



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

November 10, 2008



Dear Mr. [REDACTED]:

I am responding to your request for an advisory opinion on the application of the licensing requirement note to Export Control Classification Number (ECCN) 2B350. As you indicate in your request, this note excludes from control under 2B350 equipment that is both (1) specially designed for use in civil applications (e.g., food processing, pulp and paper processing, or water purification) and (2) inappropriate, by nature of its design, for use in storing, processing, producing or conducting and controlling the flow of the chemical weapons precursors controlled by ECCN 1C350.

While the Export Administration Regulations (EAR) do not provide a specific definition of 'inappropriate by nature of its design', the following guidance is provided as to when a particular piece of equipment, otherwise meeting the criteria for control under 2B350, may be inappropriate, by nature of its design, for use in storing, processing, producing or conducting and controlling the flow of the chemical weapons precursors controlled by ECCN 1C350:

- (1) The manufacturer of the equipment has stated in writing to the Bureau of Industry and Security (BIS) that the item is not designed for and is inappropriate for use in storing, processing, producing or conducting and controlling the flow of any of the chemical weapons precursors controlled by ECCN 1C350;
- (2) The manufacturer of the equipment has stated in writing to BIS that, to their knowledge, the equipment has never been used in storing, processing, producing or conducting and controlling the flow of any of the chemical weapons precursors controlled by ECCN 1C350 and is not used in corrosive service or with hazardous materials;
- (3) BIS is not aware of any evidence indicating current or past use of the equipment in storing, processing, producing or conducting and controlling the flow of any of the chemical weapons precursors controlled by ECCN 1C350 or use in corrosive service or with hazardous materials;
- (4) The equipment is not central to the manufacture of chemical weapons and is used in civilian applications in a peripheral or supporting role.



Please note the use of the word "any" in the first three criteria. While leak detection, leak containment, or leak avoidance capabilities may be of relevance for some of the chemicals in ECCN 1C350, other 1C350 chemicals are relatively non-toxic and are used in consumer products. Just because a piece of equipment is inappropriate by nature of its design for some of the chemicals listed in 1C350 does not mean that it is automatically inappropriate for all of them.

With respect to the previous classification requests submitted by [REDACTED] in February 2008 and issued by BIS on February 16th, please note that the period for appealing a decision by BIS, including a classification decision, pursuant to Section 756 of the EAR, expired on April 1st, 2008 (i.e., 45 days after the date appearing on the written notice of administrative action). However, if you wish, you may resubmit these classification requests and provide the two indicated written statements by the manufacturer. In your resubmitted request, you should reference the previous classification decision, respectively, and provide a copy of this advisory opinion response. With respect to the fourth and final criteria, you should also explain how each item is used in industry and provide some examples.

Sincerely,



Dennis Krepp
Acting Director
Chemical and Biological Controls Division