

On page 29944, correct:

## PART 71—[CORRECTED]

### § 71.1 [Amended]

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### ANE ME E5 Brunswick, ME [Revised]

Brunswick NAS, ME  
(Lat. 43°53'32" N, long. 69°56'19" W)  
Wiscasset Airport, ME  
(Lat. 43°57'40" N, long. 69°42'48" W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Brunswick NAS and within 4 miles each side of the 177° bearing from the Brunswick NAS extending from the 7.8-mile radius to 10 miles south of the airport and within 4 miles each side of the 357° bearing from the Brunswick NAS extending from the 7.8-mile radius to 10 miles north of the airport and within an 8.4-mile radius of Wiscasset Airport and within 4 miles south and 6 miles north of the 069° bearing from the Wiscasset Airport extending from the 8.4-mile radius to 15.5 miles east of the airport.

\* \* \* \* \*

Issued in Jamaica, New York on July 28, 2005.

**John G. McCartney,**

*Acting Area Director, Eastern Terminal Operations.*

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**BILLING CODE 4910-13-M**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 738, 740, 745, 772, and 774

[Docket No. 050719191-5191-01]

RIN 0694-AD51

#### Implementation of the Understandings Reached at the April 2005 Australia Group (AG) Plenary Meeting

**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) to implement the understandings reached at the April 2005 plenary meeting of the Australia Group (AG). Specifically, this final rule amends the EAR to implement changes to the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology" by revising the Commerce Control List (CCL) entry that controls certain pumps that can be used to make

chemical weapons or AG-controlled precursor chemicals. This rule also amends the EAR to implement changes to the AG "Control List of Dual-Use Biological Equipment" by revising the CCL entry that controls equipment capable of use in handling biological materials to add certain spraying or fogging systems, spray booms or arrays of aerosol generating units, and components therefor.

In addition, this rule amends the CCL entry that controls certain genetic elements and genetically modified organisms by revising the Technical Note in the entry to clarify the scope of the controls on genetic elements and genetically modified organisms that contain nucleic acid sequences associated with the pathogenicity of any AG-controlled microorganisms, consistent with the AG "Control List of Biological Agents," the AG "Control List of Animal Pathogens," and the AG "Control List of Plant Pathogens."

This rule also amends the EAR to reflect the addition of Ukraine to the Australia Group and updates the definition of "Australia Group" in the EAR to include a current listing of all participating countries.

Finally, this rule updates the list of countries that currently are States Parties to the Chemical Weapons Convention (CWC) by adding "Niue," which recently became a State Party. As a result of this change, the CW (Chemical Weapons) license requirements and policies in the EAR that apply to Niue now conform with those applicable to other CWC States Parties. This rule also clarifies the entry for the "Netherlands" on the list of CWC States Parties by adding a footnote to this entry to indicate that, for CWC purposes only, the Netherlands includes "Aruba and the Netherlands Antilles." This rule further updates the list by removing "Yugoslavia (Federal Republic of)" and replacing it with "Serbia and Montenegro."

**DATES:** This rule is effective August 5, 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-AD51, by any of the following methods:

- *E-mail:*  
[public.comments@bis.doc.gov](mailto:public.comments@bis.doc.gov). Include "RIN 0694-AD51" 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-AD51.

#### FOR FURTHER INFORMATION CONTACT:

Douglas Brown, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482-7900.

#### SUPPLEMENTARY INFORMATION:

##### Background

*A. Revisions to the EAR Based on the Understandings Reached at the April 2005 Plenary Meeting of the Australia Group*

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the understandings reached at the annual plenary meeting of the Australia Group (AG) that was held in Sydney, Australia, on April 18-21, 2005. The Australia Group is a multilateral forum, consisting of 39 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

The understandings reached at the April 2005 plenary meeting included a decision to revise the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology" to clarify controls on pumps usable for making chemical weapons and AG-controlled precursor chemicals. This final rule implements this change by amending the EAR to clarify the types of pumps controlled under Export Control Classification Number (ECCN) 2B350 on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR). Specifically, this rule revises the control language for certain pumps in ECCN 2B350.i to read "multiple-seal and seal-less pumps with manufacturer's specified maximum flow rate greater than 0.6 m<sup>3</sup>/hour" in which all surfaces that come into direct contact with the chemical(s) being processed are made from certain specified materials. Prior to the publication of this rule, the control language in ECCN 2B350.i referred to "multiple-seal, canned drive, magnetic drive, bellows or diaphragm pumps." This change is expected to simplify the process of determining if a particular type of pump is controlled

under ECCN 2B350.i, because exporters will no longer need to determine if a pump is a “canned drive, magnetic drive, bellows, or diaphragm pump.” The rationale for this change was to ensure a more uniform implementation of these AG controls by participating countries, thereby enhancing compliance and enforcement efforts.

ECCN 2B350.i continues to control vacuum pumps with manufacturer's specified maximum flow-rate greater than 5 m<sup>3</sup>/hour (under standard temperature (273 K (0 °C)) and pressure (101.3 kPa) conditions) in which all surfaces that come into direct contact with the chemical(s) being processed are made from certain specified materials. This ECCN also continues to control casings (pump bodies), preformed casing liners, impellers, rotors or jet pump nozzles designed for pumps controlled by 2B350.i. Items controlled by 2B350.i require a license to all countries or destinations indicated under CB Column 2 or AT Column 1 on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). A license generally will not be required to export or reexport these systems and components to AG participating countries; however, certain transactions may be subject to license requirements described elsewhere in the EAR (e.g., Part 744 of the EAR).

Another understanding reached at the April 2005 AG plenary meeting was the adoption of controls on complete spraying or fogging systems, spray booms or arrays of aerosol generating units, and components thereof that are: (1) Specially designed or modified for fitting to aircraft, “lighter than air vehicles,” or unmanned aerial vehicles (“UAVs”) and (2) capable of delivering, from a liquid suspension, an initial droplet “VMD” (volume median diameter) of less than 50 microns at a flow rate of greater than 2 liters per minute. These controls do not apply to spraying or fogging systems demonstrated to be incapable of delivering biological agents in the form of infectious aerosols. This rule amends ECCN 2B352 on the CCL to include these systems, units, and certain components therefor. These items will require a license to all countries or destinations indicated under CB Column 2 or AT Column 1 on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). A license generally will not be required to export or reexport these items to AG participating countries; however, certain transactions may be subject to license requirements described elsewhere in the EAR (e.g., Part 744 of the EAR).

In a related change, this rule amends ECCN 9A120, which controls certain “UAV” systems designed or modified to dispense an aerosol, by revising the Related Controls paragraph in the List of Items Controlled for that ECCN to include a reference to the spraying and fogging systems, and components therefor, that are now controlled under ECCN 2B352.h.

A third understanding reached at the April 2005 AG plenary meeting was the revision of the Technical Note for certain AG-controlled genetic elements and genetically modified organisms.

This rule revises the Technical Note in ECCN 1C353 to clarify the scope of the chemical/biological (CB) controls that apply to genetic elements and genetically modified organisms that contain nucleic acid sequences associated with the pathogenicity of any AG-controlled microorganisms in 1C351.a to .c, 1C352, or 1C354, consistent with the AG “Control List of Biological Agents,” the AG “Control List of Animal Pathogens,” and the AG “Control List of Plant Pathogens.” Specifically, this rule adds a new paragraph at the end of the Technical Note to indicate that the phrase “nucleic acid sequences associated with the pathogenicity of any of the microorganisms controlled by 1C351.a to .c, 1C352, or 1C354” refers to any sequence specific to the relevant AG-controlled microorganism that: (1) In itself or through its transcribed or translated products represents a significant hazard to human, animal or plant health or (2) is known to enhance the ability of an AG-controlled microorganism, or any other organism into which it may be inserted or otherwise integrated, to cause serious harm to human, animal or plant health.

This rule also amends the EAR to reflect the addition of Ukraine as the newest participating country in the Australia Group (which now includes a total of 39 countries). Supplement No. 1 to Part 738 (Commerce Country Chart) is revised to remove the license requirements indicated for Ukraine, under CB Column 2 and CB Column 3, to conform with the country scope of the CB license requirements that apply to other AG participating countries (see Section 742.2 of the EAR). Supplement No. 1 to Part 740 (Country Groups) is revised to add Ukraine to Country Group A:3 (Australia Group) and remove Ukraine from Country Group D:3 (Countries of Concern for Chemical and Biological Reasons).

In addition, this rule updates the definition of “Australia Group” in Section 772.1 of the EAR to include a

current listing of all participating countries.

#### *B. Revisions to the EAR Based on the Addition of a New State Party to the Chemical Weapons Convention (CWC) and Other Updates and Clarifications to the List of CWC States Parties in the EAR*

This rule revises Supplement No. 2 to Part 745 of the EAR (titled “States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction”) by adding Niue, which became a State Party to the CWC on May 21, 2005. As a result of this change, the CW (Chemical Weapons) license requirements and policies that apply to Niue now conform with those applicable to other CWC States Parties, as described in Section 742.18 of the EAR. This rule also clarifies the entry for the “Netherlands” in the list of CWC States Parties by adding a footnote to this entry to indicate that, for CWC purposes only, the Netherlands includes “Aruba and the Netherlands Antilles.” In addition, this rule updates the list by removing “Yugoslavia (Federal Republic of)” and replacing it with “Serbia and Montenegro.”

#### **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 September 6, 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 September 19, 2005. Any such items not actually exported or reexported before midnight, on September 19, 2005, 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 September 19, 2005. Beginning at midnight on September 19, 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 738

Administrative practice and procedure, Exports, Foreign trade.

##### 15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

##### 15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

##### 15 CFR Part 772

Exports.

##### 15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 738, 740, 745, 772, and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

#### PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR part 738 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, 69 FR 48763 (August 10, 2004).

■ 2. Supplement No. 1 to part 738 is amended by revising the entry for “Ukraine” to read as follows:

**BILLING CODE 3510–33–P**

## Supplement No. 1 to Part 738--COMMERCE COUNTRY CHART

## [Reason for control]

| Countries | Chemical & Biological |    | Nuclear          |    | National |    | Missile |    | Regional  |    | Firearms   |    | Crime   |    | Anti-Terrorism |    |
|-----------|-----------------------|----|------------------|----|----------|----|---------|----|-----------|----|------------|----|---------|----|----------------|----|
|           | Weapons               |    | Nonproliferation |    | Security |    | Tech    |    | Stability |    | Convention |    | Control |    | Terrorism      |    |
|           | CB                    | CB | NP               | NP | NS       | NS | MT      | RS | RS        | FC | CC         | CC | CC      | AT | AT             | AT |
|           | 1                     | 2  | 3                | 1  | 2        | 1  | 2       | 1  | 1         | 2  | 1          | 1  | 2       | 3  | 1              | 2  |
|           |                       |    |                  |    |          | *  | *       | *  | *         | *  |            |    |         |    |                |    |
| Ukraine   | X                     |    |                  |    |          | X  | X       | X  | X         | X  |            | X  | X       |    |                |    |

**PART 740—[AMENDED]**

■ 3. The authority citation for 15 CFR part 740 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; 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, 69 FR 48763 (August 10, 2004).

■ 4. In Supplement No. 1 to part 740, Country Groups, Country Group A is amended by revising the entry for “Ukraine” to read as follows:

**SUPPLEMENT NO. 1 TO PART 740.—COUNTRY GROUPS**

[Country Group A]

| Country       |   |   | Missile technology control regime | Australia group | Nuclear suppliers group |
|---------------|---|---|-----------------------------------|-----------------|-------------------------|
| [A:1]         |   |   | [A:2]                             | [A:3]           | [A:4]                   |
| *             | * | * | *                                 | *               | *                       |
| Ukraine ..... |   |   | X                                 | X               | X                       |
| *             | * | * | *                                 | *               | *                       |

■ 5. In Supplement No. 1 to part 740, Country Groups, Country Group D is amended by removing the “X” under the column labeled “[D:3] Chemical & Biological” in the entry for Ukraine.

**PART 745—[AMENDED]**

■ 6. The authority citation for 15 CFR part 745 continues to read as follows:

**Authority:** 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347.

■ 7. Supplement No. 2 to Part 745 is amended:

■ a. By revising the undesignated center heading “List of States Parties as of December 1, 2004” to read “List of States Parties as of August 1, 2005”;

■ b. By revising the entry for “Netherlands” to read “Netherlands\*\*\*” and adding a footnote for the Netherlands to read “\*\*\* For CWC purposes only, the Netherlands includes Aruba and the Netherlands Antilles.”;

■ c. By adding, in alphabetical order, the countries “Niue” and “Serbia and Montenegro”;

■ d. By correctly placing in alphabetical order the entry for “Ukraine”; and

■ e. By removing the country “Yugoslavia (Federal Republic of)”.

**PART 772—[AMENDED]**

■ 8. The authority citation for 15 CFR part 772 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 9. In § 772.1, the definition of “Australia Group” is revised to read as follows:

**§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).**

\* \* \* \* \*

**Australia Group.** The countries participating in the Australia Group have agreed to adopt harmonized controls on certain dual-use chemicals (*i.e.*, precursor chemicals), biological agents, related manufacturing facilities and equipment, and related technology in order to ensure that exports of these items do not contribute to the proliferation of chemical or biological weapons. Countries participating in the Australia Group as of August 1, 2005, include: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea (South), Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States. See also § 742.2 of the EAR.

\* \* \* \* \*

**PART 774—[AMENDED]**

■ 10. 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, 69 FR 48763 (August 10, 2004).

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms” & “Toxins,” ECCN 1C353 is amended by revising the List of Items Controlled to read as follows:

**1C353 Genetic elements and genetically-modified organisms, as follows (see List of Items Controlled).**

\* \* \* \* \*

**List of Items Controlled**

**Unit:** \$ value.

**Related Controls:** Vaccines that contain genetic elements or genetically modified organisms identified in this entry are controlled by ECCN 1C991.

**Related Definition:** N/A.

**Items:**

a. Genetic elements, as follows:

a.1. Genetic elements that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a to .c, 1C352, or 1C354;

a.2. Genetic elements that contain nucleic acid sequences coding for any of the “toxins” controlled by 1C351.d or “sub-units of toxins” thereof.

b. Genetically modified organisms, as follows:

b.1. Genetically modified organisms that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a to .c, 1C352, or 1C354;

b.2. Genetically modified organisms that contain nucleic acid sequences coding for any of the “toxins” controlled by 1C351.d or “sub-units of toxins” thereof.

**Technical Note:** 1. “Genetic elements” include, *inter alia*, chromosomes, genomes, plasmids, transposons, and vectors, whether genetically modified or unmodified.

2. This ECCN does not control nucleic acid sequences associated with the pathogenicity of enterohaemorrhagic *Escherichia coli*, serotype O157 and other verotoxin producing strains, except those nucleic acid sequences that contain coding for the verotoxin or its sub-units.

3. "Nucleic acid sequences associated with the pathogenicity of any of the microorganisms controlled by 1C351.a to .c, 1C352, or 1C354" means any sequence specific to the relevant controlled microorganism that:

a. In itself or through its transcribed or translated products represents a significant hazard to human, animal or plant health; or

b. Is known to enhance the ability of a microorganism controlled by 1C351.a to .c, 1C352, or 1C354, or any other organism into which it may be inserted or otherwise integrated, to cause serious harm to human, animal or plant health.

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B350 is amended by revising the List of Items Controlled to read as follows:

**2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226 or 2A292, as follows (see List of Items Controlled).**

\* \* \* \* \*

*List of Items Controlled*

*Unit:* Equipment in number.

*Related Controls:* The controls in this entry do not apply to equipment that is:

(a.) specially designed for use in civil applications (e.g., food processing, pulp and paper processing, or water purification); AND (b.) inappropriate, by the nature of its design, for use in storing, processing, producing or conducting and controlling the flow of chemical weapons precursors controlled by 1C350.

*Related Definitions:* For purposes of this entry the term "chemical warfare agents" are those agents subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.)

*Items:*

a. Reaction vessels or reactors, with or without agitators, with total internal (geometric) volume greater than 0.1 m<sup>3</sup> (100 liters) and less than 20 m<sup>3</sup> (20,000 liters), where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

a.1. Alloys with more than 25% nickel and 20% chromium by weight;

a.2. Fluoropolymers;

a.3. Glass (including vitrified or enameled coating or glass lining);

a.4. Nickel or alloys with more than 40% nickel by weight;

a.5. Tantalum or tantalum alloys;

a.6. Titanium or titanium alloys; or

a.7. Zirconium or zirconium alloys.

b. Agitators for use in reaction vessels or reactors described in 2B350.a, and

impellers, blades or shafts designed for such agitators, where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

b.1. Alloys with more than 25% nickel and 20% chromium by weight;

b.2. Fluoropolymers;

b.3. Glass (including vitrified or enameled coatings or glass lining);

b.4. Nickel or alloys with more than 40% nickel by weight;

b.5. Tantalum or tantalum alloys;

b.6. Titanium or titanium alloys; or

b.7. Zirconium or zirconium alloys.

c. Storage tanks, containers or receivers with a total internal (geometric) volume greater than 0.1 m<sup>3</sup> (100 liters) where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

c.1. Alloys with more than 25% nickel and 20% chromium by weight;

c.2. Fluoropolymers;

c.3. Glass (including vitrified or enameled coatings or glass lining);

c.4. Nickel or alloys with more than 40% nickel by weight;

c.5. Tantalum or tantalum alloys;

c.6. Titanium or titanium alloys; or

c.7. Zirconium or zirconium alloys.

d. Heat exchangers or condensers with a heat transfer surface area of less than 20 m<sup>2</sup>, but greater than 0.15 m<sup>2</sup>, and tubes, plates, coils or blocks (cores) designed for such heat exchangers or condensers, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

d.1. Alloys with more than 25% nickel and 20% chromium by weight;

d.2. Fluoropolymers;

d.3. Glass (including vitrified or enameled coatings or glass lining);

d.4. Graphite or carbon-graphite;

d.5. Nickel or alloys with more than 40% nickel by weight;

d.6. Silicon carbide;

d.7. Tantalum or tantalum alloys;

d.8. Titanium or titanium alloys;

d.9. Titanium carbide; or

d.10. Zirconium or zirconium alloys.

e. Distillation or absorption columns of internal diameter greater than 0.1 m, and liquid distributors, vapor distributors or liquid collectors designed for such distillation or absorption columns, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

e.1. Alloys with more than 25% nickel and 20% chromium by weight;

e.2. Fluoropolymers;

e.3. Glass (including vitrified or enameled coatings or glass lining);

e.4. Graphite or carbon-graphite;

e.5. Nickel or alloys with more than 40% nickel by weight;

e.6. Tantalum or tantalum alloys;

e.7. Titanium or titanium alloys; or

e.8. Zirconium or zirconium alloys.

f. Remotely operated filling equipment in which all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

f.1. Alloys with more than 25% nickel and 20% chromium by weight; or

f.2. Nickel or alloys with more than 40% nickel by weight.

g. Valves with nominal sizes greater than 1.0 cm (3/8 in.), and casings (valve bodies) or preformed casing liners designed for such valves, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

g.1. Nickel or alloys with more than 40% nickel by weight;

g.2. Alloys with more than 25% nickel and 20% chromium by weight;

g.3. Fluoropolymers;

g.4. Glass or glass lined (including vitrified or enameled coatings);

g.5. Tantalum or tantalum alloys;

g.6. Titanium or titanium alloys; or

g.7. Zirconium or zirconium alloys.

h. Multi-walled piping incorporating a leak detection port, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

h.1. Alloys with more than 25% nickel and 20% chromium by weight;

h.2. Fluoropolymers;

h.3. Glass (including vitrified or enameled coatings or glass lining);

h.4. Graphite or carbon-graphite;

h.5. Nickel or alloys with more than 40% nickel by weight;

h.6. Tantalum or tantalum alloys;

h.7. Titanium or titanium alloys; or

h.8. Zirconium or zirconium alloys.

i. Multiple-seal and seal-less pumps with manufacturer's specified maximum flow-rate greater than 0.6 m<sup>3</sup>/hour, or vacuum pumps with manufacturer's specified maximum flow-rate greater than 5 m<sup>3</sup>/hour (under standard temperature (273 K (0° C)) and pressure (101.3 kPa) conditions), and casings (pump bodies), preformed casing liners, impellers, rotors or jet pump nozzles designed for such pumps, in which all surfaces that come into direct contact with the chemical(s) being processed are made from any of the of the following materials:

i.1. Alloys with more than 25% nickel and 20% chromium by weight;

i.2. Ceramics;

i.3. Ferrosilicon;  
 i.4. Fluoropolymers;  
 i.5. Glass (including vitrified or enameled coatings or glass lining);  
 i.6. Graphite or carbon-graphite;  
 i.7. Nickel or alloys with more than 40% nickel by weight;  
 i.8. Tantalum or tantalum alloys;  
 i.9. Titanium or titanium alloys, or  
 i.10. Zirconium or zirconium alloys.  
 j. Incinerators designed to destroy chemical warfare agents, chemical weapons precursors controlled by 1C350, or chemical munitions having specially designed waste supply systems, special handling facilities and an average combustion chamber temperature greater than 1000° C in which all surfaces in the waste supply system that come into direct contact with the waste products are made from or lined with any of the following materials:

j.1. Alloys with more than 25% nickel and 20% chromium by weight;  
 j.2. Ceramics; or  
 j.3. Nickel or alloys with more than 40% nickel by weight.

*Technical Note:* Carbon-graphite is a composition consisting primarily of graphite and amorphous carbon, in which the graphite is 8 percent or more by weight of the composition.

■ 13. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B352 is amended by revising the List of Items Controlled to read as follows:

**2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).**

\* \* \* \* \*

*List of Items Controlled*

*Unit:* Equipment in number

*Related Controls:* See ECCNs 1A004 and 1A995 for protective equipment that is not covered by this entry. Also see ECCN 9A120 for controls on certain “UAV” systems designed or modified to dispense an aerosol and 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.

*Related Definitions:* (1) “*Lighter than air vehicles*”—balloons and airships that rely on hot air or on lighter-than-air gases, such as helium or hydrogen, for their lift. (2) “*UAVs*”—Unmanned Aerial Vehicles. (3) “*VMD*”—Volume Median Diameter.

*Items:*

a. Complete containment facilities at P3 or P4 containment level.

*Technical Note:* P3 or P4 (BL3, BL4, L3, L4) containment levels are as specified in the WHO Laboratory Biosafety Manual (Geneva, 1983).

b. Fermenters capable of cultivation of pathogenic microorganisms, viruses, or for toxin production, without the propagation of aerosols, having a capacity equal to or greater than 20 liters.

*Technical Note:* Fermenters include bioreactors, chemostats, and continuous-flow systems.

c. Centrifugal separators capable of the continuous separation of pathogenic microorganisms, without the propagation of aerosols, and having all of the following characteristics:

c.1. One or more sealing joints within the steam containment area;

c.2. A flow rate greater than 100 liters per hour;

c.3. Components of polished stainless steel or titanium; and

c.4. Capable of in-situ steam sterilization in a closed state.

*Technical Note:* Centrifugal separators include decanters.

d. Cross (tangential) flow filtration equipment and accessories, as follows:

d.1. Cross (tangential) flow filtration equipment capable of separation of pathogenic microorganisms, viruses, toxins or cell cultures, without the propagation of aerosols, having all of the following characteristics:

d.1.a. A total filtration area equal to or greater than 1 square meter (1 m<sup>2</sup>); and

d.1.b. Capable of being sterilized or disinfected in-situ.

*N.B.:* 2B352.d.1 does not control reverse osmosis equipment, as specified by the manufacturer.

d.2. Cross (tangential) flow filtration components (e.g., modules, elements, cassettes, cartridges, units or plates) with filtration area equal to or greater than 0.2 square meters (0.2 m<sup>2</sup>) for each component and designed for use in cross (tangential) flow filtration equipment controlled by 2B352.d.1.

*Technical Note:* In this ECCN, “sterilized” denotes the elimination of all viable microbes from the equipment through the use of either physical (e.g., steam) or chemical agents.

“Disinfected” denotes the destruction of potential microbial infectivity in the equipment through the use of chemical agents with a germicidal effect.

“Disinfection” and “sterilization” are distinct from “sanitization”, the latter referring to cleaning procedures designed to lower the microbial content of equipment without necessarily achieving elimination of all microbial infectivity or viability.

e. Steam sterilizable freeze-drying equipment with a condenser capacity of 10 kgs of ice or greater in 24 hours, but less than 1,000 kgs of ice in 24 hours.

f. Protective and containment equipment, as follows:

f.1. Protective full or half suits, or hoods dependant upon a tethered external air supply and operating under positive pressure;

*Technical Note:* This entry does not control suits designed to be worn with self-contained breathing apparatus.

f.2. Class III biological safety cabinets or isolators with similar performance standards, e.g., flexible isolators, dry boxes, anaerobic chambers, glove boxes or laminar flow hoods (closed with vertical flow).

g. Chambers designed for aerosol challenge testing with microorganisms, viruses, or toxins and having a capacity of 1 m<sup>3</sup> or greater.

h. Spraying or fogging systems and components therefor, as follows:

h.1. Complete spraying or fogging systems, specially designed or modified for fitting to aircraft, “lighter than air vehicles,” or “UAVs,” capable of delivering, from a liquid suspension, an initial droplet “VMD” of less than 50 microns at a flow rate of greater than 2 liters per minute;

h.2. Spray booms or arrays of aerosol generating units, specially designed or modified for fitting to aircraft, “lighter than air vehicles,” or “UAVs,” capable of delivering, from a liquid suspension, an initial droplet “VMD” of less than 50 microns at a flow rate of greater than 2 liters per minute;

h.3. Aerosol generating units specially designed for fitting to the systems specified in paragraphs h.1 and h.2 of this ECCN.

*Technical Notes:* 1. “*Aerosol generating units*” are devices specially designed or modified for fitting to aircraft and include nozzles, rotary drum atomizers and similar devices.

2. This ECCN does not control spraying or fogging systems and components, as specified in 2B352.h., that are demonstrated not to be capable of delivering biological agents in the form of infectious aerosols.

3. Droplet size for spray equipment or nozzles specially designed for use on aircraft or “UAVs” should be measured using either of the following methods (pending the adoption of internationally accepted standards):

a. Doppler laser method,

b. Forward laser diffraction method.

■ 14. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, ECCN 9A120 is amended by revising the Related Controls paragraph in the List of Items Controlled 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 volume greater than 20 liters, and having any of the following:**

\* \* \* \* \*

*List of Items Controlled*

*Unit:* \* \* \*

*Related Controls:* See ECCN 9A012 or the U.S. Munitions List Category VIII (22 CFR part 121). Also see ECCN 2B352.h for controls on certain spraying or fogging systems, and components therefor, specially designed or modified for fitting to aircraft, "lighter than air vehicles," or "UAVs."

*Related Definitions:* \* \* \*

*Items:*

\* \* \* \* \*

Dated: July 29, 2005.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 05-15530 Filed 8-4-05; 8:45 am]

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## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### 36 CFR Part 1191

[Docket No. 99-1]

RIN 3014-AA20

### Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; Corrections

**AGENCY:** Architectural and  
Transportation Barriers Compliance  
Board.

**ACTION:** Correcting amendments.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) published a final rule in the **Federal Register** on July 23, 2004 revising and updating its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA). This document contains correcting amendments to the final rule.

**DATES:** The correcting amendments are effective September 6, 2005.

**FOR FURTHER INFORMATION CONTACT:** Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance

Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004-1111.

Telephone numbers: (202) 272-0020 (voice); (202) 272-0082 (TTY). E-mail address: [ta@access-board.gov](mailto:ta@access-board.gov).

**SUPPLEMENTARY INFORMATION:** The final rule published in the **Federal Register** on July 23, 2004 (69 FR 44084) revising and updating the accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA) contained some errors and omissions, which are corrected by this document.

### Appendix B to Part 1191—Americans With Disabilities Act: Scoping

The following is a description of the corrections made to Appendix B to Part 1191—Americans with Disabilities Act: Scoping:

1. On page 12, in § 106.5 the term "amusement attractions" is italicized in the second sentence since the term is defined in § 106.5.

2. On page 20, in § 202.5 the word "or" in the term "qualified historic building or facility" is italicized since the term is defined in § 106.5.

3. On page 22, § 203.9 is amended to exclude raised courtroom stations from the general exception for small, elevated employee work areas. There is a specific exception for raised courtroom stations in § 206.2.4.

4. On page 29, § 206.4.4.1 is amended by adding the words "serving each fixed route or group of fixed routes" after the term "public entrance." These words were in § 10.3.1(2) of the former guidelines. The amendment clarifies that, where different entrances serve different transportation fixed routes or groups of fixed routes, at least one public entrance serving each fixed route or group of fixed routes is required to be accessible.

5. On page 34, in § 208.2.3 the term "facilities" is italicized since the term is defined in § 106.5.

6. On page 70, in § 242.3 the term "accessible" is italicized in the second sentence since the term is defined in § 106.5.

### Appendix C to Part 1191— Architectural Barriers Act: Scoping

The following is a description of the corrections made to Appendix C to Part 1191—Architectural Barriers Act: Scoping:

1. On page 79, in § F106.3 the blank spaces after the words "United States Postal Service" are deleted and a single space is inserted in their place.

2. On page 80, in § F106.5 the term "amusement attractions" is italicized in

the second sentence since the term is defined in § F106.5.

3. On page 87, in § F202.5 the word "or" in the term "qualified historic building or facility" is italicized since the term is defined in § F106.5.

4. On page 97, § F206.4.4.1 is amended by adding the words "serving each fixed route or group of fixed routes" after the term "public entrance." The amendment is consistent with an amendment made to § 206.4.4.1 in Appendix B to Part 1191—Americans with Disabilities Act: Scoping.

5. On page 102, in § F208.2.3 the term "facilities" is italicized since the term is defined in § F106.5; and in § F208.2.4 one indent is removed and the section is placed in-line with § F208.2.3.

6. On page 127, in § F233.1 the indent is removed and the section is placed in-line with § F233.

7. On page 128, in § F233.2 the indent is removed and the section is placed in-line with § F233.1.

### Appendix D to Part 1191—Technical

The following is a description of the corrections made to Appendix D to Part 1191—Technical:

1. On page 173, in § 407.2.3.1 the word "and" is deleted after the words "complying with 703.2 and 703.4.1."

2. On page 178, in Table 407.2.3.1 the quotation mark is deleted after the letter "P" in the first row of the third column.

3. On page 191, in the advisory note under § 505.4 the word "principle" is deleted and the word "principal" is inserted in its place in the second sentence.

4. On page 197, in the advisory note under § 606.3 the redundant words "and people" are deleted.

5. On page 225, Figure 703.3.1 is revised to correctly reflect the requirements in Table 703.3.1.

6. On page 247, three sections are corrected. In the exception under § 806.2.3, the term "space" is italicized the second time the term is used since the term is defined in §§ 106.5 and F106.5. Section 806.2.4 is amended to clarify that at least one bathroom in an accessible guest room is required to be accessible; to reference the applicable requirements for accessible toilet and bathing fixtures in Chapter 6; and to permit accessible toilet and bathing fixtures to be located in more than one toilet or bathing area, provided that travel between the fixtures does not require travel between other parts of the guest room. In § 806.2.4.1, the italics are deleted in the second part of the word "non-accessible."

7. On pages 248 through 251, the text is shifted due to the corrections on page