1C992, 1C993, 1C994 and 1C995).

* * * * *

28. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1

is amended by adding new ECCN 1E355 to read as follows:

1E355 Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals, as follows (see List of Items Controlled):

License Requirements

Reason for Control: CW, AT.

Control(s)

Country chart

SW applies to entire entry. A license is required for CW reasons to CWC non-States Parties (destinations not listed in Supplement No. 2 to part 745), except for Israel and Taiwan. See § 472.18 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SW reasons.

AT applies to the entire entry AT Column 1

License Exceptions

TSR: N/A.

CIV: N/A.

List of Items Controlled

Unit: N/A.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Technology for the production of the following CWC Schedule 2 toxic chemicals:

a.1. PFIB: 1,1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene (382-21-8);

a.2. [Reserved]

b. Technology for the production of the following CWC Schedule 3 toxic chemicals CWC:

b.1. Phosgene: Carbonyl dichloride (75-44-5);

b.2. Cyanogen chloride (506-77-4);

b.3. Hydrogen cyanide (74-90-8).

Dated: May 11, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99-12281 Filed 5-17-99; 8:45 am]

BILLING CODE 3510-33-P

Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501
Telephone (610) 481-4911

16 June 1999

Nancy Crowe, Regulatory Policy Division
Bureau of Export Administration
Room 2705
14th Street and Pennsylvania Avenue, N. W.
Washington, D.C. 20230

RE: Implementation of the Chemical Weapons Convention

Dear Mrs. Crowe:

On behalf of Air Products and Chemicals, Inc., we are responding to your May 18, 1999 interim rule revising the Export Administration Regulations to reflect implementation of the Chemical Weapons Convention. The Chemical Weapons Convention is important to Air Products and Chemicals, an advocate for the nonproliferation of chemical weapons. However, at the same time we have concerns over the way in which the final regulations are promulgated.

We are somewhat disappointed with the overall presentation of the implementing regulations. We were surprised by several omissions in light of an earlier draft that had been circulating through the chemical industry for roughly two years. We do not understand why the Bureau of Export Administration has reversed course on some good ideas such as managing CWC controls through use of the Commerce Country Chart, or adding ECCN 1C356 for Schedule 1 chemicals to the Commerce Control List. We are also concerned that a key item in the United States implementing regulations, the CWC End-Use Certificate, is not transparent with the approach taken by other States Parties to the Convention.

We urge you to consider our comments and recommendations, and to revise the implementing regulations where necessary to allow industry a better means of implementing these regulations and managing future changes. To start, we believe that the 30 day comment period was insufficient and should be extended an additional 30 days because the implementing regulations have strayed from what was originally portrayed and discussed between industry and the Bureau of Export Administration. An additional 30 days would allow further potential development of comments in addition to those that follow.

1. We strongly recommend that you reconsider adding a CWC column to the Commerce Country Chart in order for industry to effectively manage current and future updates to States Parties. Use of the Commerce Country Chart has been integrated into our export compliance software and that of our external software compliance providers, both which have made management of export licensing requirements and documentation much more efficient and

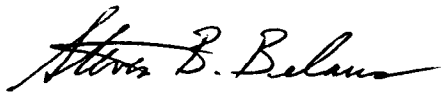
easier to change and maintain. We are disappointed that the Commerce Country Chart is not being adopted to disseminate regulatory policy for CWC controls. This decision, which is similar to the way "XP" controls for computer tiers are disseminated, for example, is advancing a trend toward inconsistency in managing export administration policy. It is inconsistent with the way all other reasons for control are managed by matching a country and Commerce Control List ECCN to the reason for control. If you will not reconsider use of the Commerce Country Chart for CWC controls, we ask that you please state your reasoning.

2. CWC End-Use Certificates should not require authorization from non-States Parties. Authorization is not required by other States Parties such as the United Kingdom. In the United Kingdom all that is required is that the end-user complete this certificate and return it to the exporter. Besides, what purpose is served by having a non-State Party authorize an End-Use Certificate? Does anyone actually think they would not authorize it? Their local businesses would not be importing if they had the chemical, or enough of it, domestically. The time involved in obtaining an end-use certificate authorization from the appropriate government agency of a non-States Party is unknown and extremely underestimated. Customers in non-States Parties will need to be educated as to what is required of them, particularly because they will need to confront their own bureaucracies to obtain this authorization.
3. The Bureau of Export Administration and State Department should recommend to the OPCW that a standard CWC End-Use Certificate be adopted and presented for use by all non-States Parties. Doing so would eliminate any confusion between non-States Parties and customers within those countries, and offer guidance as to what information is required on the CWC End-Use Certificate. It would also alleviate what we believe will be an administrative burden that is more than anyone realizes. Non-States Parties and customers in those countries would be in sync with CWC End-Use Certificate requirements and knowledgeable of the specific information that must be disclosed to and by all parties to a CWC controlled transaction with the use of a suggested format.
4. CWC End-Use Certificate reporting requirements should be reconsidered. If and when an End-Use Certificate is obtained from a non-State Party, what purpose is served by providing the End-Use Certificate to the Department of Commerce seven days after each shipment, especially when the certificate covers an aggregate quantity against which multiple shipments may be made to a single consignee with no time period limitation? If the purpose is to be on record, then only one End-Use Certificate should be sent to the Department of Commerce after the first shipment. If the purpose is to track quantities shipped to each consignee, rather than submit the same End-Use Certificate seven days after each shipment, this information could be obtained from the Shipper's Export Declaration since exporters will now be required to include the ECCN for CWC controlled chemicals. Another alternative would be to allow quarterly reporting similar to that required for 1C350 sample shipments. At the very least, further clarification would be appreciated on this topic.

5. Existing export licenses for Schedule 2 and 3 chemicals under 1C350 should be excluded from requiring the ultimate consignee/end-user to obtain a CWC End-Use Certificate from a non-States Party's authorizing agency. We currently have export licenses to export CWC controlled chemicals to Taiwan, Israel, and Malaysia. Rather than have our customers track down the appropriate in-country authority, especially in Malaysia, it would be far more efficient to allow the Customs authorities of non-States Parties to identify these imports with the assistance of the customer's broker. Otherwise, this will only lead to delays for transactions that will ultimately be approved because non-States Parties would not disapprove of imported chemicals that may be unavailable locally.
6. The implementation of new ECCN 1C356 to control any Schedule 1 chemical not otherwise controlled on the International Traffic in Arms Regulations or the Commerce Control List should be reconsidered. Assigning an ECCN to these chemicals would make it easier for industry to manage future changes to the Schedule 1 list, as well as the ability to program export license, documentation, and reporting requirements.
7. With regard to Supplement No. 2 to Part 745, please clarify that Hong Kong is included as a States Party since it is now part of the People's Republic of China, and therefore, not subject to the CWC End-Use Certificate requirement when importing or transacting schedule 2 and 3 chemicals through Hong Kong. At the same time, please confirm that the same treatment will apply to Macau when the former Portuguese Colony returns to the sovereignty of the People's Republic of China this year.

Thank you in advance for the opportunity to comment on the CWC implementing regulations for export controls. Should you have any questions with regard to these recommendations and comments, please do not hesitate contacting me by phone at (610) 481-4979, or by facsimile at (610) 481-8223.

Very truly yours,

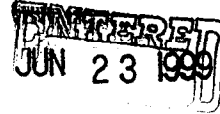


Steven B. Belaus
International Trade Compliance Administrator

*mnt # 2 page 1 of 5*

CHEMICAL MANUFACTURERS ASSOCIATION

KATHLEEN A. AMBROSE
VICE PRESIDENT
INTERNATIONAL AFFAIRS



June 22, 1999

Ms. Nancy Crowe
Regulatory Policy Division
Bureau of Export Administration
Room 2705
United States Department of Commerce
14th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20230

Dear Nancy:

The Chemical Manufacturers Association (CMA) offers the following comments on the interim final rule to implement the export control provisions of the Chemical Weapons Convention (CWC). 64 Fed.Reg. at 27138 (May 18, 1999). CMA believes that the rule effectively translates the export control obligations of the United States under the CWC and addresses many of the implementation challenges faced by the chemical industry. However, we thought it would be helpful to outline below our remaining concerns and requests for clarification on the rule.

End-Use Certificates Issued By Governments

Under the rule U.S. exporters of CWC Schedule 2 and 3 chemicals are required to obtain end-use certificates from consignees in non-member states from the agency or authority designated by the government of the importing country. Supplement 3 to Part 740 on Foreign Government Agencies Responsible for Issuing End-Use Certificates currently lists only two foreign government agencies. 64 Fed.Reg. at 27146. Although BXA has indicated it will add government agencies to the list as soon as they are known (64 Fed.Reg. at 27144), U.S. exporters may face a considerable challenge in identifying the appropriate agency or authority in non-member countries.

CMA is concerned about the possible compliance consequences of relying on end-use certificates obtained from governments that do not have agencies or authorities designated in Supplement No. 3. CMA requests that BXA clarify that end-use certificates obtained from countries not yet listed in Supplement 3 are valid for purposes of compliance with the rule.

Furthermore, CMA understands that the rule has already complicated U.S. industry compliance with the CWC end-use certificate requirement. CMA understands that several U.S. companies are experiencing delays and difficulty in obtaining end-use certificates from non-

Ms. Nancy Crowe
June 22, 1999
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member states that reflect the exact language in the U.S. export control rule. Some non-member governments refuse to issue CWC end-use certificates that state that the chemicals will not be transferred to other end-use(s) or end-user(s). Instead, non-member states issue end-use certificates that promise not to "re-transfer" the CWC import. In issuing such end-use certificates, CMA contends that non-member states are making an express commitment not to re-transfer the CWC import to other end-use(s) or end-user(s) either locally or internationally in member and non-member states alike. Thus, BXA should consider these as satisfying the CWC end-use certificate requirement. It would be helpful if BXA would clarify that such end-use certificates fulfill the terms of the regulation.

Furthermore, CMA recommends that the Organization for the Prohibition of Chemical Weapons (OPCW) adopt a standard CWC end-use certificate. CMA believes that the adoption of a uniform end-use certificate would expedite and enhance industry compliance worldwide, as well as possibly eliminate existing confusion over the content of such certificates.

Chemical Types

Section 745.2 implements the CWC requirement for the inclusion of chemical "types and quantities" on CWC end-use certificates. 64 Fed.Reg. at 27144. Because the term "chemical type" can be interpreted to require either general information about the chemical family or exact identification of CWC Scheduled chemicals by name and Chemical Abstract Service (CAS) number. CMA recommends that BXA adopt a requirement for the CAS name and/or number, if assigned, to identify the chemical type of Schedule 2 and 3 chemicals on end-use certificates.

Timeframe for Fulfilling the End-Use Certificate Requirement

BXA has estimated the timeframe for obtaining, transmitting and submitting the CWC end-use certificate from the government of the importing destination at thirty minutes per certificate. 64 Fed.Reg. at 27140. CMA believes BXA has grossly underestimated the burden of fulfilling the CWC end-use certificate requirement. U.S. industry estimates that obtaining an end-use certificate will require one to eight hours per certificate. BXA should recognize that, in many cases, end-use certificates that meet the criteria of Part 745 will not be obtained in a matter of thirty minutes.

Section 745.2 also requires the submission of end-use certificates to the Department of Commerce (DOC) no later than seven days after the date of export. 64 Fed.Reg. at 27144. The 7-day deadline for filing the end-use certificate is simply too short. This short time frame will jeopardize the ability of industry to comply with the CWC, if not promote pointless violations of the Export Administration Regulations (EAR) and CWC. Alternatively, CMA encourages BXA to consider coordinating CWC and Australia Group (AG) reporting requirements. CMA suggests that BXA adopt a requirement for quarterly submission of CWC end-use certificates to coincide with the timeframe for industry reporting on AG sample shipments. CMA believes that the adoption of a consistent deadline for reporting on shipments of chemical weapons precursors will enable industry to consolidate similar reporting requirements and avoid unnecessary violations of the EAR and CWC.

Ms. Nancy Crowe
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U.S. exporters are required to submit separately CWC end-use certificates and license applications. 64 Fed.Reg. at 27144. CMA is unclear on the rationale for requiring the submission of CWC end-use certificates separate from license applications. Additionally, CMA is concerned over possible violations of the EAR, resulting from industry efforts to satisfy customer requests and new CWC reporting requirements. For example, CMA expects U.S. chemical companies to utilize one end-use certificate for multiple shipments. The prohibition on simultaneous submission of end-use certificates and license applications will complicate U.S. industry compliance efforts on shipments that are individually licensable, but not certifiable under the CWC. Further, CMA understands that U.S. exporters expect customers will prefer to supply license information at the same time as end-use certificates. In the interest of overall efficiency, CMA requests that BXA allow for the submission of license applications together with end-use certificates, where appropriate.

Part 740.11 - Governments, International Organizations and International Inspections under the Chemical Weapons Convention

The rule modifies the existing government (GOV) license exception to authorize exports and reexports of DOC controlled technology to the OPCW. The exception allows the release of DOC controlled technology and equipment to the OPCW. The exception also enables the facility to focus on compliance with the CWC, as opposed to compliance with the EAR. However, the exception may have the unintended consequence of increasing, rather than relieving, the facility's responsibility for protection of controlled exports and confidential business information (CBI).

In exercising the new GOV license exception, the U.S. exporter relies on the OPCW for protection of confidentiality. At a minimum, the modified GOV license foresees the OPCW's maintenance of effective control of controlled technology relating to a CWC inspection site including technology released as a result of visual inspection and/or oral communication and the application to situations abroad of personal knowledge or technical experience acquired in the U.S. However, CMA is concerned over the apparent responsibility placed on U.S. industry to ensure the OPCW fulfills industry's expectations of protection of CBI and adherence to applicable U.S. laws, as a condition for use of the license exception.

CMA believes the modified GOV license exception will be useful to industry during CWC inspections, provided the use of the exception subjects the OPCW rather than industry to the protection of CBI and adherence to applicable U.S. laws. Also, CMA is concerned over the absence of any reference to the OPCW's primary responsibility for adherence to the CWC's Confidentiality Annex. CMA requests that BXA clarify how U.S. companies will utilize the modified GOV license exception. Further, CMA encourages the adoption of a comparable license exception for items controlled under the U.S. Munitions List, administered by the U.S. Department of State.

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Part 758.3 - Shippers Export Declarations

The rule requires exporters to enter the Export Control Classification Number (ECCN) on Shipper's Export Declarations (SED) when exporting chemicals controlled under ECCN 1C355 under No License Required (NLR). CMA accepts the requirement for ECCNs on licensable shipments to non-states parties. This requirement is consistent with the existing U.S. practice of tracking licensable shipments and the end-use certificate requirements of the CWC.

However, BXA also requires the inclusion of ECCNs on SEDs for non-licensable shipments to member states under the license requirements for 1C355. Under the terms of the treaty, CMA questions the rationale for and reasonableness of this requirement. The inclusion of the ECCN on SEDs for shipments between member states is not essential for compliance with the CWC, yet imposes significant administrative costs (particularly where companies must modify proprietary export control software programs).

CMA seeks to ensure consistency in CWC implementation. In order to conform Part 758.3 to the license requirements under 1C355, CMA recommends BXA revise Part 758.3 to read as follows, "that are controlled for "CW" reasons and are destined for a non-State party, that have the column identifier".

Supplement 2 to Part 742 - Anti-Terrorism Controls

The reference contained at 64 Fed.Reg. at 27143 refers to production technology controlled under ECCN 1C355. Apparently, BXA intended to reference 1E355 rather than 1C355 on the Commerce Control List (CCL). CMA recommends that BXA correct that reference.

Supplement Number 2 to Part 745 - States Parties to the Convention

CMA emphasizes the importance of maintaining a current list of states party to the CWC. However, CMA recommends that BXA supplement the list of states parties with a comparable list of non-member states. Including a separate list of non-member states would enable individual chemical companies to check the status of their respective trading partners as either CWC member or non-member states. Further, CMA requests that BXA include the new and former names of individual countries in the positive and negative lists, as an aid to compliance.

Supplement 2 to Part 748 - Unique License Application Requirements

Under Supplement Number 2 to Part 748 on Unique License Application Requirements, BXA notes that exporters may still be required to obtain a Statement of Ultimate Consignee and Purchase as support documentation for the export of chemicals controlled for Chemical Weapons (CW) reasons, in addition to the end-use certificate. In order to enhance further the efficiency of this system, BXA should consider the statements on the end-use certificate to satisfy any requirement for a Statement of Ultimate Consignee/Purchaser.

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Section 742.18 Chemical Weapons Convention

CMA appreciates and supports the exemption for Israel and Taiwan under new ECCN 1E355 for the control of technology for the production of select toxic chemicals included in CWC Schedules 2 and 3. The requirement for a DOC license for the export of CWC toxics' production technology to non-member states recognizes their demonstrated dual-use nature and integral importance to commercial chemical and consumer products manufacturing.


Section 745.2 - End-Use Certificate Reporting Requirements Under the CWC

CMA appreciates the extension of single end-use certificate to multiple shipments. CMA expects this accommodation will advance individual company efforts to schedule and stage shipments, as well as facilitate both licensable and non-licensable transactions.

Conclusion

CMA maintains a strong interest in promoting a reasonable and reliable framework for domestic implementation of the CWC. We appreciate the opportunity for providing input on the CWC export controls and invite the chance to comment on the anticipated regulations to implement the CWC declaration and inspection requirements. If you have any questions about CMA's concerns and requests for clarification on the EAR amendment, please contact me at 703/741-5920 or Marybeth Kelliher of my staff at 703/741-5923.

Sincerely,



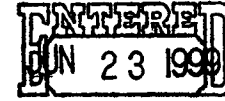
Kathleen Ambrose
Vice President, International Affairs

cc: Steven Goldman
Robert Mikulak
Roger Majak



int #3 page 1 of 4

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Nancy Crowe, Regulatory Policy Division
Bureau of Export Administration
Room 2705
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230

RE: Implementation of the Chemical Weapons Convention

Dear Ms. Crowe:

On behalf of the National Council on International Trade Development (NCITD), we are responding to your May 18, 1999 interim rule revising the Export Administration Regulations to reflect implementation of the Chemical Weapons Convention (CWC). As you may be aware, the NCITD is a nonprofit trade association comprising a large and small U.S. exporters and importers who have a strong interest in maintaining a regulatory dialogue with your office and other government agencies. The Chemical Weapons Convention is important to the NCITD because numerous firms in the chemical industry are NCITD members that actively participate in our export and import regulations committees. The NCITD is an advocate for the nonproliferation of chemical weapons, as well as an advocate for free trade and reasonable regulatory controls that are effective, and at the same time, not unnecessarily over-burdensome on industry.

While we are generally in agreement with the overall presentation of the implementing regulations, we believe that there is room for improvement. The 30 day comment period has been insufficient to critique the regulations and coordinate responses with our member companies. And even though we were forewarned of the 30 day comment period, our understanding on what was to be published was slightly different from what appeared in the implementing regulations. Specifically, we have concerns over the following:

- exclusion of a CWC column from the Commerce Country Chart
- exclusion of ECCN 1C356 from the Commerce Control List
- reporting and documentation requirements for the CWC end-use certificate

- the effect on existing export licenses to non-States Parties
- the presentation of schedule 1 and 2 chemicals

We do not understand why BXA has reversed course on some good ideas such as managing CWC controls through use of the Commerce Country Chart, or adding ECCN 1C356 to the Commerce Control List. We are also puzzled over the fact that CWC end-use certificates require non-State Party authorization under the U.S. implementing regulations, while the same is not required by other States Parties to the Convention.

Commerce Country Chart

We are disappointed that the Commerce Country Chart is not being adopted in the use of disseminating regulatory policy for CWC controls. We strongly recommend that you reconsider adding a CWC column to the Commerce Country Chart in order for industry to effectively manage current and future updates to States Parties. Use of the Commerce Country Chart has been integrated into compliance systems at many of our member companies and has made management of export licensing requirements much more efficient and easier to change and maintain. Non-use of the Commerce Country Chart is inconsistent with the way in which most other export licensing policy decisions are managed which is comparing the reason for control with the ECCN and the country table in the Commerce Control Chart.

CWC End-Use Certificate

The time involved in obtaining CWC end-use certificates is relatively unknown and could be extremely underestimated. The fact that other States Parties are not requiring authorization from a non-State Party's government agency creates a major inconsistency in the way end-use certificates are handled from country to country. For example, the United Kingdom does not have a requirement for end-use declarations to be endorsed by any local agency or government office of a non-State Party. Exporters in the United Kingdom may use letters from customers in non-States Parties on their letterhead that simply state the proposed language set forth in Part 745.2(b). These letters are accepted by the United Kingdom's licensing authority, the Department of Trade and Industry, as end-use declarations.

The NCITD recommends adopting the CWC end-use certificate method used in the United Kingdom. Because of this inconsistency, non-States Parties may trivialize the importance of this information which could eventually lead to delays in obtaining end-use certificates. Furthermore, foreign consignees will need to be educated as to what is required of them because they will need to confront their own bureaucracies to obtain this authorization.

As an alternative, the Bureau of Export Administration should recommend to the OPCW that a standard international CWC end-use certificate be adopted for use by all non-States Parties. Doing so would eliminate confusion between non-States Parties and customers within those countries, and alleviate what could be an administrative burden that is more than exporters are prepared to handle. Non-States Parties and customers located in those countries would have a

mutual understanding and knowledge of the specific information that must be disclosed to and by all parties to a CWC controlled transaction.

Clarification is also required on CWC end-use certificate reporting requirements. It is not entirely clear as to what actually has to be submitted seven days after the date of export, especially in light of the ability to issue end-use certificates with aggregate quantities against multiple shipments to a single consignee. Are exporters required to submit the same end-use certificate seven days after each export to the same consignee? Is each subsequent export supposed to be subtracted and noted on the original end-use certificate? Why can't the end-use certificate be submitted with a license application for 1C350 controlled chemicals? Why not allow quarterly reporting of end-use certificates to coincide with sample shipments controlled under 1C350?

Commerce Control List

A new ECCN, 1C356, for CWC schedule 1 chemicals and families of chemicals was supposed to be added to the Commerce Control List in prior drafts of the implementing regulations. This would have been very beneficial to our member companies since many of them program the ECCN logic into their export control systems. Doing so, along with adding a CWC column to the Commerce Country Chart, would have been a much more effective way of managing schedule 1 chemicals. The alternative industry will have to deal with is far less cohesive and may lead to inaccuracies in maintaining schedule 1 chemicals because they are listed in three different places: under 1C350, 1C351, and the State Department's International Traffic in Arms Regulations.

Existing Export Licenses to Non-States Parties

Exports of schedule 2 and 3 chemicals under 1C350 authorized under existing export licenses should be exempt from obtaining a CWC end-use certificate from non-States Parties. We wonder whether non-States Parties place as much, if any, emphasis on authorizing these imports. This information could be collected through their Customs authority.

Chemical Families

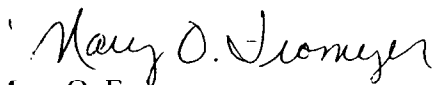
Providing Chemical Abstract Service (CAS) numbers where possible would be helpful when referencing chemical families listed in schedules 1 and 2. Doing so would: increase the likelihood that the average layman would be able to make compliance decisions without technical support from a chemist; save time in researching the properties of chemicals to determine whether or not they are affected by the CWC; and improve compliance by all parties other than the manufacturer handling these chemicals. For example, Ethylphosphonyl difluoride (753-98-0), a schedule 1 chemical, appears under 1C350 chemical precursors by name with corresponding CAS number, but appears in schedule 1 of the CWC implementing regulations within (9) Alkyl (Me, Et, n-Pr or I-Pr) phosphonyldifluorides.

Mixtures

Please clarify that CWC schedule 2 and 3 chemicals that do not meet the mixtures threshold of less than 10% and less than 25%, respectively, default to 1C995 for 1C350 chemical mixtures, and EAR99 for 1C355 chemical mixtures.

The NCITD thanks you for your time and consideration in this matter and looks forward to working with you on future regulatory policies. If you have any questions concerning these comments, please contact me at (202) 872-9280.

Sincerely,

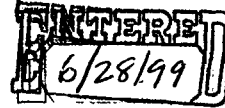

Mary O. Fromyer
Executive Director, NCITD



1790 Patent Law Building
June 25, 1999

The Dow Chemical Company
Midland, Michigan 48674

Ms. Nancy Crowe
Regulatory Policy Division
Bureau of Export Administration
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14th Street and Pennsylvania Avenue, N.W.
Washington, DC 20230



**COMMENTS BY THE DOW CHEMICAL COMPANY TO THE REVISIONS TO THE
EXPORT ADMINISTRATION REGULATIONS: 64 FR 27138; MAY 18, 1999**

The Dow Chemical Company (Dow) respectfully offers the following comments to the Bureau of Export Administration (BXA) on the interim final rule to implement the export control provisions of the Chemical Weapons Convention (CWC) at 15 CFR Part 734, et al. [64 FR 27138-27150 (May 18, 1999)]. Dow believes that the rule effectively reflects the requirements of the CWC, is quite clear and succinct, and largely addresses many of the implementation challenges faced by industry. However, Dow does have concerns over portions of the rule, and hereby requests some clarifications and changes.

BXA should reconsider the Savings Clause to give exporters options when problems arise

This interim rule was effective immediately for export orders that were not essentially en route by the date of publication of the rule. Dow's minimal experience with the rule so far has led to business-threatening delays, and, potentially, loss of significant business. Some countries would not issue End-Use Certificates for U.S. exports prior to implementation of the U.S. regulations which caused delays in shipments, and continues to do so. In addition, because the CWC had been implemented in other countries for up to two years prior to U.S. implementation, at least one importing country (possibly more - time will tell) has a standardized Certificate that they have been issuing for CWC purposes. This country is reluctant to change its Certificate to comply with the U.S. regulation, which is somewhat different from the CWC requirement. Dow requests that BXA reconsider immediate effect of this rule, and issue guidance to exporters on options available in the case that conflicts arise that are outside the control of the exporter. Continuing delays and loss of sales has a very real and sometimes long-lasting negative impact on customer relations and future sales.

BXA should accurately reflect the timing for submission of End-Use Certificates in §736.2(b)(7)(B).

Section 736.2(b)(7)(B) states that a U.S. person may not export a Schedule 2 or Schedule 3 chemical to a non-States Party "without first submitting" an End-Use Certificate as required in §745.2. Section 745.2 states that the Certificate must be submitted no later than 7 days *after* the date of export. Dow requests that the word "first" be removed from the requirement in §736.2(b)(7)(B), since it does not accurately reflect the required timing of submission as stated in §745.2. In addition, Dow believes 7 days is an unnecessarily short submission deadline. See Dow's comments, below, regarding the submission time in §745.2(a)(2).

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BXA should rewrite or eliminate §740.11(c)(3).

Section 740.11(c) describes the GOV license exception which authorizes exports and reexports to the Organization for the Prohibition of Chemical Weapons (OPCW) and exports and reexports by the OPCW for inspections under the CWC. This license exception is vital for industry compliance with the CWC, and Dow fully supports the need for the license exception. However, Section 740.11(c)(3), which deals with confidentiality, raises some concerns. It says:

The application of the provisions of this paragraph (c) is subject to the condition that the confidentiality of business information is strictly protected in accordance with applicable provisions of the EAR and other U.S. laws regarding the use and retransfer of U.S. goods and services.

This paragraph raises many questions and does not seem to be necessary for proper use of the GOV license exception. The CWC and the corresponding U.S. implementing legislation define the requirements for confidentiality of business information. Industry must assume that these requirements will be followed; otherwise, implementation of CWC inspections could devastate the U.S. chemical industry. Therefore, including the confidentiality paragraph in the CWC seems to be unnecessary. Unfortunately, the paragraph seems to impart a burden on the U.S. industry exporter to ensure that the confidentiality provisions (of all U.S. laws) are followed. Since the U.S. industry exporter has no control over the behavior of the OPCW and its employees, this paragraph seems to render the license exception nearly useless. At a minimum, it is confusing and raises many questions such as:

- What is the effect of failure to protect confidential information? For instance, if confidential information (controlled or not) is not strictly protected by the OPCW, use of the license exception would be prohibited. Would all exports that had been done using the license exception then be unlawful? Who would be liable? In the case of technology exports from the U.S. industry exporter, it was the exporter who used the license exception, thereby agreeing to the confidentiality provision.
- Does timing matter? What if confidentiality was breached 3 years after the exports took place? Does the export/reexport become retroactively unlawful?
- Does this paragraph only affect confidential information? If an inspector breaches the confidentiality requirement, does that mean that the OPCW equipment exported under the license exception [§740.11(c)(1)(i)] was unlawful?
- What if a member of the U.S. inspection team violates the confidentiality provision by providing information to others in the U.S. (not an export)? Does that render exports under the license exception unlawful?
- What "other U.S. laws" should be considered?

Dow recognizes both the need for the GOV license exception and necessity of protecting confidential business information. However, making this confidentiality provision an explicit criterion for use of the license exception creates confusion for the chemical industry. For these reasons Dow respectfully suggests that §740.11(c)(3) be rewritten for clarity or eliminated.

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BXA should warn exporters about the inapplicability of the GOV license exception for export of ITAR-controlled technology.

In order to avoid confusion and assist compliance, BXA should warn exporters that the GOV license exception only applies to technology controlled by the Export Administration Regulations (EAR). Dow generally feels that reference to the International Traffic in Arms Regulation (ITAR) within the EAR adds confusion rather than clarity. However, since there are many references to the ITAR within these CWC implementing regulations (with regard to End-Use Certificates and scheduled chemicals), it seems prudent that BXA issue a warning relative to the GOV license exception.

BXA should clarify the requirements for ECCN 1C350 within §742.18(a)(2)(i)

Section 742.18 is the description of the control policy for the CWC. Section 742.18(a)(2)(i) is the description of the license requirements for Schedule 2 and 3 chemicals under ECCN 1C350. It states that "For *all* chemicals included in ECCN 1C350 ... a license is required for CW reasons unless an End-Use Certificate is obtained...for exports to" non-States Parties. This statement is inaccurate. It would seem to require an End-Use Certificate be obtained for *all* chemicals included in 1C350. A license is generally required for shipment of an ECCN 1C350 chemical to any of these destinations for CB reasons. However, only *some* of these chemicals, *not all* of these chemicals, are controlled for CW reasons. Therefore, only those chemicals controlled for CW reasons would require a license *for CW reasons* when an End-Use Certificate is not obtained. BXA should make it clear that End-Use Certificates are only required for those chemicals included in ECCN 1C350 that are also controlled for CW reasons.

Errors in Parts 742 and 745 should be corrected

There are several apparent typographical errors in Parts 742 and 745 that should be corrected. They are:

§742.18(b)(2)(ii)(A):

- In the first sentence, the second "Schedule" should be removed from the portion of the sentence that currently says "and Schedule 3 Schedule chemicals controlled under ECCN 1C350".
- In the same paragraph, there is a parenthetical reference to paragraph (b)(2)(iv) of this section. The referenced paragraph does not exist. It appears that this reference should be to paragraph (b)(2)(iii).
- In the last sentence of this paragraph there is a reference to an "end-user certificate". In order to be consistent with other references in the regulation BXA should capitalize the first letter of each word and remove the "r" from "user" so that it reads "End-Use Certificate".

§742.18(b)(2)(ii)(C):

- In the title of this paragraph there is a period (.) instead of a comma (,) after April 29, and before 2000.
- This paragraph states that applications to export Schedule 2 chemicals controlled under 1C350 *and* 1C355 to non-States Parties on or after April 29, 2000, will generally be denied.

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Since there are no chemicals controlled under *both* 1C350 and 1C355, when read literally this statement is meaningless. BXA should clarify the intent of this paragraph by changing the *and* between 1C350 and 1C355 to *or*.

Supplement No. 2 To Part 742:

- At (c)(41), the proper reference to the technology control is 1E355, not 1C355.

Part 745:

- The reference to Supplement No. 3 to Part 745 is missing from the section listing at the beginning of this part. It should be added just prior to the "Authority" citations.

BXA should clarify the requirement for obtaining End-Use Certificates from foreign governments in §745.2(a)(1).

Section 745.2(a)(1) requires that the End-Use Certificate "must be issued by the foreign government's agency responsible for foreign affairs or any other agency or department designated by the importing government for this purpose." Supplement No. 3 to Part 745 then lists two of these government agencies. The absence of a listing of the designated authorities makes it very difficult for an exporter to know whether a Certificate has been issued by the proper authority. The exporter will generally have to rely upon the customer in the importing country to ensure that the proper authority has issued the Certificate. BXA should either include a complete listing of government authorities or clarify what means an exporter should/must use to ensure that a Certificate has been issued by the proper importing government's agency.

BXA should allow license applications and End-Use Certificates to be submitted together in §745.2(a)(1)

Section 745.2(a)(1) states that End-Use Certificates must be submitted separately from license applications. Dow anticipates that, generally, an exporter will submit a license application while concurrently attempting to obtain an End-Use Certificate. However, as customers become more familiar with the requirements, they may obtain the End-Use Certificate and submit it to the exporter along with any other required supporting documents. In this case, the exporter should be allowed to submit all required documentation together with the license application. Minimizing the burden on exporters and allowing for efficiency in processing paperwork can only lead to better compliance. BXA should change the regulation to allow exporters to submit all required documents together.

BXA should allow more time to submit End-User Certificates under §745.2(a)(2)

Section 745.2(a)(2) states that End-User Certificates must be submitted to the Department of Commerce no later than 7 days after the date of export. Dow believes this requirement imposes an unnecessary burden on the exporter without a resulting compliance benefit. To our knowledge, there is no other weekly reporting requirement in the EAR. Dow suggests that BXA consider quarterly submission of the End-Use Certificates. This would correspond to the quarterly reporting requirement for shipment of samples under ECCN 1C350. Allowing a more

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reasonable timeframe for submission of the Certificates should lead to enhanced compliance and less burden on the exporter.

BXA should also clarify that an End-Use Certificate for multiple shipments only needs to be submitted once, within the given timeframe for the first shipment which is supported by that Certificate.

BXA should consider changing the re-transfer language on the End-Use Certificate in §745.2(b)(2) to conform with the CWC language.

Section 745.2(b)(2) says that the End-Use Certificate must state that the chemicals will not be transferred to any other end-user(s) or end-use(s). This differs slightly from the CWC requirement that says the Certificate must state that the chemicals will not be re-transferred. This difference between the U.S. regulation and the CWC requirement has already caused delays in shipments and possible loss of business. Dow requests that BXA reconsider this requirement and change it to conform with the CWC. (See also comments to Savings Clause, above)

BXA should clarify what is meant by type of chemical in §745.2(b)(3)

Section 745.2(b)(3) states that the End-Use Certificate must list the types and quantities of chemicals. Dow requests that BXA clarify what is meant by "type" of chemical. Although this language is taken directly from the CWC, it is not clear what the expectation is for type of chemical. Chemical type can mean many things to many people, and is used in different contexts within the CWC. Dow suggests that chemical name and/or CAS # may be appropriate on the certificate. However, without guidance, BXA can expect highly variable responses to "type" of chemical.

BXA should clarify the SED requirement in Part 758

This section revises §758.3(h)(2) to require the ECCN to be shown on the SED for items "that are controlled for CW reasons." This appears to require that the ECCN be shown on the SED for all exports of all CWC Scheduled chemicals included in either ECCN 1C350 or 1C355 to all destinations outside the U.S. Dow believes this is a burdensome and unnecessary requirement. The only other items which bear this burden are items which are controlled for "NS" reasons and have a column identifier of "NS column 2". Dow can understand that there *may* be some enforcement reasons why BXA wants to know the ECCN for shipments of Scheduled chemicals to non-States Parties; but there seems to be no similar enforcement benefit for shipments to States Parties. This section should be rewritten to indicate that the ECCN is required on the SED only for items "that are controlled for "CW" reasons and are destined to non-States Parties, or that have the column identifier". This would also conform this section to the requirements as stated within Note 2 to ECCN 1C355 (see comments on ECCN 1C355, below).

BXA should clearly delineate the SED requirement in ECCN 1C355 (Supplement 1 to Part 774)

In the "Controls" section of ECCN 1C355 there is a note to the exporter informing them to check the export clearance requirements of §758.3. As noted above, §758.3 indicates that the ECCN

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must be placed on the SED for any shipments of these chemicals to all export destinations. See comments above concerning the burden of §758.3 as currently written. In the "License Requirements Notes" for ECCN 1C355 there is no mention of the SED requirement in Note 1 (shipments to States Parties), but there is a positive statement of the SED requirement in Note 2 (shipments to non-States Parties). This would indicate that BXA only intends the ECCN to be shown on the SED when shipments are going to non-States Parties. BXA should change §758.3, as suggested above, to conform with Note 2 to this ECCN.

BXA should clarify the mixture exemption in ECCN 1C355 (Supplement 1 to Part 774)

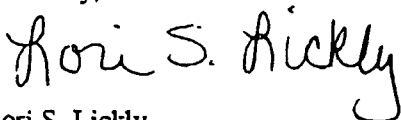
Note 4 to ECCN 1C355 provides for a mixture exemption for low level mixtures of Scheduled chemicals. Dow applauds BXA's inclusion of this exemption. For clarity, Dow suggests that BXA positively state that mixtures exempted from the controls of this ECCN are properly classified as EAR99, as is done in paragraph "c" to this note for consumer goods.

SUMMARY AND CONCLUSIONS

Dow is very supportive of the CWC, and appreciates the opportunity to provide comments to the CWC amendments to the EAR. Dow found the amendments to be, for the most part, clear and readable. The regulation seems to reasonably implement the requirements of the CWC. Many of Dow's comments constitute minor clarifications or corrections of errors. However, some of the concerns described above could cause significant burden for exporters and/or significantly affect Dow's (and industries') ability to comply with the regulations. Dow respectfully requests that BXA give careful consideration to these comments and suggested changes.

I would be happy to discuss any of these comments with you. Please contact me at the number below if you have any questions about the comments, or would like to discuss them further.

Sincerely,



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Senior Export Regulations Specialist
Export/Import Regulatory Affairs
Ph: (517)636-5984
Fax: (517)636-1352