

*Material Incorporated by Reference*

(p) You must use EMBRAER Alert Service Bulletin S.B. 145–28–A013, dated August 16, 2000; and EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The incorporation by reference of EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Alert Service Bulletin S.B. 145–28–A013, dated August 16, 2000, was approved previously by the Director of the Federal Register as of October 3, 2000 (65 FR 56233, September 18, 2000).

(3) Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on April 1, 2005.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 742, 744, and 774

[Docket No. 050401091–5091–01]

RIN 0694–AD37

#### **Expansion of the Country Scope of the License Requirements that Apply to Chemical/Biological (CB) Equipment and Related Technology; Amendments to CB-Related End-User/End-Use and U.S. Person Controls**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is publishing this final rule to amend the Export Administration Regulations (EAR) by increasing the country scope of chemical/biological (CB) controls on those Commerce Control List (CCL) entries that contain chemical/biological equipment and related technology included on the Australia Group (AG) Common Control Lists. Specifically, this

final rule expands the country scope of the CB license requirements for these CCL entries from certain countries of concern for chemical/biological weapons reasons to all destinations, worldwide, except for those countries that participate in the Australia Group (AG). These changes are intended to make the EAR license requirements that apply to chemical/biological equipment and related technology identified on the AG Common Control Lists consistent with the AG “Guidelines for Transfers of Sensitive Chemical or Biological Items.”

In addition, this rule amends certain end-user and end-use based controls in the EAR by expanding these controls to include transfers (in-country), as well as exports and reexports. Specifically, this final rule expands the EAR restrictions on certain chemical and biological weapons end-uses to apply to exports, reexports, and transfers of items subject to the EAR to or within any country or destination, worldwide. Prior to the publication of this rule, such restrictions applied only to exports and reexports.

Finally, this rule amends the EAR by expanding the country scope of the restrictions on certain activities of U.S. persons to include activities in support of the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide. This change makes the country scope of these U.S. person controls consistent with the country scope of the chemical and biological weapons end-user/end-use controls in Section 744.4 of the EAR, as described above.

**DATES:** This rule is effective April 14, 2005. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

**ADDRESSES:** You may submit comments, identified by RIN 0694–AD37, by any of the following methods:

- E-mail: [wfisher@bis.doc.gov](mailto:wfisher@bis.doc.gov). Include “RIN 0694–AD37” in the subject line of the message.
- Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

- Mail or Hand Delivery/Courier: Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AD37.

**FOR FURTHER INFORMATION CONTACT:** Mark Sagrams, Office of Nonproliferation and Treaty

Compliance, Bureau of Industry and Security, telephone: (202) 482–7900.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by increasing the country scope of the chemical/biological (CB) controls that apply to entries on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) that list chemical/biological equipment and related technology included on the Australia Group (AG) Common Control Lists. The AG is a multilateral forum, consisting of 38 participating countries, that maintains export controls on lists of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program.

Specifically, this rule amends Export Control Classification Numbers (ECCNs) 1A004, 2A226, 2A292, 2B350, 2B351, 2B352, 2E001, 2E002, 2E201, 2E290, and 2E301 by revising the License Requirements section in each of these ECCNs to expand the country scope of the CB license requirements for these ECCNs from CB Column 3 to CB Column 2. The countries that require a license under CB Column 2 or CB Column 3 are indicated in the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). Prior to the publication of this rule, these ECCNs required a license, for CB reasons, only to certain countries of concern for chemical/biological weapons reasons. Effective with the publication of this rule, the CB license requirements for these ECCNs now apply to all destinations, worldwide, except for those countries that participate in the Australia Group (AG), *i.e.*, those countries identified in Country Group A:3 (Australia Group) in Supplement No. 1 to Part 740 of the EAR.

This rule also amends ECCN 1E001 by: (1) revising the ECCN, in conformance with entry 1.E.1 on the Wassenaar Arrangement (WA) “List of Dual-Use Goods and Technologies,” to control technology for the “development” or “production” of equipment controlled by 1A004; (2) expanding the CB Column 2 controls in ECCN 1E001 to include technology for the “development” or “production” of chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristics described in 2B351.a; and (3) correcting the NS Column 1 controls in ECCN 1E001 to include technology for the “development” or “production” of metals and compounds

controlled under 1C011. These changes are consistent with BIS's regular practice of including technologies on the WA Dual-Use List in the CCL and ensure that this 1A004 technology is subject to the appropriate national security (NS), chemical-biological (CB), and anti-terrorism (AT) controls.

In addition, this rule makes conforming changes to Section 742.2(a) of the EAR, which identifies the CB license requirements that apply to those ECCNs containing items identified on one of the AG lists. Specifically, this rule removes all references to ECCNs 1A004, 2A226, 2A292, 2B350, 2B351, 2B352, 2E001, 2E002, 2E201, 2E290, and 2E301 from Section 742.2(a)(3). This section identifies those ECCNs containing AG-listed items requiring a license to countries indicated under CB Column 3 of the Commerce Country Chart. This rule also adds references to these ECCNs (as well as the 1A004.c CB-controlled technology in ECCN 1E001) to Section 742.2(a)(2), which identifies those ECCNs containing AG-listed items requiring a license to countries indicated under CB Column 2 of the Commerce Country Chart.

The changes made to the Commerce Control List and to Section 742.2 by this rule are intended to make the EAR license requirements that apply to AG-listed chemical/biological equipment and related technology consistent with the AG "Guidelines for Transfers of Sensitive Chemical or Biological Items." These changes will likely result in an increase in the number of license applications that will have to be submitted to BIS for exports and reexports of equipment and technology affected by the expansion in the number of destinations for which a license is required for CB reasons. For example, expanding the number of destinations for which a license is required for exports and reexports of technology related to AG-controlled chemical/biological equipment (*i.e.*, CB-controlled technology in ECCNs 1E001, 2E001, 2E002, 2E201, 2E290, and 2E301) will likely result in an increase in the number of "deemed" export license applications that will have to be submitted to BIS.

This rule also amends the EAR by expanding the types of transactions that would require a license pursuant to the chemical and biological weapons end-user/end-use controls in Section 744.4 of the EAR. This final rule amends paragraphs (a), (b), and (d) in Section 744.4 of the EAR to apply to transfers (in-country), as well as exports and reexports. Prior to the publication of this rule, the end-user/end-use controls in Section 744.4 applied only to exports

and reexports, although U.S. persons have been and continue to be subject to certain in-country transfer restrictions described in § 744.6 of the EAR. In conjunction with expanding the scope of Section 744.4 to include transfers (in-country), this rule replaces the term "exporters," in paragraph (b) of that section, with the term "persons," to make subsections 744.4(a) and (b) consistent with each other.

As amended by this rule, Section 744.4(a) of the EAR requires a license to export, reexport, or transfer (in-country) items subject to the EAR if, at the time of the export, reexport, or transfer, the party responsible for the export, reexport, or transfer knows that the items are intended for chemical or biological weapons activities in or by any country or destination, worldwide. Section 744.4(b) of the EAR authorizes BIS to inform persons that a license is required for a specific export, reexport, or transfer (in-country), or for the export, reexport, or transfer (in-country) of specific items to a certain end-user, because there is an unacceptable risk of diversion to chemical or biological weapons activities, anywhere in the world.

The term "transfer (in-country)," as used in the context of Section 744.4 of the EAR, means the transfer of an item subject to the EAR within a foreign country, if the transferor has knowledge that the transferee will use the "item" in the design, development, production, stockpiling, or use of chemical or biological weapons. The term "transfer (in-country)," as used in Section 744.4, does not apply to a transfer within the United States. However, Section 764.2(e) of the EAR indicates that certain activities involving items subject to the EAR (including transfers of such items within the United States) are prohibited, if a person acts with knowledge of a violation of the EAR, the Export Administration Act (EAA), or any order, license, license exception, or other authorization issued thereunder with respect to such items. The release of technology or source code subject to the EAR to certain foreign nationals in the United States, as described in Section 734.2(b)(2)(ii) of the EAR, constitutes a "deemed" export, not a "transfer (in-country)."

This rule also amends Section 744.6(a)(1)(i)(C) and (a)(2)(ii) of the EAR to expand the country scope of the restrictions on certain activities of U.S. persons to include activities in support of the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide. Prior to the publication of this rule, these U.S.

person restrictions applied only to activities involving certain countries of concern for chemical and biological weapons reasons (*i.e.*, Country Group D:3 in Supplement 1 to Part 740 of the EAR). This change makes the country scope of these U.S. person controls consistent with the country scope of the chemical and biological weapons end-user/end-use controls in Section 744.4 of the EAR, as described above. On March 30, 2005 (70 FR 16110), BIS published a final rule that expanded the country scope of the end-user/end-use controls in Section 744.4 of the EAR from certain countries of concern for chemical and biological reasons (*i.e.*, Country Group D:3) to include all destinations, worldwide, including the countries identified in Country Group A:3 (*i.e.*, the AG-participating countries).

Although the Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 6, 2004, 69 FR 48763 (August 10, 2004), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

#### Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (*i.e.*, under the designator "NLR") 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 April 29, 2005, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before May 16, 2005. Any such items not actually exported or reexported before midnight, on May 16, 2005, require a license in accordance with this regulation.

Transfers (in-country) that are made subject to a license requirement as a result of this regulatory action may be made without a license before May 16, 2005. Beginning at midnight on May 16, 2005, transfers (in-country) require a license in accordance with this regulation.

Deemed" exports of "technology" and "source code" removed from eligibility for export under a license exception or without a license (under the designator "NLR") as a result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before August 12, 2005. Beginning at

midnight on August 12, 2005, such "technology" and "source code" may no longer be released, without a license, to a foreign national subject to the "deemed" export controls in the EAR when a license would be required to the home country of the foreign national 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 of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694-0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

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.

### List of Subjects

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 744 and 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 742, 744, and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

### PART 742—[AMENDED]

■ 1. The authority citation for 15 CFR Part 742 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; Sec. 1503, Pub. L. 108-11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004), Notice of November 4, 2004, 69 FR 64637 (November 8, 2004).

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

#### § 742.2 Proliferation of chemical and biological weapons.

(a) \* \* \*

(2) If CB Column 2 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to all destinations except countries in Country Group A:3 (see Supplement No. 1 to part 740 of the EAR) (Australia Group members) for the following:

(i) Chemicals identified in ECCN 1C350 (precursor and intermediate chemicals used in the production of chemical warfare agents).

(A) This license requirement includes chemical mixtures identified in ECCN 1C350.b, .c, or .d, except as specified in License Requirements Note 2 to that ECCN.

(B) This licensing requirement does not include chemical compounds created with any chemicals identified in ECCN 1C350, unless those compounds are also identified in ECCN 1C350.

(C) This licensing requirement does not apply to any of the following medical, analytical, diagnostic, and food testing kits that consist of pre-packaged materials of defined composition that

are specifically developed, packaged, and marketed for diagnostic, analytical, or public health purposes:

(1) Test kits containing no more than 300 grams of any chemical controlled by ECCN 1C350.b or .c (CB-controlled chemicals also identified as Schedule 2 or 3 chemicals under the CWC) that are destined for export or reexport to CWC States Parties (destinations listed in Supplement No. 2 to part 745 of the EAR). Such test kits are controlled by ECCN 1C395 for CB and CW reasons, to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR), and for AT reasons.

(2) Test kits that contain no more than 300 grams of any chemical controlled by ECCN 1C350.d (CB-controlled chemicals not also identified as Schedule 1, 2, or 3 chemicals under the CWC). Such test kits are controlled by ECCN 1C995 for AT reasons.

(ii) Software (ECCN 1D390) for process control that is specifically configured to control or initiate production of the chemical precursors controlled by ECCN 1C350.

(iii) Technology (ECCN 1E001) for the development or production of chemical detection systems and dedicated detectors therefore, controlled by ECCN 1A004.c, that also have the technical characteristics described in ECCN 2B351.a.

(iv) Technology (ECCNs 1E001 and 1E350) involving the following for facilities designed or intended to produce chemicals described in 1C350:

- (A) Overall plant design;
- (B) Design, specification, or procurement of equipment;
- (C) Supervision of construction, installation, or operation of complete plant or components thereof;
- (D) Training of personnel; or
- (E) Consultation on specific problems involving such facilities.

(v) Technology (ECCNs 1E001 and 1E351) for the production and/or disposal of chemical precursors described in ECCN 1C350;

(vi) Equipment and materials identified in ECCN 2B350 or 2B351 on the CCL, chemical detection systems controlled by 1A004.c for detecting chemical warfare agents and having the characteristics of toxic gas monitoring systems described in 2B351.a, and valves controlled by ECCN 2A226 or ECCN 2A292 having the characteristics of those described in 2B350.g, which can be used in the production of chemical weapons precursors or chemical warfare agents.

(vii) Equipment and materials identified in ECCN 2B352, which can be

used in the production of biological agents.

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

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

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

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

(3) If CB Column 3 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to Country Group D:3 (see Supplement No. 1 to part 740 of the EAR) for medical products identified in ECCN 1C991.d.

\* \* \* \* \*

**PART 744—[AMENDED]**

■ 3. The authority citation for 15 CFR Part 744 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 4. Section 744.4 is amended by revising paragraphs (a), (b), and (d) to read as follows:

**§ 744.4 Restrictions on certain chemical and biological weapons end-uses.**

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR without a license if, at the time of export, reexport, or transfer you know that the item will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide.

(b) *Additional prohibition on persons informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export, reexport, or transfer (in-country), or for the export, reexport, or transfer (in-country) of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to the activities specified in paragraph (a) of this section, anywhere in the world. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraph (a) of this section.

\* \* \* \* \*

(d) *License review standards.* (1) Applications to export, reexport, or transfer (in-country) items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport, or transfer would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export, reexport, or transfer is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on an application required under this section:

- (i) The specific nature of the end-use;
- (ii) The significance of the export, reexport, or transfer in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;
- (iii) The nonproliferation credentials of the importing country or the country in which the transfer would take place;
- (iv) The types of assurances or guarantees against the design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case; and

(v) The existence of a pre-existing contract. See Supplement No. 1 to Part 742 of the EAR for relevant contract sanctity dates.

■ 5. Section 744.6 is amended by revising paragraphs (a)(1)(i)(C) and (a)(2)(ii) to read as follows:

**§ 744.6 Restrictions on certain activities of U.S. persons.**

- (a) \* \* \*
- (1) \* \* \*
- (i) \* \* \*

(C) Will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide.

\* \* \* \* \*

- (2) \* \* \*

(ii) Perform any contract, service, or employment that the U.S. person knows will directly assist in the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide.

\* \* \* \* \*

**PART 774—[AMENDED]**

■ 6. The authority citation for 15 CFR Part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 68 FR 48763 (August 10, 2004).

**Supplement No. 1 to Part 774 [Amended]**

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—“Materials, Chemicals, ‘Microorganisms’ & ‘Toxins,’” ECCN 1A004 is amended by revising the License Requirements section of the ECCN to read as follows:

**1A004 Protective and detection equipment and components not specially designed for military use as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, CB, AT

Control(s)	Country chart
NS applies to entire entry .....	NS Column 2.
CB applies to chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristics described in 2B351.a.	CB Column 2.
AT applies to entire entry .....	AT Column 1.

<p>* * * * *</p> <p>■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—“Materials, Chemicals, ‘Microorganisms’ &amp; ‘Toxins,’” ECCN 1E001 is amended by revising the ECCN heading and the</p>	<p>License Requirements section of the ECCN to read as follows:</p> <p><b>1E001 “Technology” according to the General Technology Note for the “development” or “production” of items controlled by 1A001.b, 1A001.c, 1A002,</b></p>	<p><b>1A003, 1A004, 1A005, 1A101, 1B, or 1C (except 1C355, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C992, and 1C995).</b></p> <p><b>License Requirements</b></p> <p><i>Reason for Control:</i> NS, MT, NP, CB, AT</p>
Control(s)		Country chart
NS applies to “technology” for items controlled by 1A001.b and .c, 1A002, 1A003, 1A005, 1B001 to 1B003, 1B018, 1C001 to 1C011, or 1C018.		NS Column 1.
NS applies to “technology” for items controlled by 1A004 .....		NS Column 2.
MT applies to “technology” for items controlled by 1A101, 1B001, 1B101, 1B102, 1B115, to 1B119, 1C001, 1C007, 1C011, 1C101, 1C102, 1C107, 1C111, 1C116, 1C117, or 1C118 for MT reasons.		MT Column 1.
NP applies to “technology” for items controlled by 1A002, 1B001, 1B101, 1B201, 1B225 to 1B233, 1C002, 1C010, 1C116, 1C202, 1C210, 1C216, 1C225 to 1C240 for NP reasons.		NP Column 1.
CB applies to “technology” for controlled by 1C351, 1C353, or 1C354 .....		CB Column 1.
CB applies to “technology” for materials controlled by 1C350, and for chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristics described in 2B351.a.		CB Column 2.
AT applies to entire entry .....		AT Column 1.

<p><b>License Requirements Note:</b> See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.</p> <p>* * * * *</p>	<p>■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2A226 is amended by revising the License Requirements section to read as follows:</p>	<p><b>2A226 Valves having all of the following characteristics (see List of Items Controlled).</b></p> <p><b>License Requirements</b></p> <p><i>Reason for Control:</i> NP, CB, AT</p>
Control(s)		Country chart
NP applies to entire entry .....		NP Column 1.
CB applies to valves that also meet or exceed the technical parameters in 2B350.g .....		CB Column 2.
AT applies to entire entry .....		AT Column 1.

<p>* * * * *</p> <p>■ 10. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2A292 is</p>	<p>amended by revising the License Requirements section to read as follows:</p> <p><b>2A292 Piping, fittings and valves made of, or lined with, stainless steel, copper-nickel</b></p>	<p><b>alloy or other alloy steel containing 10% or more nickel and/or chromium.</b></p> <p><b>License Requirements</b></p> <p><i>Reason for Control:</i> NP, CB, AT</p>
Control(s)		Country chart
NP applies to entire entry .....		NP Column 2.
CB applies to valves that meet or exceed the technical parameters described in 2B350.g .....		CB Column 2.
AT applies to entire entry .....		AT Column 1.

<p>* * * * *</p> <p>■ 11. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B350 is</p>	<p>amended by revising the License Requirements section to read as follows:</p> <p><b>2B350 Chemical manufacturing facilities and equipment, except valves controlled by</b></p>	<p><b>2A226 or 2A292, as follows (see List of Items Controlled).</b></p> <p><b>License Requirements</b></p> <p><i>Reason for Control:</i> CB, AT</p>
Control(s)		Country chart
CB applies to entire entry .....		CB Column 2.
AT applies to entire entry .....		AT Column 1.

<p>* * * * *</p> <p>■ 12. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B351 is</p>	<p>amended by revising the License Requirements section to read as follows:</p> <p><b>2B351 Toxic gas monitoring systems that operate on-line and dedicated detectors</b></p>	<p><b>therefor, except those systems and detectors controlled by ECCN 1A004.c.</b></p> <p><b>License Requirements</b></p> <p><i>Reason for Control:</i> CB, AT</p>
Control(s)		Country chart
CB applies to entire entry .....		CB Column 2.
AT applies to entire entry .....		AT Column 1.

\* \* \* \* \*

■ 13. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B352 is

amended by revising the License Requirements section to read as follows:  
**2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).**

**License Requirements**  
*Reason for Control:* CB, AT

Control(s)	Country chart
CB applies to entire entry .....	CB Column 2.
AT applies to entire entry .....	AT Column 1.

\* \* \* \* \*

■ 14. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E001 is

amended by revising the License Requirements section to read as follows:  
**2E001 “Technology” according to the General Technology Note for the “development” of equipment or “software” controlled by 2A (except 2A983, 2A991, or**

**2A994), 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998), or 2D (except 2D983, 2D991, 2D992, or 2D994).**  
**License Requirements**  
*Reason for Control:* NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to “technology” for items controlled by 2A001, 2B001 to 2B009, 2D001 or 2D002 .....	NS Column 1
MT applies to “technology” for items controlled by 2B004, 2B009, 2B018, 2B104, 2B105, 2B109, 2B116, 2B117, 2B119 to 2B122, 2D001, or 2D101 for MT reasons.	MT Column 1
NP applies to “technology” for items controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232, 2D001, 2D002, 2D101, 2D201 or 2D202 for NP reasons.	NP Column 1
NP applies to “technology” for items controlled by 2A290 to 2A293, 2B290, or 2D290 for NP reasons .....	NP Column 2
CB applies to “technology” for equipment controlled by 2B350 to 2B352 and for valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g.	CB Column 2
AT applies to entire entry .....	AT Column 1

**License Requirement Notes:** See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

\* \* \* \* \*

■ 15. In Supplement No. 1 to Part 774 (the Commerce Control List), Category

2—Materials Processing, ECCN 2E002 is amended by revising the License Requirements section to read as follows:  
**2E002 “Technology” according to the General Technology Note for the “production” of equipment controlled by 2A**

**(except 2A983, 2A991, or 2A994), or 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998).**  
**License Requirements**  
*Reason for Control:* NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to “technology” for equipment controlled by 2A001, 2B001 to 2B009 .....	NS Column 1.
MT applies to “technology” for equipment controlled by 2B004, 2B009, 2B018, 2B104, 2B105, 2B109, 2B116, 2B117, or 2B119 to 2B122 for MT reasons.	MT Column 1.
NP applies to “technology” for equipment controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232 for NP reasons.	NP Column 1.
NP applies to “technology” for equipment controlled by 2A290 to 2A293, 2B290 for NP reasons .....	NP Column 2.
CB applies to “technology” for equipment controlled by 2B350 to 2B352 and for valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g.	CB Column 2.
AT applies to entire entry .....	AT Column 1.

**License Requirement Notes:** See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

\* \* \* \* \*

■ 16. In Supplement No. 1 to Part 774 (the Commerce Control List), Category

2—Materials Processing, ECCN 2E201 is amended by revising the License Requirements section to read as follows:  
**2E201 “Technology” according to the General Technology Note for the “use” of equipment or “software” controlled by**

**2A225, 2A226, 2B001, 2B006, 2B007.b, 2B007.c, 2B008, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232, 2D002, 2D201 or 2D202.**  
**License Requirements**  
*Reason for Control:* NP, CB, AT

Control(s)	Country chart
NP applies to entire entry, except 2B008 .....	NP Column 1.
CB applies to “technology” for valves controlled by 2A226 that meet or exceed the technical parameters in 2B350.g .....	CB Column 2.
AT applies to entire entry .....	AT Column 1.

\* \* \* \* \*

■ 17. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E290 is

amended by revising the License Requirements section to read as follows:  
**2E290 “Technology” according to the General Technology Note for the “use” of**

**equipment controlled by 2A290, 2A291, 2A292, 2A293, or 2B290.**

**License Requirements**

Reason for Control: NP, CB, AT

Control(s)	Country chart
NP applies to entire entry .....	NP Column 2.
CB applies to "technology" for valves controlled by 2A292 that meet or exceed the technical parameters in 2B350.g .....	CB Column 2.
AT applies to entire entry .....	AT Column 1.

\* \* \* \* \*

■ 18. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E301 is amended by revising the heading of the

ECCN and the License Requirements section to read as follows:  
**2E301 "Technology" according to the "General Technology Note" for the "use" of**

**items controlled by 2B350, 2B351 and 2B352.**

**License Requirements**  
 Reason for Control: CB, AT

Control(s)	Country chart
CB applies to entire entry .....	CB Column 2.
AT applies to entire entry .....	AT Column 1.

\* \* \* \* \*

Dated: April 11, 2005.

**Matthew S. Borman,**  
 Deputy Assistant Secretary for Export Administration.

[FR Doc. 05-7523 Filed 4-13-05; 8:45 am]

BILLING CODE 3510-33-P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 31**

[TD 9196]

RIN 1545-BE21

**Withholding Exemptions**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains regulations providing guidance under section 3402(f) of the Internal Revenue Code (Code) for employers and employees relating to the Form W-4, "Employee's Withholding Allowance Certificate." These regulations provide rules for the submission of copies of certain withholding exemption certificates to the IRS, the notification provided to the employer and the employee of the maximum number of withholding exemptions permitted, and the use of substitute forms. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. The amendments to the final regulations provide cross-references to the temporary regulations.

**DATES:** These regulations are effective April 14, 2005.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Owens, (202) 622-0047 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

These regulations do not impose any new information collection. The Office of Management and Budget (OMB) previously approved the information collection requirements concerning Form W-4 contained in the regulation under section 6001 (§ 31.6001-5; OMB Control No. 1545-0798) and in the regulation under section 3402 (§ 31.3402(f)(2)-1; OMB Control No.1545-0010) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

Under section 3402(f)(2)(A), every employee is required to furnish his or her employer with a signed withholding exemption certificate on or before commencing employment. Regulations prescribe the form of the certificate as the Form W-4. The maximum number of withholding exemptions to which an employee is entitled depends upon the employee's marital status, the employee's filing status, the number of the employee's dependents, the number of exemptions claimed by the employee's spouse (if any) on a Form W-4, and the amount of the employee's estimated itemized deductions, tax credits, and certain other deductions

from income. A Form W-4 may be in either paper or electronic form.

Section 31.3402(f)(2)-1(g) of the existing regulations requires employers to submit copies of certain questionable Forms W-4 to the IRS. Employers must submit a copy of each Form W-4 on which an employee claims more than 10 withholding exemptions. Employers must also submit a copy of each Form W-4 on which the employee claims a complete exemption from withholding for the taxable year if the employer reasonably expects, when the Form W-4 is received, that the employee's wages from that employer will usually be \$200 or more per week.

In addition, the existing regulations provide that, upon written request from the IRS, employers are required to submit to the IRS copies of withholding exemption certificates which are received from employees or groups of employees identified by the IRS in the written request.

The existing regulations provide that the IRS may notify an employer that a named employee is not entitled to claim a complete exemption from withholding and is not entitled to claim a total number of withholding exemptions more than the maximum number specified by the IRS in the notice. The IRS will issue such notice if the IRS finds that the withholding exemption certificate contains a materially incorrect statement or if the IRS finds, after written request to the employee for verification of the statements on the certificate, that the IRS lacks sufficient information to determine if the certificate is correct. In these cases, the employer must withhold tax based on the maximum number of withholding exemptions specified in the notice from the IRS unless otherwise notified by the IRS. However, if the employee furnishes