

Items:

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

a.1.b. [RESERVED]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: April 27, 2004.

Peter Lichtenbaum,
Assistant Secretary for Export Administration.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR part 774

[Docket No. 040414116-4116-01]

RIN 0694-AD01

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

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

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

DATES: This rule is effective May 4, 2004.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

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

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

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

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

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

5A101:

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

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

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

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

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

used in association with UAV's capable of traveling at least 300km. 9A120: Adding this ECCN to capture UAVs designed or modified for aerosol delivery.

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

Savings Clause

Shipments of items removed from license exception eligibility or NLR authorization as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on May 4, 2004, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous license exception eligibility or NLR authorization provisions so long as they have been exported from the United States before June 3, 2004. Any such items not actually exported before midnight, on June 3, 2004, require a license in accordance with this regulation.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

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

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

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Matthew Blaskovich, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

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

PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms" & "Toxins," ECCN 1B118 is amended by revising the "items" paragraph in the List of Items Controlled section to read as follows:

1B118 Continuous mixers with provision for mixing under vacuum in the range from zero to 13.326 kPa and with temperature control capability of

the mixing chamber and having any of the following characteristics (see List of Items Controlled), and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

- a. Two or more mixing/kneading shafts; or
- b. A single rotating shaft which oscillates and has kneading teeth/pins on the shaft as well as inside the casing of the mixing chamber.

■ 3. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms" & "Toxins," ECCN 1C111 is amended by revising the "items" paragraph in the List of Items Controlled section to read as follows:

1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

- a. Propulsive substances:
 - a.1. Spherical aluminum powder, other than that specified on the U.S. Munitions List, with particles of uniform diameter of less than 200 micrometer and an aluminum content of 97% by weight or more, if at least 10 percent of the total weight is made up of particles of less than 63 micrometer, according to ISO 2591:1988 or national equivalents such as JIS Z8820.

Technical Note: A particle size of 63 micrometer (ISO R-565) corresponds to 250 mesh (Tyler) or 230 mesh (ASTM standard E-11).

- a.2. Metal fuels, other than that controlled by the U.S. Munitions List, in particle sizes of less than $z60 \times 10^{-6}$ m (60 micrometers), whether spherical, atomized, spheroidal, flaked or ground, consisting 97% by weight or more of any of the following:
 - a.2.a Zirconium;
 - a.2.b Beryllium;
 - a.2.c Magnesium; or
 - a.2.d Alloys of the metals specified by a.2.a to a.2.c above.

Technical Note: The natural content of hafnium in the zirconium (typically 2% to 7%) is counted with the zirconium.

- a.3. Liquid oxidizers, as follows:
 - a.3.a Dinitrogen trioxide;

- a.3.b. Nitrogen dioxide/dinitrogen tetroxide;
- a.3.c. Dinitrogen pentoxide;
- a.3.d. Mixed oxides of nitrogen (MON);
- a.3.e. Inhibited red fuming nitric acid (IRFNA);

Technical Note: Mixed oxides of nitrogen (MON) are solutions of nitric oxide (NO) in dinitrogen tetroxide/nitrogen dioxide (N₂O₄/NO₂) that can be used in missile systems. There are a range of compositions that can be denoted as MON_i or MON_{ij}, where i and j are integers representing the percentage of nitric oxide in the mixture (e.g., MON3 contains 3% nitric oxide, MON25 25% nitric oxide. An upper limit is MON40, 40% by weight).

- b. Polymeric substances:
 - b.1. Carboxy-terminated polybutadiene (CTPB);
 - b.2. Hydroxy-terminated polybutadiene (HTPB), other than that controlled by the U.S. Munitions List;
 - b.3. Polybutadiene-acrylic acid (PBAA);
 - b.4. Polybutadiene-acrylic acid-acrylonitrile (PBAN);
- c. Other propellant additives and agents:
 - c.1. Butacene;
 - c.2. Triethylene glycol dinitrate (TEGDN);
 - c.3. 2-Nitrodiphenylamine;
 - c.4. Trimethylethane trinitrate (TMETN);
 - c.5. Diethylene glycol dinitrate (DEGDN).

■ 4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and “Information Security”, Part I. Telecommunications, ECCN 5A101 is amended by revising the heading and the “items” paragraph in the List of Items Controlled section to read as follows:

5A101 Telemetering and telecontrol equipment, including ground equipment, designed or modified for unmanned aerial vehicles or rocket systems (including ballistic missile systems, space launch vehicles, sounding rockets, cruise missile systems, target drones, and reconnaissance drones) capable of a maximum “range” equal to or greater than 300km.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

The list of items controlled is contained in the ECCN heading.

Note: 5A101 does not control: 1. Telecontrol equipment specially designed to be used for remote control of recreational

model planes, boats or vehicles and having an electric field strength of not more than 200 microvolts per meter at a distance of 500 meters;

- 2. Equipment designed or modified for manned aircraft or satellites;
- 3. Ground based equipment designed or modified for terrestrial or marine applications;
- 4. Equipment designed for commercial, civil, or safety of life (e.g., data integrity or flight safety) Global Navigation Satellite System services.

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

■ 5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, ECCN 9A115 is amended by revising the heading to read as follows:

9A115 Apparatus, devices and vehicles, designed or modified for the transport, handling, control, activation and launching of rockets, missiles, and unmanned aerial vehicles capable of achieving a “range” equal to or greater than 300 km. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, ECCN 9A120 is added after ECCN 9A119 and before ECCN 9A980 to read as follows:

9A120 Complete unmanned aerial vehicles designed or modified to dispense an aerosol, capable of carrying elements of a payload in the form of a particulate or liquid other than fuel components of such vehicles of a volume greater than 20 liters, and having any of the following:

License Requirements

Reason for Control: MT, AT

| Control(s) | Country chart |
|----------------------------------|---------------|
| MT applies to entire entry | MT Column 1. |
| AT applies to entire entry | AT Column 1. |

License Exceptions

LVS: N/A
GBS: N/A

CIV: N/A

List of Items Controlled

Unit: Equipment in number; parts and accessories in \$ value.

Related Controls: See ECCN 9A012 or the U.S. Munitions List Category VIII (22 CFR part 121).

Related Definitions: N/A.

Items:

- a. An autonomous flight control and navigation capability (e.g., an autopilot with an inertial navigation system); or
- b. Capability of controlled-flight out of the direct vision range involving a human operator (e.g., televisual remote control).

Note: 1. Item does not control model aircraft intended for recreational or competition purposes.

2. Item does not control UAVs designed to accept payloads (such as remote sensing equipment or communications equipment), that lack an aerosol dispensing system/mechanism.

Technical Notes: 1. Complete systems comprise those unmanned air vehicles (UAVs) already configured with, or already modified to incorporate, an aerosol delivery mechanism.

2. An aerosol consists of a particulate or liquid dispersed in the atmosphere. Examples of aerosols include liquid pesticides for crop dusting and dry chemicals for cloud seeding.

3. The phrase “elements of a payload in the form of a particulate or liquid” refers to the particulate or liquid being a part (possibly one of many parts) of the payload.

4. The phrase “particulate or liquid other than fuel components” was added to ensure such items as exhaust vapour (a byproduct of combustion in the form of a particulate) and liquid fuel and its components (e.g. additives such as oil) were not considered as control criteria when evaluating UAVs against this control.

5. This item does not control UAVs that are exported without the aerosol dispensing system/mechanism included at time of export.

Dated: April 27, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

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