UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

Cryofab, Inc.
540 North Michigan Avenue
Kenilworth, NJ 07033

Respondent

ORDER RELATING TO CRYOFAB, INC.

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has notified Cryofab, Inc., of Kenilworth, New Jersey, of its intention to initiate an administrative proceeding against Cryofab pursuant to Section 766.3 of the Export Administration Regulations (the "Regulations"),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (the "Act"),[2] through the issuance of a Proposed Charging Letter to Cryofab that alleges that Cryofab committed two violations of the Regulations. Specifically, the charges are:

Charges 1-2 **15 C.F.R. § 764.2(a) -- Engaging in Conduct Prohibited by the Regulations**

On two occasions, on or about July 19, 2012 and December 4, 2012, respectively, Cryofab engaged in conducted prohibited by the Regulations by exporting gas storage containers and related tools and accessories, items subject to the Regulations, designated

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2017). The charged violations occurred in 2012. The Regulations governing the violations at issue are found in the 2012 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2017 Regulations set forth the procedures that apply to this matter.

[2] 50 U.S.C. §§ 4601-4623 (Supp. III 2015). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 Fed. Reg. 39,005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq.) (2006 & Supp. IV 2010).

EAR99,[3] and valued in total at $21,570, from the United States to the Bhabha Atomic Research Center (BARC), an Indian Department of Atomic Energy entity located in Mumbai, India, without the BIS licenses required by Section 744.11 and Supplement No. 4 to Part 744 of the Regulations. On the first occasion, Cryofab exported a liquid helium storage container and accessory (total value: $16,275), and on the second occasion, it exported a liquid nitrogen storage container and operating tool (total value: $5,295). BARC is and at all times pertinent hereto was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations. BARC was added to the Entity List on June 30, 1997.[4]

Although an experienced exporter, Cryofab failed to screen the Entity List in connection with these two transactions and failed to seek or obtain the BIS licenses required pursuant to Section 744.11 and Supplement No. 4. It also erroneously listed the items as eligible for shipment without a license ("NLR," or No License Required) on the Shipper's Letter of Instructions for each shipment.

In so doing, Cryofab committed two violations of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Cryofab have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, Cryofab shall be assessed a civil penalty in the amount of $35,000, the payment of which shall be made to the U.S. Department of Commerce by October 15, 2017.

SECOND, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date

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[3] EAR99 is a designation for items subject to the Regulations that are not listed on the Commerce Control List, which is set forth at Supplement No. 1 to Part 774 of the Regulations. 15 C.F.R. §§ 734.3(c) and 774.1 (2012, 2017).

[4] *See* 62 Fed. Reg. 35,334 (June 30, 1997).

specified herein, Cryofab will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, Cryofab shall complete an external audit of its export controls compliance program. Cryofab shall hire an unaffiliated third-party consultant with expertise in U.S. export control laws to conduct the external audit of its compliance with U.S. export control laws (including recordkeeping requirements), with respect to all exports, reexports, and transfers (in-country) that are subject to the Regulations. The results of the audit, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, 1200 South Avenue, Suite 104, Staten Island, New York 10314 ("BIS New York Field Office"). The audit shall cover the 12-month period beginning on the date of the Order, and the related report shall be due to the BIS New York Field Office no later than fifteen (15) months from the date of the Order. Said audit shall be in substantial compliance with the Export Management and Compliance Program (EMCP) sample audit module, and shall include an assessment of Cryofab's compliance with the Regulations. The EMCP sample audit module is available on the BIS web site at https://www.bis.doc.gov/index.php/compliance-a-training/export-management-a-compliance/compliance. In addition, where said audit identifies actual or potential violations of the Regulations, Cryofab shall promptly provide copies of the pertinent invoices, waybills, and other export control documents and supporting documentation to the BIS New York Field Office.

FOURTH, the full and timely payment of the civil penalty set forth above and the timely completion of the audit and submission of its results as set forth above are hereby

made conditions to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Cryofab. Accordingly, if Cryofab should fail to pay the civil penalty in a full and timely manner or timely complete the audit and submit the audit results, the undersigned may issue an order denying all of Cryofab's export privileges under the Regulations for a period of one year from the date of the failure to make full and timely payment or to timely complete the audit and submit the audit results.

FIFTH, Cryofab shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Cryofab's testimonial obligations in any proceeding; nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

SIXTH, the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

RICHARD R. MAJAUSKAS
Acting Assistant Secretary of Commerce
for Export Enforcement

Issued this 18TH day of August, 2017.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

Cryofab, Inc.
540 North Michigan Avenue
Kenilworth, NJ 07033

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Cryofab, Inc., of Kenilworth, New Jersey ("Cryofab"), and the Bureau of Industry and Security, U.S. Department of Commerce ("BIS") (collectively, the "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations (the "Regulations"),[1] issued pursuant to the Export Administration Act of 1979, as amended (the "Act").[2]

WHEREAS, BIS has notified Cryofab of its intention to initiate an administrative proceeding against Cryofab pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a Proposed Charging Letter to Cryofab that alleges that Cryofab committed two violations of the Regulations, specifically:

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[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2017). The charged violations occurred in 2012. The Regulations governing the violations at issue are found in the 2012 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2017 Regulations set forth the procedures that apply to this matter.

[2] 50 U.S.C. §§ 4601-4623 (Supp. III 2015). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 4, 2016 (81 Fed. Reg. 52,587 (Aug. 8, 2016)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq.) (2006 & Supp. IV 2010).

Charges 1-2 **15 C.F.R. § 764.2(a) -- Engaging in Conduct Prohibited by the Regulations**

On two occasions, on or about July 19, 2012 and December 4, 2012, respectively, Cryofab engaged in conducted prohibited by the Regulations by exporting gas storage containers and related tools and accessories, items subject to the Regulations, designated EAR99,[3] and valued in total at $21,570, from the United States to the Bhabha Atomic Research Center (BARC), an Indian Department of Atomic Energy entity located in Mumbai, India, without the BIS licenses required by Section 744.11 and Supplement No. 4 to Part 744 of the Regulations. On the first occasion, Cryofab exported a liquid helium storage container and accessory (total value: $16,275), and on the second occasion, it exported a liquid nitrogen storage container and operating tool (total value: $5,295). BARC is and at all times pertinent hereto was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations. BARC was added to the Entity List on June 30, 1997.[4]

Although an experienced exporter, Cryofab failed to screen the Entity List in connection with these two transactions and failed to seek or obtain the BIS licenses required pursuant to Section 744.11 and Supplement No. 4. It also erroneously listed the items as eligible for shipment without a license ("NLR," or No License Required) on the Shipper's Letter of Instructions for each shipment.

In so doing, Cryofab committed two violations of Section 764.2(a) of the Regulations.

WHEREAS, Cryofab has reviewed the Proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true;

WHEREAS, Cryofab fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

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[3] EAR99 is a designation for items subject to the Regulations that are not listed on the Commerce Control List, which is set forth at Supplement No. 1 to Part 774 of the Regulations. 15 C.F.R. §§ 734.3(c) and 774.1 (2012, 2017).

[4] *See* 62 Fed. Reg. 35,334 (June 30, 1997).

WHEREAS, Cryofab enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

WHEREAS, Cryofab states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Cryofab neither admits nor denies the allegations contained in the Proposed Charging Letter; and

WHEREAS, Cryofab agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over Cryofab, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanctions shall be imposed against Cryofab:

a. Cryofab shall be assessed a civil penalty in the amount of $35,000, the payment of which shall be made to the U.S. Department of Commerce by October 15, 2017. Payment shall be made in the manner specified in the attached instructions.

b. Cryofab shall complete an external audit of its export controls compliance program. Cryofab shall hire an unaffiliated third-party consultant with expertise in U.S. export control laws to conduct the external audit of its compliance with U.S. export control laws (including recordkeeping requirements), with respect to all exports, reexports, and transfers (in-country) that are subject to the Regulations. The results of the audit, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau

of Industry and Security, Office of Export Enforcement, 1200 South Avenue, Suite 104, Staten Island, New York 10314 ("BIS New York Field Office"). The audit shall cover the 12-month period beginning on the date of the Order, and the related report shall be due to the BIS New York Field Office no later than fifteen (15) months from the date of the Order. Said audit shall be in substantial compliance with the Export Management and Compliance Program (EMCP) sample audit module, and shall include an assessment of Cryofab's compliance with the Regulations. The EMCP sample audit module is currently available on the BIS web site at https://www.bis.doc.gov/index.php/compliance-a-training/export-management-a-compliance/compliance. In addition, where said audit identifies actual or potential violations of the Regulations, Cryofab shall promptly provide copies of the pertinent invoices, waybills, and other export control documents and supporting documentation to the BIS New York Field Office.

c. The full and timely payment of the civil penalty agreed to in Paragraph 2.a and the timely completion of the audit and submission of the audit results agreed to in Paragraph 2.b are hereby made conditions to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Cryofab. Failure to make full and timely payment of the civil penalty or to timely complete the audit and submit the audit results may result in the denial of all of Cryofab's export privileges under the Regulations for one year from the date of the failure to make full and timely payment or to timely complete the audit and submit the audit results.

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, Cryofab hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if issued), including, without limitation, any right to: (a) receive an administrative hearing regarding the allegations in any proposed charging letter or charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. Cryofab also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Proposed Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until the later of the date Cryofab pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement or completes the audit and submits the audit results agreed to in Paragraph 2.b.

4. Cryofab shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Cryofab's testimonial obligations in any proceeding; nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a and timely completion of the audit and submission of the audit results as set forth in Paragraph 2.b, BIS will not initiate any further administrative proceeding against Cryofab in connection with any violation of the Act or the

Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. If the Order issues, BIS will make the Proposed Charging Letter, this Agreement, and the Order available to the public.

10. Each signatory affirms that he/she has authority to enter into this Settlement Agreement and to bind his/her respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE

Douglas R. Hassebrock
Director of Export Enforcement

Date: August 18, 2017

CRYOFAB, INC.

Vincent J. Grillo
President

Date: August 15, 2017

Reviewed and approved by:

Mollie D. Sitkowski, Esq.
Drinker Biddle & Reath LLP
Counsel for Cryofab, Inc.

Date: August 16, 2017

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Cryofab, Inc.
540 North Michigan Avenue
Kenilworth, NJ 07033

Attention: Vincent J. Grillo, President

Dear Mr. Grillo:

The Bureau of Industry and Security, U.S. Department of Commerce (BIS), has reason to believe that Cryofab, Inc., of Kenilworth, New Jersey (Cryofab), has violated the Export Administration Regulations (the Regulations),[1] which issued under the authority of the Export Administration Act of 1979, as amended (the Act).[2] Specifically, BIS alleges that Cryofab committed the following violations:

Charges 1-2 **15 C.F.R. § 764.2(a) -- Engaging in Conduct Prohibited by the Regulations**

On two occasions, on or about July 19, 2012 and December 4, 2012, respectively, Cryofab engaged in conducted prohibited by the Regulations by exporting gas storage containers and related tools and accessories, items subject to the Regulations, designated EAR99,[3] and valued in total at $21,570, from the United States to the Bhabha Atomic Research Center (BARC), an Indian Department of Atomic Energy entity located in Mumbai, India, without the BIS licenses required by Section 744.11 and Supplement No. 4 to Part 744 of the Regulations. On the first occasion, Cryofab exported a liquid helium storage container and accessory (total value: $16,275), and on the second occasion, it exported a liquid nitrogen storage container and operating tool (total value: $5,295). BARC is and at all times pertinent hereto was an organization listed on the Entity List set

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[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. parts 730-774 (2016). The violations alleged occurred in 2012. The Regulations governing the violations at issue are found in the 2012 versions of the Code of Federal Regulations, 15 C.F.R. parts 730-774 (2012). The 2016 Regulations govern the procedural aspects of this case.

[2] The Act, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (available at http://uscode.house. gov), has been in lapse since August 21, 2001, and the President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 4, 2016 (81 Fed. Reg. 52,587 (Aug. 8, 2016)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq.) (2012).

[3] EAR99 is a designation for items subject to the Regulations that are not listed on the Commerce Control List, which is set forth at Supplement No. 1 to Part 774 of the Regulations. 15 C.F.R. §§ 734.3(c) and 774.1 (2012, 2016).

forth at Supplement No. 4 to Part 744 of the Regulations. BARC was added to the Entity List on June 30, 1997.[4]

Although an experienced exporter, Cryofab failed to screen the Entity List in connection with these two transactions and failed to seek or obtain the BIS licenses required pursuant to Section 744.11 and Supplement No. 4. It also erroneously listed the items as eligible for shipment without a license ("NLR," or No License Required) on the Shipper's Letter of Instructions for each shipment.

In so doing, Cryofab committed two violations of Section 764.2(a) of the Regulations.

* * * * *

Accordingly, Cryofab is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including, but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of $284,582 per violation,[5] or twice the value of the transaction that is the basis of the violation;[6]
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

If Cryofab fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Cryofab defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Cryofab. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Cryofab is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Cryofab is also entitled

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[4] *See* 62 Fed. Reg. 35,334 (June 30, 1997).

[5] *See* 15 C.F.R. § 6.4(b)(4). This amount is subject to increase pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015.

[6] *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Cryofab have a proposal to settle this case, Cryofab should transmit it to the attorney representing BIS named below.

Cryofab is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Cryofab may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: http://www.sba.gov/ombudsman/.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Cryofab's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of Cryofab's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Parvin R. Huda
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Parvin R. Huda is the attorney representing BIS in this case; any communications that Cryofab may wish to have concerning this matter should occur through her. Ms. Huda may be contacted by telephone at (202) 482-5301.

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement