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Done in Washington, DC, this 29th day of April 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 040220063-4063-01]

RIN 0694-AC64

Protective Equipment Export License Jurisdiction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule revises the Commerce Control List to conform the description of certain protection and detection equipment to that found in the Wassenaar Arrangement List of Dual Use Goods and Technologies (the Dual Use List), to impose national security and anti-terrorism license requirements on those items, and to impose antiterrorism controls on certain items that are excluded from the Dual Use List.

DATES: This rule is effective May 6, 2004.

FOR FURTHER INFORMATION CONTACT: Scott Hubinger, Office of Chemical and Biological Controls and Treaty Compliance, telephone: (202) 482-5223, e-mail shubinge@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Commerce Control List (15 CFR part 774, supp. 1) (CCL) contains entries called Export Control Classification Numbers (ECCNs) and is used in determining whether a license from the Bureau of Industry and Security (BIS) is required for certain exports and reexports. It also describes some items that are subject to the export licensing jurisdiction of the Directorate of Defense Trade Controls (DTC), U.S. Department of State. In general, DTC has export licensing authority over items that have been specifically designed, developed, configured, adapted, or modified for military application and do not have predominantly civil applications or that have significant military or intelligence applications. BIS generally has export licensing authority over items having

predominantly civil uses even if they also may be used by the military. Prior to publication of this rule ECCN 1A004 referred readers to the DTC controls with regard to "[p]rotective and detection equipment and components, not specially designed for military use."

This rule revises ECCN 1A004 to emulate entry 1.A.4 on the Wassenaar Arrangement List of Dual Use Goods and Technologies, including an exclusion note from that entry. This rule applies national security (NS2) and antiterrorism (AT1) controls to items covered by ECCN 1A004, including gas masks, filter canisters, decontamination equipment, protective suits, gloves and shoes specially designed or modified for defense against biological agents or radioactive materials adapted for use in war or chemical warfare agents, and certain nuclear, chemical, and biological detection systems. The national security controls require a license for export or reexport to all destinations except Country Group A:1 and cooperating countries as listed in 15 CFR part 740, supp. No. 1.

This rule also creates a new ECCN 1A995 that imposes antiterrorism controls (AT1) on personal radiation monitoring dosimeters and equipment limited by design or function to protect against hazards specific to civil industries, such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or to the food industry that are excluded from 1A004. The antiterrorism controls require a license for export or reexport to countries designated by the Secretary of State as state sponsors of international terrorism. New ECCN 1A995 includes a note that items for protection against chemical or biological agents that are consumer goods, packaged for retail sale or personal use and medical products are excluded from 1A995, and are EAR99. EAR99 items are not listed in any specific entry on the Commerce Control List, but are subject to other provisions of the EAR, including those that impose a license requirement based on recipient or end-use, those that apply to embargoed destinations, the prohibitions on violating denial orders, and export clearance requirements.

The antiterrorism controls imposed by this rule are new foreign policy controls. As required by the Export Administration Act of 1979, as amended (the Act), a report on the imposition of these controls was delivered to Congress on April 27, 2004.

Although the Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice

of August 7, 2003 (68 FR 47833, August 11, 2003), continues the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Savings Clause

Exports and reexports that did not require a license prior to publication of this rule and for which this rule imposes a new license requirement may be made without a license if the items being exported or reexported were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export or reexport on May 20, 2004, and exported or reexported on or before June 7, 2004. Any such exports or reexports not actually made before midnight on June 7, 2004, require a license in accordance with this rule.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of E.O. 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 involves collections of information subject to the PRA. These collections have been approved by the Office of Management and Budget (OMB) under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually form BIS-748P. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at david_rostker@omb.eop.gov or by fax to 202.395.285; 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 this 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 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 rule is being issued in final form.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade.

■ For the reasons set forth in the preamble, the supplement No. 1 to part 774 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

Supplement No. 1 to Part 774— [Amended]

■ 1. The authority citation for 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 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 2. Supplement No. 1 to part 774 (the Commerce Control List), Category 1—“Materials, Chemicals, ‘Microorganisms’ and ‘Toxins’”, Export Control Classification Number 1A004 is revised 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, AT

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

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: \$ value

Related Controls: (1) See ECCNs 1A995, 2B351, and 2B352. (2) Chemical and biological protective and detection equipment specifically designed, developed, modified, configured, or adapted for military applications is subject to the export licensing jurisdiction of the Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121, category XIV(f)), as is commercial equipment that incorporates components or parts controlled under that category unless those components or parts are: (1) Integral to the device; (2) inseparable from the device; and (3) incapable of replacement without compromising the effectiveness of the device, in which case the equipment is subject to the export licensing jurisdiction of the Department of Commerce under ECCN 1A004.

Related Definitions: N/A

Items:

a. Gas masks, filter canisters and decontamination equipment therefor designed or modified for defense against biological agents or radioactive materials adapted for use in war or chemical warfare (CW) agents and specially designed components therefor;

b. Protective suits, gloves and shoes specially designed or modified for defense against biological agents or radioactive materials adapted for use in war or chemical warfare (CW) agents;

c. Nuclear, biological and chemical (NBC) detection systems specially designed or modified for detection or identification of biological agents or radioactive materials adapted for use in war or chemical warfare (CW) agents and specially designed components therefor.

Note: In this entry, the phrase “adapted for use in war” means: Any modification or selection (such as altering purity, shelf life, virulence, dissemination characteristics, or resistance to UV radiation) designed to increase the effectiveness in producing casualties in humans or animals, degrading equipment or damaging crops or the environment.

Note: 1A004 does not control:

a. Personal radiation monitoring dosimeters;

b. Equipment limited by design or function to protect against hazards specific to civil industries, such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or to the food industry.

Note: Protective equipment and components are classified as 1A004 if they have been tested and proven effective against penetration of BW/CW agents or their simulants using test protocols published by a U.S. Government Agency, such as the National Institute of Occupational Safety and Health (NIOSH) or the U.S. Army, for use by emergency responders or evacuees in chemical, biological, radiological or nuclear environments and labeled with or otherwise identified by the manufacturer or exporter as being effective against penetration by BW/CW agents even if such equipment or components are used in civil industries such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary,

environmental, waste management, or the food industry.

■ 3. In supplement No. 1 to part 774 (Commerce Control List), Category 1—“Materials, Chemicals, ‘Microorganisms’ & ‘Toxins’”, add a new Export Control Classification Number 1A995 immediately following Export Control Classification Number 1A985 and immediately preceding Export Control Classification Number 1A999 reading as follows:

1A995 Protective and detection equipment and components not specially designed for military use and not controlled by ECCN 1A004, as follows (see List of Items Controlled).

License Requirements

Reason for Control: AT

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

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: \$ value

Related controls: See ECCNs 1A004, 2B351, and 2B352.

Related Definitions: N/A

Items:

a. Personal radiation monitoring dosimeters;

b. Equipment limited by design or function to protect against hazards specific to civil industries, such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or to the food industry.

Note: This entry (1A995) does not control items for protection against chemical or biological agents that are consumer goods, packaged for retail sale or personal use, or medical products, such as latex exam gloves, latex surgical gloves, liquid disinfectant soap, disposable surgical drapes, surgical gowns, surgical foot covers, and surgical masks. Such items are classified as EAR99.

■ 4. Supplement No. 1 to part 774 (the Commerce Control List), Category 2—“Materials Processing”, Export Control Classification Number 2B351 is amended by revising the Related Controls paragraph of the List of Items Controlled section to read as follows:

2B351 Toxic gas monitoring systems that operate on-line and dedicated detectors therefor.

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List of Items Controlled

Unit: * * *

Related Controls: See ECCNs 1A004 and 1A995 for detection equipment that is not covered by this entry.

Related Definitions: * * *

Items: * * *

■ 5. Supplement No. 1 to part 774 (the Commerce Control List), Category 2—“Materials Processing”, Export Control Classification Number 2B352 is amended by revising the Related Controls paragraph of the List of Items Controlled section to read as follows:

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

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List of Items Controlled

Unit: * * *

Related Controls: See ECCNs 1A004 and 1A995 for protective equipment that is not covered by this entry.

Related Definitions: * * *

Items: * * *

Dated: April 29, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 040414115-4115-01]

RIN 0694-AD00

December 2003 Wassenaar Arrangement Plenary Agreement Implementation: Categories 1, 2, 3, 4, 5, 6, and 7 of the Commerce Control List, and Reporting Requirements; and Interpretation Regarding NUMA Technology; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correction.

SUMMARY: The Bureau of Industry and Security published in the **Federal Register** of April 29, 2004, a final rule that revised certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 5 Part II (information security), 6, and 7 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). This document corrects one error that appeared in ECCN 3A001 in that rule.

DATES: This rule is effective May 6, 2004.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482-2440 or E-mail: scCook@bis.doc.gov.

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security published in the **Federal Register** of April 29, 2004 [69 FR 23598], a final rule that revised certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 5 Part II (information security), 6, and 7 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). Part of the Related Controls paragraph in the List of Items Controlled section of ECCN 3A001 was inadvertently deleted. This document corrects this error.

Rulemaking Requirements

1. The final rule has been determined to be not significant for purposes of E.O. 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 involves a collection of information subject to 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 for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 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 (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 the Administrative Procedure Act 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. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 774

Exports, Foreign Trade, Reporting and recordkeeping requirements.

■ Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

PART 774—[CORRECTED]

■ 1. The authority citation for 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 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is amended revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

3A001 Electronic components, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) The following commodities are under the export licensing authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121) when “space qualified” and operating at frequencies higher than 31.8 GHz: helix tubes