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February 7, 2011

Mr. Timothy Mooney
Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
14th & Pennsylvania Ave, NW
Washington, DC 20230

VIA E-MAIL: *publiccomments@bis.doc.gov*

Re: Notice of Inquiry - CCL

Dear Mr. Mooney,

E.I. DuPont de Nemours (DuPont) welcomes the Administration's export controls reform initiative and is responding to the Department of Commerce's Bureau of Industry and Security (BIS) request for comments published in "Commerce Control List: Revising Descriptions of Items and Foreign Availability,". ("tiering rule") a proposed rule published at 75 Fed. Reg. 76664 (December 9, 2010). This proposed rule response suggests a more clear and positive "tiering" of control criteria relative specifically to chemicals captures under Export Control Commodity Number (ECCN) 1C350 under the Commodity Control List (CCL) of the Export Administration Regulations (EAR).

DuPont's DuPont Chemicals and Fluoroproducts (DC&F) business produces and exports a number of chemicals captured under ECCN 1C350(d) of the CCL including sodium cyanide, potassium cyanide, and dimethylamine.[1] ECCN 1C350 currently segregates all of its precursor chemicals, and mixtures of 30% or more of the controlled chemical, ("chemicals") into 4 categories: a) reserved, b) Australia Group controlled chemicals also listed on Schedule 2 of the Chemical Weapons Convention (CWC), c) Australia Group controlled chemicals also listed on Schedule 3 of the CWC and d) Australia Group controlled chemicals not on Schedules 1, 2, or 3 of the CWC.

[1] 1C350(d)(17), (d)(12) and (d)(5) respectively.

DuPont notes that the tiering rule creates three tiers of control. Tier 1 items are (a) weapons of mass destruction; (b) WMD-capable unmanned delivery system; (c) plants, facilities, or items specially designed for producing, processing, or using WMDs, special nuclear materials, or WMD-capable unmanned delivery systems; or (d) items almost exclusively available from the United States and which provide a critical military or intelligence advantage to the United States. Tier 2 items are almost exclusively available from regime partners or adherents and provide substantial military or intelligence advantage to the United States, or make a substantial contribution to the indigenous development, production, use, or enhancement of a Tier 1 or Tier 2 item. Tier 3 items are more broadly available and provide a significant military or intelligence advantage to the United States or make a significant contribution to the indigenous development, production, use or enhancement of a Tier 1, 2, or 3 item, or are otherwise controlled for national security, foreign policy, or human rights reasons (see 75 Fed. Reg. 76664, at 76665 (December 9, 2010).

DuPont's proposal is simple: all 1C350(a) chemicals should be Tier 1, and all 1C350(b) and (c) chemicals should be Tier 2, but 1C350(d) chemicals should be split between either Tier 2 and Tier 3 based on their demonstrated availability from countries outside the Austrialia Group. If a 1C350(d) chemical is widely available outside the the Australia Group it should be a Tier 3 item. DuPont's three example chemicals are all widely available as solutions, i.e. controlled mixtures of greater then 30%, from countries inside and outside the Australia Group as shown in the following table:

	Australia Group Amount (metric tons)	Australia Group Percentage	Non-Australia Group Amount (metric tons)	Non-Australia Group Percentage
Dimethylamine[1]	248,000	50%	243,000	50%
Hydrogen fluoride[2]	699,000	43%	1,167,000	57%
Phosphorus pentasulfide[3]	148,000	59%	104,000	41%
Potassium cyanide[4]	40,000	80%	10,000	20%
Sodium cyanide[5] (solid)	395,000	80%	95,000	20%
Sodium cyanide[5] (solution)	178,000	52%	162,000	48%
Sodium sulfide[6]	112,000	14%	685,000	86%

[1] Sebastian N. Bizzari, Thomas Kalin, and Yosio Inoguchi, Chemical Economics Handbook, "Alkylamines (C1-C6)", March 2008

[2] Ray K. Will, Chemical Economics Handbook, "Fluorspar and Fluorine Chemicals", March 2009

[3] Bala Suresh, Yan Ping, and Chiyo Funada, Chemical Economics Handbook, "Phosphorus and Phosphorus Chemicals", April 2009

[4] capacity is 10% of solid sodium cyanide capacity

[5] Bala Suresh and Takashi Kumamoto, Chemical Economics Handbook, "Sodium Cyanide", January 2010.

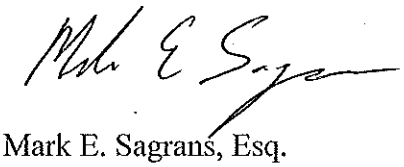
[6] James Glauser and Kazuteru Yokose, Chemical Economics Handbbook, "Miscellaneous Sulfur Chemicals", April 2010

In further support of this proposal DuPont notes that for these three chemicals:

- 1C350(d) chemicals are not CWC-controlled chemicals and thus are arguably of at least slightly lesser strategic concern,
- even though these are not CWC-controlled chemicals, all of the producing countries outside the Australia Group are States Parties to the CWC,
- there are as many non-Australia Group producing countries as there are Australia Group countries even if the volumes are equal or smaller,
- future capacity expansions are planned for all the non-Australia Group producers as the primary use of such chemicals are for gold mining in those countries, and
- there is no difference in the quality, efficiency or value of these chemicals when produced outside the Australia Group.

DuPont assumes that Tier 3 licensing processes would be more streamlined then those for Tier 2 controlled items. Therefore, placing demonstratably widely available 1C350(d) chemicals in Tier 3 could help the U.S. chemical industry be more competitive and contribute directly towards furthering the Administration's goal of doubling exports.

Respectfully submitted,



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