

supplement those otherwise maintained under the EAR for that particular country. This part does not address license requirements and licensing policies for controls implementing U.N. sanctions. CCL entries containing items subject to U.N. sanctions will refer the exporter to part 746 of the EAR, Embargoes and Other Special Controls, for any supplemental controls that may apply to exports and re-exports involving these countries.

(c) *Exports and reexports involving Cuba, Libya, Iraq, Iran, and the Bosnian Serb-controlled areas of Bosnia-Herzegovina.* This part does not cover license requirements and licensing policies that apply to exports and re-exports to embargoed destinations (Cuba, Libya, Iraq, Iran and the Bosnian-Serb controlled areas of Bosnia-Herzegovina). These comprehensive embargoes cover a broader range of items than those reflected in the CCL. If you are exporting or reexporting to any of these destinations, you should first review part 746 of the EAR, Embargoes and Other Special Controls.

(d) *Anti-terrorism Controls on Cuba, Libya, Iran, Iraq, North Korea, Sudan and Syria.* Commerce maintains anti-terrorism controls on Iran, North Korea, Syria and Sudan under section 6(a) of the Export Administration Act. Items controlled under section 6(a) to these three countries are described in Supplement No. 2 to part 742. Commerce also maintains controls under section 6(j) of the EAA to Cuba, Libya, Iraq, Iran, North Korea, Sudan and Syria. Items controlled to these seven countries under EAA section 6(j) are also described in Supplement 2 to part 742. The Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days before issuing a license for an item controlled under section 6(j) to Cuba, Libya, North Korea, Iran, Iraq, Sudan or Syria. As noted in paragraph (c) of this section, if you are exporting or reexporting to Cuba, Libya, Iran, and Iraq, you should review Part 746 of the EAR, Embargoes and Other Special Controls.

(e) *End-user and end-use based controls.* This part does not cover prohibitions and licensing requirements for exports of items not included on the

CCL that are subject to end-use and end-user controls: certain nuclear end-uses; certain missile end-uses; certain chemical and biological weapons end-uses; certain naval nuclear propulsion end-uses; certain activities of U.S. persons; certain exports to and for the use of certain foreign vessels or aircraft; and certain exports to all countries for Libyan aircraft. Licensing requirements and policies for these exports are contained in part 744 of the EAR.

(f) *Overlapping license policies.* Many items on the CCL are subject to more than one type of control (e.g., national security (NS), missile technology (MT), nuclear nonproliferation (NP), regional stability (RS)). In addition, applications for all items on the CCL, other than those controlled for short supply reasons, may be reviewed for missile technology (see § 742.5(b)(3) of this part), nuclear nonproliferation (see § 742.3(b)(2) of this part), or chemical and biological weapons (see § 742.2(b)(3) of this part), if the end-use or end-user may be involved in certain proliferation activities. Finally, many multilaterally controlled items are reviewed for anti-terrorism reasons if they are destined for a terrorism-supporting country (see paragraph (d) of this section). Your application for a license will be reviewed under all applicable licensing policies. A license will be issued only if an application can be approved under all applicable licensing policies.

[61 FR 12786, Mar. 25, 1996, as amended at 62 FR 25458, May 9, 1997; 65 FR 38151, June 19, 2000]

§ 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 § 742.18 of this part for license requirements pursuant to the Chemical Weapons Convention).

(1) If CB Column 1 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 Canada for the following:

(i) Human pathogens, zoonoses, toxins, animal pathogens, genetically modified microorganisms and plant pathogens identified in ECCNs 1C351, 1C352, 1C353 and 1C354; and

(ii) Technology (ECCNs 1E001 and 1E351) for the production and/or disposal of microbiological commodities described in paragraph (a)(1)(i) of this section.

(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 licensing requirement includes chemical mixtures containing any chemicals identified in ECCN 1C350, except as specified in 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.

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

(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 the following:

(i) Equipment and materials identified in ECCNs 2B350 and 2B351 on the CCL, which can be used in the production of chemical weapons precursors or chemical warfare agents, and equipment and materials identified in ECCN 2B352, which can be used in the production of biological agents; and

(ii) Technology (ECCNs 2E001, 2E002 and 2E301) for development, production, or use of the commodities covered in ECCNs 2B350, 2B351 and 2B352.

(b) *Licensing policy.* (1) License applications for the items described in paragraph (a) of this section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export or reexport 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 license applications:

(i) The specific nature of the end-use;

(ii) The significance of the export and reexport 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;

(iv) The types of assurances or guarantees against 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.

(3) BXA will review license applications in accordance with the licensing policy described in paragraph (b)(2) of this section for items not described in paragraph (a) of this section that:

(i) Require a license for reasons other than short supply;

(ii) Are destined to any country except countries in Country Group A:3 (see Supplement No. 1 to part 740 of the EAR) (Australia Group members); and

(iii) Could be destined for the design, development, production, stockpiling,

§ 742.3

or use of chemical or biological weapons, or for a facility engaged in such activities.

(c) *Contract sanctity.* Contract sanctity dates are set forth in Supplement No. 1 to part 742. Applicants who wish that a preexisting contract be considered in reviewing their license applications must submit documentation sufficient to establish the existence of such a contract.

(d) *Australia Group.* The Australia Group, a multilateral body that works to halt the spread of chemical and biological weapons, has developed common control lists of items specifically related to chemical and biological weapons. Australia Group members are listed in Country Group A:3 (see Supplement No. 1 to part 740 of the EAR). Controls on items listed in paragraph (a) of this section are consistent with lists agreed to in the Australia Group.

[61 FR 12786, Mar. 25, 1996, as amended at 62 FR 25458, May 9, 1997; 63 FR 42228, Aug. 7, 1998; 64 FR 27142, May 18, 1999; 64 FR 28909, May 28, 1999]

§ 742.3 Nuclear nonproliferation.

(a) *License requirements.* Section 309(c) of the Nuclear Non-Proliferation Act of 1978 requires BXA to identify items subject to the EAR that could be of significance for nuclear explosive purposes if used for activities other than those authorized at the time of export or reexport. ECCNs on the CCL that include the symbol “NP 1” or “NP 2” in the “Country Chart” column of the “License Requirements” section identify items that could be of significance for nuclear explosive purposes and are therefore subject to licensing requirements under this part and under section 309(c) of the Nuclear Non-Proliferation Act of 1978. These items are referred to as “The Nuclear Referral List” and are subject to the following licensing requirements:

(1) If NP Column 1 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 Nuclear Suppliers Group (NSG) member countries (Country Group A:4) (see Supplement No. 1 to part 740 of the EAR).

(2) If NP Column 2 of the Country Chart (Supplement No. 1 to part 738 of

15 CFR Ch. VII (1–1–01 Edition)

the EAR) is indicated in the applicable ECCN, a license is required to Country Group D:2 (see Supplement No. 1 to part 740 of the EAR).

(3) Other nuclear-related license requirements are described in §§ 744.2 and 744.5 of the EAR.

(b) *Licensing policy.* (1) To implement the controls in paragraph (a) of this section, the following factors are among those used to determine what action should be taken on individual applications:

(i) Whether the items to be transferred are appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;

(ii) The significance for nuclear purposes of the particular item;

(iii) Whether the items to be exported or reexported are to be used in research on, or for the development, design, manufacture, construction, operation, or maintenance of, any reprocessing or enrichment facility;

(iv) The types of assurances or guarantees given against use for nuclear explosive purposes or proliferation in the particular case;

(v) Whether any party to the transaction has been engaged in clandestine or illegal procurement activities;

(vi) Whether an application for a license to export or reexport to the end-user has previously been denied, or whether the end-user has previously diverted items received under a general license, a License Exception, or a validated license to unauthorized activities;

(vii) Whether the export or reexport would present an unacceptable risk of diversion to a nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity described in § 744.2(a) of the EAR; and

(viii) The nonproliferation credentials of the importing country, based on consideration of the following factors:

(A) Whether the importing country is a party to the Nuclear Non-Proliferation Treaty (NPT) or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) or to a similar international legally-binding nuclear nonproliferation agreement;