Rules and Regulations

Federal Register
Vol. 72, No. 136
Tuesday, July 17, 2007

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27837; Airspace Docket No. 07–ACE–5]

Modification of Class E Airspace; Bolivar, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Bolivar, MO and corrects the airport reference point coordinates.

DATES: *Effective Date:* The direct final rule published at 72 FR 23768, May 1, 2007, is confirmed to be 0901 UTC, August 30, 2007.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 1, 2007 (72 FR 23768). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 30, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date. The airport reference point coordinates are corrected to lat. 37°35′46″ N., long. 93°20′52″ W.

Issued in Fort Worth, Texas on June 27, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Center.

[FR Doc. 07–3446 Filed 7–16–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27838; Airspace Docket No. 07–ACE–6]

Modification of Class E Airspace; Hugoton, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Hugoton, KS.

DATES: *Effective Date:* The direct final rule published at 72 FR 23767, May 1, 2007, is confirmed to be 0901 UTC, August 30, 2007.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 1, 2007 (72 FR 23767). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 30, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Fort Worth, Texas on June 27, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Center.

[FR Doc. 07–3445 Filed 7–16–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 764 and 766

[Docket No. 0612242577–7145–01]

RIN 0694–AD63

Antiboycott Penalty Guidelines

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule sets forth BIS policy concerning voluntary self-disclosures of violations of part 760 (Restrictive Trade Practices or Boycotts) of the Export Administration Regulations (EAR) and violations of part 762 (Recordkeeping) of the EAR that relate to part 760. This rule also sets forth the factors that the Bureau of Industry and Security (BIS) considers when deciding whether to pursue administrative charges or settle allegations of such violations as well as the factors that BIS considers when deciding what level of penalty to seek in administrative antiboycott cases.

DATES: This rule is effective August 16, 2007.

FOR FURTHER INFORMATION CONTACT: Edward O. Weant III, Director, Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce, at (202) 482–2381.

SUPPLEMENTARY INFORMATION:

Background

Part 760 of the EAR—Restrictive Trade Practices or Boycotts—prohibits U.S. persons from taking or knowingly agreeing to take certain actions with intent to comply with, further, or support an unsanctioned foreign boycott. Part 760 of the EAR also requires U.S. persons who are recipients of requests ''* * * to take any action which has the effect of furthering or

supporting a restrictive trade practice or boycott fostered or imposed by a foreign country against a country friendly to the United States or against any United States person * * *'' to report receipt of those requests to BIS and whether they took the requested action. Part 762 of the EAR—Recordkeeping—requires, *inter alia,* retention of certain documents that contain information related to the prohibitions or reporting requirements of part 760. Collectively, these provisions of the EAR are referred to in this notice as the ''antiboycott provisions.'' BIS administers and enforces the antiboycott provisions through its Office of Antiboycott Compliance (OAC). On June 30, 2006, BIS published a proposed rule regarding specific procedures for voluntary self-disclosures of violations to OAC, guidance about how BIS responds to violations of the antiboycott provisions, and a description of how BIS makes penalty determinations in the settlement of administrative enforcement cases related to the antiboycott provisions. After reviewing the public comments on the proposed rule, BIS is publishing this final rule.

This rule does not address disclosure provisions or penalty determination factors in any other matters such as criminal prosecutions for violations of the antiboycott provisions or tax penalties that the Department of Treasury may impose for antiboycott violations that arise pursuant to the Ribicoff Amendment to the Tax Reform Act of 1976, as implemented by Section 999 of the Internal Revenue Code. Voluntary self-disclosure provisions and guidance on charging and penalty determinations in settlement of administrative enforcement cases that are not related to the antiboycott provisions are stated elsewhere in the EAR.

BIS received comments from two organizations regarding the proposed rule. Collectively, the two organizations raised seven issues. Three of the issues were general in nature and four addressed specific provisions of the proposed rule.

General Issues Raised by the Comments

One commenter suggested that BIS consult with industry and provide guidance on what a company's reporting structure should be. BIS concludes that this proposal is outside the scope of the issues raised by the proposed rule. BIS recognizes that among the entities that have reporting obligations, one could find myriad organizational structures. BIS believes that any tailoring of the manner of reporting to accommodate both an organization's structure and BIS's need to properly identify the source of reports can best be done through consultations between the organization and BIS rather than through an amendment to the regulations. BIS encourages organizations that have questions about how to submit reports to contact BIS for such consultations.

One commenter suggested that BIS develop a system to allow the public to submit boycott reports electronically. This suggestion is outside the scope of the proposed rule.

One commenter suggested that BIS update and publish its telephone advice guidance and look for other opportunities to provide practical written guidance for companies to use in complying with boycott requests. This comment is outside the scope of the proposed rule.

Comments Relating to Specific Features of the Proposed Rule

The comments address four specific issues in connection with the proposed rule. Those four issues are: The burden that would be imposed by new § 764.8 regarding voluntary self-disclosures; whether the provision of new § 764.8(f) regarding requests to take action that would otherwise violate § 764.2(e) is contrary to prior agency practice; whether new § 764.8 should allow verbal voluntary self-disclosures with written follow-up; and whether the rule should provide more concrete incentives to disclose by making a warning letter the maximum sanction for most voluntary self-disclosure cases.

Comment on Paperwork Burden

One commenter stated that BIS had underestimated the costs large global companies would incur in complying with the voluntary disclosure provisions. In particular, the commenter noted that a company with decentralized operations would incur costs measured in tens of thousands of dollars if it conducted the five-year review of all its operations recommended by BIS. Upon review, BIS acknowledges that the burden on large companies with decentralized operations would be greater than estimated in the proposed rule. However, BIS believes that such burden will be justified in many instances because of the risks to the firm involved if it performs a less comprehensive review. The risk of conducting a review covering a period shorter than five years or that does not include all business units is that some violations will be made known to OAC through other sources or during the course of an OAC investigation initiated in response to the voluntary self-disclosure. Such undisclosed violations would not receive the ''great weight'' mitigating factor that BIS would apply in settlement negotiations to voluntarily self-disclosed violations under this rule. The larger penalties imposed for such undisclosed violations might exceed the cost of doing a business-wide five-year search. Hence, BIS believes that it is appropriate to recommend a five-year period for this kind of review. BIS notes that the proposed rule and this final rule recommend but do not require a review extending back for a period of five years prior to the initial notification.

In the proposed rule, BIS stated that it intended to treat the collection of information related to the voluntary self-disclosure procedures in this rule as an extension of the scope of the collection approved under OMB control number 0694–AD58. Based on this comment, BIS re-evaluated the burden hours associated with this information collection and concluded that the burden is large enough to justify a separate collection authorization. Therefore, BIS sought and obtained separate OMB authorization for the collection related to the voluntary self-disclosure procedure in this rule. The collection related to the voluntary self-disclosure procedure in this rule explicitly accounts for the larger burden that would be imposed on large companies with decentralized locations and is authorized under OMB control number 0694–0132 for which the estimated annual burden hours and costs are 1,280 and $51,200, respectively.

Comment on § 764.8(f) and Prior Agency Practice

One commenter raised an issue concerning the implication of proposed § 764.8(f). Proposed § 764.8(f) would have provided a procedure by which a person making a voluntary self-disclosure of a violation of the antiboycott provision may request authorization to take certain actions with respect to the transaction. The commenter expressed a belief that ''the current OAC practice is not to require companies to seek BIS authorization to continue with a transaction after filing a voluntary disclosure.'' The commenter went on to state that ''[t]he proposed rule, however, would impose such a requirement * * * if a company were to commit a Category B or C violation it seems unreasonable that the company would have to file a voluntary disclosure and then seek BIS authorization to continue with the transaction. A more reasonable approach would be to require BIS

authorization only in those instances where the company voluntarily discloses a Category A violation.''

BIS agrees that, in the past, OAC has advised members of the public who contacted OAC via its telephone advice line a violation of part 760 does not preclude exporting in connection with the same commercial transaction. Upon review, BIS has decided to remove paragraph (f) from § 764.8 because it is not consistent with prior agency practice.

Comment Proposing Allowing Verbal Voluntary Self-Disclosures

BIS received one comment expressing the opinion that the Bureau of Customs and Border Protection self-disclosure procedure set forth in 19 CFR 162.74(a) is better than the procedure in the proposed rule. The procedure in 19 CFR 162.74(a) allows an importer to make a verbal disclosure to a Customs officer of a violation with the requirement that the disclosure be followed up in writing within 10 days. The commenter suggested that this Customs procedure encourages more disclosures by allowing the importer to disclose the violation at the earliest possible moment. The ten day written follow-up deadline encourages accurate and complete disclosures. BIS has reviewed 19 CFR 162.74(a) and the commenter's rationale. BIS notes that 19 CFR 162.74(a) applies to penalties for certain violations related to tariffs on imports into the United States. Compliance with the disclosure requirements in § 162.74 can allow the importer to pay a reduced penalty as compared with violations for which no such disclosure takes place. The penalties are set forth in 19 CFR 162.73 and 19 CFR 162.73a. Generally, the penalties are expressed as a percentage of value of the merchandise that was the subject of the violation. BIS believes that violations of the antiboycott provisions are substantively different from the violations addressed by 19 CFR 162.74(a). As noted in the preamble to the proposed rule, BIS believes that written initial notifications reduce the possibility of confusion as to whether a particular communication was intended to be a voluntary self-disclosure and are likely to produce more complete disclosures than would oral disclosures. In addition, BIS believes that preparing and submitting a written submission of the information required in an initial notification, *i.e.*, the name of the person making the disclosure and a brief description of the suspected violations and their general nature and extent, is not an onerous task. Therefore, this final rule makes no changes to the provisions of the proposed rule that required initial notifications to be in writing.

Comment Regarding Incentives to Self-Disclose Violations

One commenter recommended that BIS provide more concrete incentives for making disclosures of violations of the antiboycott provisions. This commenter noted that although new Supplement No. 2 to part 764 provides that voluntary self-disclosures be given ''GREAT WEIGHT'' as a mitigating factor, other language in the supplement concerning the effect of other factors as well as language in new § 764.8(b) stating that ''[t]he weight given to a voluntary self-disclosure is solely within discretion of BIS and the effect of voluntary self-disclosure may be outweighed by aggravating factors'' makes the benefits of voluntary self-disclosure almost speculative and could affect decisions to disclose. That commenter stated that BIS's proposal ''contrasts sharply with * * * customs law administration. [Where] * * * definite advantages always flow from disclosing violations * * *.'' The commenter recommended that BIS at least adopt a position of resolving all voluntary self-disclosure cases with a warning letter unless the ''violation involves serious anti-boycott concerns—*e.g.*, complying with boycott requests to discriminate on the basis of race, religion, sex, or national origin, or where there are significant aggravating factors.''

BIS notes that as stated in § 764.8, the weight to be given to any factor is solely within the discretion of BIS. Supplement No. 2 to part 764 describes how BIS exercises that discretion. BIS's statement in the supplement that voluntary self-disclosure made in accordance with § 764.8 be given great weight and that factors of great weight ordinarily should be given considerably more weight than other factors reflects the policy that BIS has followed and intends to follow in settling administrative enforcement actions involving the antiboycott provisions. However, given the myriad possible combinations of facts that may be present in any given case, including a range of possible aggravating and mitigating factors, BIS believes that it cannot determine in advance the maximum sanction that would be appropriate for a particular violation or combination of violations. Moreover, attempting to do so could create incentives to violate the antiboycott provisions in cases where the potential economic benefit to the violator is large relative to the maximum monetary penalty. Such incentives could occur, for example, in a situation in which a single violation provides the violator with access to a very large market.

Changes to the EAR in This Rule

This rule creates a new § 764.8 setting forth the procedures for voluntary self-disclosure of violations of the antiboycott provisions. It also creates a new supplement No. 2 to part 764 that describes how BIS responds to violations of the antiboycott provisions and how BIS makes penalty determinations in the settlement of antiboycott administrative enforcement cases. The rule also makes technical and conforming changes to part 766.

This rule provides specific criteria with respect to what constitutes a voluntary self-disclosure and how voluntary self-disclosures relate to other sources of information that OAC may have concerning violations of the antiboycott provisions. The rule also informs the public of the factors that BIS usually considers to be important when settling antiboycott administrative enforcement cases. BIS believes that publishing this information in the EAR will tend to place all potential respondents on a more equal footing because procedures for making voluntary self-disclosures, information about how BIS responds to violations and how BIS makes penalty determinations in the settlement of antiboycott administrative enforcement cases will all be matters of public record. BIS also believes such publication will make settlement of antiboycott administrative cases more efficient, as respondents and BIS will be able to focus on the important factors in antiboycott administrative enforcement cases and OAC generally expends fewer resources to obtain information received through voluntary self-disclosure than information obtained by other means.

This rule also revises Supp. No. 1 to part 730 of the EAR to display the OMB control number of the newly approved collection of information that relates to § 764.8 of the EAR, which is created by this rule.

Creation of § 764.8—Voluntary Self-Disclosure of Boycott Violations

The new § 764.8 both defines what constitutes a voluntary self-disclosure and provides the procedures for making such disclosures. Compliance with the provisions of § 764.8 is important because a voluntary self-disclosure ''satisfying the requirements of § 764.8'' is designated as a mitigating factor of ''GREAT WEIGHT'' in the settlement of administrative cases as set forth in the new Supplement No. 2 to part 764. Supplement No. 2 provides that such

factors ''will ordinarily be given considerably more weight than a factor that is not so designated.'' In addition to providing such an incentive for the submission of voluntary self-disclosures, BIS anticipates that § 764.8 will promote more effective use of OAC resources, as the receipt of voluntary self-disclosures will reduce the time that OAC must spend identifying and investigating possible violations. The rule provides the benefit of a mitigating factor to those who self-disclose before OAC has invested resources to investigate violations based on information it might receive from another source.

Section 764.8 requires, among other things, that voluntary self-disclosures be in writing and that they be received by OAC before OAC learns of the same or substantially similar information from ''another source'' and has commenced an investigation or inquiry in connection with that information. Section 764.8 provides that a person may make an initial written notification followed by submission of a more detailed narrative account and supporting documents. For purposes of determining whether a voluntary self-disclosure was received before OAC learned of the same or substantially similar information from another source, the date of the voluntary self-disclosure will be deemed to be the date that OAC received the initial notification if the person making the disclosure subsequently submits the required narrative account and supporting documentation.

BIS recognizes that two features of its existing regulations and practices may impact the requirement that a voluntary self-disclosure be received before OAC learns of the same or substantially similar information from another source. The first such feature is the set of reporting requirements in § 760.5. The second such feature is OAC's practice of encouraging persons with questions about the EAR to contact OAC by telephone or e-mail for advice.

Section 760.5 of the EAR requires any ''U.S. person who receives a request to take any action that would have the effect of furthering or supporting a restrictive trade practice or boycott fostered or imposed by a foreign country against a country friendly to the United States or against any United States person'' to report to OAC both receipt of the request and the action that the person took in response to that request. In some instances, taking the requested action would be a violation of § 760.2. BIS recognizes that, in such instances, the reporting requirements of § 760.5 would have the effect of requiring a person to disclose a violation that it had committed. Section 764.8(b)(3)(i) provides that reports filed pursuant to § 760.2 constitute ''information received from another source.'' Thus, a person who wishes to make a voluntary self-disclosure of a violation that is based on an action that § 760.5 requires that person to report would have to make sure that OAC receives the written initial notification portion of the voluntary self-disclosure before OAC began an investigation or inquiry based on the information received in the required report. The report itself would not serve as the initial notification. However, if OAC received the report and the initial notification simultaneously, it would be deemed to have received the initial notification before it had begun an investigation or inquiry based on the report. That person would then have to comply with the remaining requirements of § 764.8, but once that person complied with those requirements, the voluntary self-disclosure would be treated as having been received at the time that the initial notification was received.

OAC has, for a number of years, provided advice about the antiboycott provisions to persons requesting such advice via telephone or e-mail. In some instances, the persons requesting such advice may disclose that they have committed a violation. OAC's practice has been to encourage such persons to make voluntary self-disclosures. OAC wants to continue to encourage persons with questions about the antiboycott provisions to disclose fully all relevant facts when making telephone or e-mail inquiries for advice concerning the antiboycott provisions. Therefore, § 764.8(b)(3)(ii) provides that violations revealed in telephone or e-mail requests for advice concerning the antiboycott provisions are not information received from another source for purposes of § 764.8. Section 764.8(b)(3)(ii) also states that the information provided over the telephone or via e-mail while seeking advice would not constitute a voluntary self-disclosure or even an initial notification of a voluntary self-disclosure. OAC's practice is to inform persons who reveal violations in the course of seeking such advice of their opportunity to make a voluntary self-disclosure.

Section 764.8 also provides that for a firm to be deemed to have made a voluntary self-disclosure under that section, the individual making the disclosure must do so with the ''full knowledge and authorization of the firm's senior management or of an officer or employee who is authorized to make such disclosures on behalf of the firm.'' BIS believes that approval of a person with such authority is needed to make clear that a firm may not claim the benefits of a voluntary self-disclosure when a subordinate employee acting on his or her own initiative has disclosed wrongdoing. The proposed rule did not include the phrase ''or of an officer or employee who is authorized to make such disclosures on behalf of the firm.'' Upon review, BIS does not believe that knowledge and approval of ''senior management'' are needed so long as someone with authority to make such disclosures on behalf of the firm has approved the disclosure on behalf of the firm.

Creation of Supplement No. 2 to Part 766

This rule creates a new supplement to part 766 of the EAR to set forth publicly BIS's practice with respect to violations of the antiboycott provisions. The supplement describes the ways that BIS responds to violations, the types of administrative sanctions that may be imposed for violations, the factors that BIS considers in determining what sanctions are appropriate, the factors that BIS considers in determining the appropriate scope of the denial or exclusion order sanctions, and the factors BIS considers when deciding whether to suspend a sanction.

Paragraph (a) of the supplement contains introductory material that defines the scope and limitations of the supplement as well as sets forth BIS's policy of encouraging any party in settlement negotiations with BIS to provide all information that the party believes is relevant to the application of the guidance in the supplement as well as information that is relevant to determining whether a violation has, in fact, occurred and whether the party has a defense to any potential charges.

Paragraph (b) of the supplement sets forth the three actions that BIS may take in response to a violation, namely, issuing a warning letter, pursuing an administrative case, and referring a case to the Department of Justice for criminal prosecution. This paragraph also lists the factors that often cause BIS to issue a warning letter. Additionally, it notes BIS's ability to issue *proposed* administrative charging letters rather than actual administrative charging letters. Proposed charging letters are issued informally to provide an opportunity for settlement before initiation of a formal administrative proceeding. As noted in paragraph (b), BIS is not required to issue a proposed charging letter. Finally, paragraph (b) notes that BIS may refer a case to the Department of Justice for criminal

prosecution in addition to pursuing an administrative enforcement action.

Paragraph (c) of the supplement lists the types of administrative sanctions that may be imposed in antiboycott administrative enforcement cases. Those sanctions are: A monetary penalty, a denial of export privileges and an order excluding the party from practice before BIS.

Paragraph (d) provides information about how BIS determines what sanctions are appropriate in settlement of antiboycott administrative enforcement cases. The paragraph describes the general factors that BIS believes are important in cases concerning violations of the antiboycott provisions. The paragraph then describes specific mitigating and aggravating factors. BIS typically looks to the presence or absence of the specific factors, alongside the general factors, in determining what sanctions should apply in a given settlement.

Paragraph (d) begins by listing seven general factors to which BIS looks in determining what administrative sanctions are appropriate in each settlement. Those seven general factors are: Degree of seriousness, category of violation, whether multiple violations arise from related transactions, whether multiple violations arise from unrelated transactions, the timing of a settlement, whether there are related civil or criminal violations, and the party's familiarity with the antiboycott provisions. The supplement provides general guidance on how BIS applies each of these seven general factors.

Paragraph (d) then addresses the role of eight specific mitigating and nine specific aggravating factors whose presence or absence BIS generally considers when determining what sanctions should apply. The listed factors are not exhaustive and BIS may consider other factors as well in a particular case. However, the listed factors are those that BIS's experience indicates are commonly relevant to penalty determinations in cases that are settled. Factors identified by the term ''GREAT WEIGHT'' will ordinarily be given considerably more weight than other factors.

The eight specific mitigating factors in paragraph (d) are: Voluntary self-disclosure, effective compliance program, limited business with or in boycotted or boycotting countries, history of compliance with the antiboycott provisions, exceptional cooperation with the investigation, (lack of) clarity of request to furnish prohibited information or take prohibited action, violations arising out of a party's ''passive'' refusal to do business in connection with an agreement, and isolated occurrence. The proposed rule contained a statement in paragraph (d)(2)(i)(B)(*2*), to the effect that deliberate or intentional destruction of records may be an issue in settlement. Paragraph (d)(2)(i)(B)(*2*) is part of a discussion of mitigating factors of great weight. Upon review BIS removed the sentence about intentional or deliberate destruction of records because it pertains to aggravating factors and would be subsumed in the serious disregard for compliance issues provision in paragraph (d)(2)(ii)(B).

The nine specific aggravating factors in paragraph (d) are: Concealment or obstruction, serious disregard for compliance responsibilities, history of (lack of) compliance with the antiboycott provisions, familiarity with the type of transaction at issue in the violation, prior history of business with or in boycotted countries or boycotting countries, long duration or high frequency of violations, clarity of request to furnish prohibited information or take prohibited action, violation relating to information concerning a specific individual or entity, and violations relating to ''active'' conduct concerning an agreement to refuse to do business.

The specific mitigating and aggravating factors are set forth in more detail in the supplement. BIS believes that in most cases evaluating these factors provides a fair basis for determining the penalty that is appropriate when settling an antiboycott administrative enforcement case. However, these mitigating and aggravating factors are not exclusive. BIS may consider other factors that are relevant in a particular case and respondents in settlement negotiations may submit other relevant factors for BIS's consideration.

Paragraph (e) sets forth the factors that BIS considers to be particularly relevant when deciding whether to impose a denial or exclusion order in the settlement of antiboycott administrative enforcement cases. Certain factors in paragraph (d)—the four factors that are given great weight, degree of seriousness, and history of prior violations and their seriousness—are included in paragraph (e). In addition, BIS considers the extent to which a firm's senior management participated in or was aware of the conduct that gave rise to the violation, the likelihood of future violations, and whether a monetary penalty could be expected to have a sufficient deterrent effect to be particularly relevant in determining whether a monetary penalty is appropriate.

Paragraph (f) provides examples of factors that BIS may consider in deciding whether to suspend or defer a monetary penalty or suspend an order denying export privileges or an order providing for exclusion from practice. With respect to suspension or deferral of monetary penalties, BIS may consider whether the party has demonstrated a limited ability to pay a penalty that would be appropriate for such violation so that suspended or deferred payment can be expected to have sufficient deterrent value, and whether the impact of the penalty would be consistent with the impact of penalties on other parties who commit similar violations. When deciding whether to suspend denial or exclusion orders, BIS may consider the adverse economic consequences of the order on the party, its employees, and other persons, as well as on the national interest in the competitiveness of U.S. businesses. However, such orders will be suspended for adverse economic consequences only if future violations are unlikely and if there are adequate measures (usually a substantial civil penalty) to achieve the necessary deterrent effect.

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, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains a new collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) that has been approved by the Office of Management and Budget under control number 0694–0132 which carries a burden hour estimate of 1,280 and a cost estimate of $51,200.

Send comments about this collection, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget, by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; 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 in Executive Order 13132.

4. The Chief Counsel for Regulation at the Department of Commerce certified

to the Chief Counsel for Advocacy at the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis was published in the proposed rule and is not repeated here. BIS received only one comment that addressed the economic impact of this rule. That comment addressed the rule's economic impact on large businesses with multiple operating units in many countries and did not address the rule's impact on small entities. BIS has included that comment in its Paperwork Reduction Act submission to OMB and addressed it under the heading ''Comment on Paperwork Burden'' earlier in this preamble. Therefore, BIS has not prepared a final regulatory flexibility analysis for this rule.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties.

15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

■ For the reasons set forth above, the Export Administration Regulations (15 CFR 730–774) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for part 730 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); 22 U.S.C. 287c; 22 U.S.C. 2151 note, Pub. L. 108–175; 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. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p.133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

■ 2. In Supp. No. 1 to part 730, add a new row to the table of approved information collections immediately following the row that begins with ''0694–0129'' and immediately preceding the row that begins with ''0607–0152'' to read as follows:

Supplement No. 1 to Part 730—Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

* * * * *

Collection No.	Title	Reference in the EAR
* * *	* *	* *
0694–0132	Voluntary Self-Disclosure of Antiboycott Violations ...	§ 764.8.
* * *	* *	* *

PART 764—[AMENDED]

■ 3. The authority citation for part 764 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 3, 2006, 71 FR 44551 (August 7, 2006).

■ 4. Add a new § 764.8 to read as follows:

§ 764.8 Voluntary self-disclosures for boycott violations.

This section sets forth procedures for disclosing violations of part 760 of the EAR—Restrictive Trade Practices or Boycotts and violations of part 762—Recordkeeping—with respect to records related to part 760. In this section, these provisions are referred to collectively as the ''antiboycott provisions.'' This section also describes BIS's policy regarding such disclosures.

(a) *General policy.* BIS strongly encourages disclosure to the Office of Antiboycott Compliance (OAC) if you believe that you may have violated the antiboycott provisions. Voluntary self-disclosures are a mitigating factor with respect to any enforcement action that OAC might take.

(b) *Limitations.* (1) This section does not apply to disclosures of violations relating to provisions of the EAR other than the antiboycott provisions. Section 764.5 of this part describes how to prepare disclosures of violations of the EAR other than the antiboycott provisions.

(2) The provisions of this section apply only when information is provided to OAC for its review in determining whether to take administrative action under parts 764 and 766 of the EAR for violations of the antiboycott provisions.

(3) *Timing.* The provisions of this section apply only if OAC receives the voluntary self-disclosure as described in paragraph (c)(2) of this section before it commences an investigation or inquiry in connection with the same or substantially similar information it received from another source.

(i) *Mandatory Reports.* For purposes of this section, OAC's receipt of a report required to be filed under § 760.5 of the EAR that discloses that a person took an action prohibited by part 760 of the EAR constitutes the receipt of information from another source.

(ii) *Requests for Advice.* For purposes of this section, a violation that is revealed to OAC by a person who is seeking advice, either by telephone or e-mail, about the antiboycott provisions does not constitute the receipt of information from another source. Such revelation also does not constitute a voluntary self-disclosure or initial notification of a voluntary self-disclosure for purposes of this section.

(4) Although a voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by BIS, it is a factor that is considered together with all other factors in a case. The weight given to voluntary self-disclosure is solely within the discretion of BIS, and the mitigating effect of voluntary self-disclosure may be outweighed by aggravating factors. Voluntary self-disclosure does not

prevent transactions from being referred to the Department of Justice for criminal prosecution. In such a case, BIS would notify the Department of Justice of the voluntary self-disclosure, but the decision as to how to consider that factor is within the discretion of the Department of Justice.

(5) A firm will not be deemed to have made a disclosure under this section unless the individual making the disclosure did so with the full knowledge and authorization of the firm's senior management or of a person with authority to make such disclosures on behalf of the firm.

(6) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) *Information to be provided.* (1) *General.* Any person wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify OAC as soon as possible after violations are discovered, and then conduct a thorough review of all transactions where violations of the antiboycott provisions are suspected.

(2) *Initial notification.* The initial notification must be in writing and be sent to the address in § 764.8(c)(7) of this part. The notification should include the name of the person making the disclosure and a brief description of the suspected violations. The notification should describe the general nature and extent of the violations. If the person making the disclosure subsequently completes the narrative account required by § 764.8(c)(3) of this part, the disclosure will be deemed to have been made on the date of the initial notification for purposes of § 764.8(b)(3) of this part.

(3) *Narrative account.* After the initial notification, a thorough review should be conducted of all business transactions where possible antiboycott provision violations are suspected. OAC recommends that the review cover a period of five years prior to the date of the initial notification. If your review goes back less than five years, you risk failing to discover violations that may later become the subject of an investigation. Any violations not voluntarily disclosed do not receive the same mitigation as the violations voluntarily self-disclosed under this section. However, the failure to make such disclosures will not be treated as a separate violation unless some other section of the EAR or other provision of law enforced by BIS requires disclosure. Upon completion of the review, OAC should be furnished with a narrative account that sufficiently describes the suspected violations so that their nature and gravity can be assessed. The narrative account should also describe the nature of the review conducted and measures that may have been taken to minimize the likelihood that violations will occur in the future. The narrative account should include:

(i) The kind of violation involved, for example, the furnishing of a certificate indicating that the goods supplied did not originate in a boycotted country;

(ii) An explanation of when and how the violations occurred, including a description of activities surrounding the violations (*e.g.*, contract negotiations, sale of goods, implementation of letter of credit, bid solicitation);

(iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations; and

(iv) A description of any mitigating factors.

(4) Supporting documentation.

(i) The narrative account should be accompanied by copies of documents that explain and support it, including:

(A) Copies of boycott certifications and declarations relating to the violation, or copies of documents containing prohibited language or prohibited requests for information;

(B) Other documents relating to the violation, such as letters, facsimiles, telexes and other evidence of written or oral communications, negotiations, internal memoranda, purchase orders, invoices, bid requests, letters of credit and brochures;

(ii) Any relevant documents not attached to the narrative account must be retained by the person making the disclosure until the latest of the following: the documents are supplied to OAC; BIS informs the disclosing party that it will take no action; BIS issues a warning letter for the violation; BIS issues an order that constitutes the final agency action in the matter and all avenues for appeal are exhausted; or the documents are no longer required to be kept under part 762 of the EAR.

(5) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a corporation or other organization should be signed by an official of the corporation or other organization with the authority to do so. Section 764.2(g) of this part relating to false or misleading representations applies in connection with the disclosure of information under this section.

(6) *Oral presentations.* OAC believes that oral presentations are generally not necessary to augment the written narrative account and supporting documentation. If the person making the disclosure believes otherwise, a request for a meeting should be included with the disclosure.

(7) *Where to make voluntary self-disclosures.* The information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure should be submitted to: Office of Antiboycott Compliance, 14th and Pennsylvania Ave., NW., Room 6098, Washington, DC 20230, tel: (202) 482–2381, facsimile: (202) 482–0913.

(d) *Action by the Office of Antiboycott Compliance.* After OAC has been provided with the required narrative and supporting documentation, it will acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact, and take whatever additional action, including further investigation, it deems appropriate. As quickly as the facts and circumstances of a given case permit, BIS may take any of the following actions:

(1) Inform the person making the disclosure that, based on the facts disclosed, it plans to take no action;

(2) Issue a warning letter;

(3) Issue a proposed charging letter and attempt to settle the matter pursuant to § 766.18 of the EAR;

(4) Issue a charging letter pursuant to § 766.3 of the EAR if a settlement is not reached or BIS otherwise deems appropriate; and/or

(5) Refer the matter to the Department of Justice for criminal prosecution.

(e) *Criteria.* Supplement No. 2 to part 766 of the EAR describes how BIS typically exercises its discretion regarding whether to pursue an antiboycott administrative enforcement case under part 766 and what administrative sanctions to seek in settling such a case.

PART 766—[AMENDED]

■ 5. The authority citation for part 766 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 3, 2006, 71 FR 44551 (August 7, 2006).

■ 6. In § 766.3, paragraph (a) the second sentence is revised to read as follows:

§ 766.3 Institution of administrative enforcement proceedings.

(a) *Charging letters.* * * * Supplements Nos. 1 and 2 to this part describe how BIS typically exercises its discretion regarding the issuance of charging letters. * * *

* * * * *

■ 5. In § 766.18 paragraph (f) is revised to read as follows:

§ 766.18 Settlement.

* * * * *

(f) Supplements Nos. 1 and 2 to this part describe how BIS typically exercises its discretion regarding the terms under which it is willing to settle particular cases.

■ 6. Add Supplement No. 2 to part 766 to read as follows:

Supplement No. 2 to Part 766—Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases Involving Antiboycott Matters

(a) *Introduction.*

(1) *Scope.* This Supplement describes how the Office of Antiboycott Compliance (OAC) responds to violations of part 760 of the EAR ''Restrictive Trade Practices or Boycotts'' and to violations of part 762 ''Recordkeeping'' when the recordkeeping requirement pertains to part 760 (together referred to in this supplement as the ''antiboycott provisions''). It also describes how BIS makes penalty determinations in the settlement of administrative enforcement cases brought under parts 764 and 766 of the EAR involving violations of the antiboycott provisions. This supplement does not apply to enforcement cases for violations of other provisions of the EAR.

(2) *Policy Regarding Settlement.* Because many administrative enforcement cases are resolved through settlement, the process of settling such cases is integral to the enforcement program. BIS carefully considers each settlement offer in light of the facts and circumstances of the case, relevant precedent, and BIS's objective to achieve in each case an appropriate level of penalty and deterrent effect. In settlement negotiations, BIS encourages parties to provide, and will give serious consideration to, information and evidence that the parties believe is relevant to the application of this guidance to their cases, to whether a violation has in fact occurred, and to whether they have a defense to potential charges.

(3) *Limitation.* BIS's policy and practice is to treat similarly situated cases similarly, taking into consideration that the facts and combination of mitigating and aggravating factors are different in each case. However, this guidance does not confer any right or impose any obligation regarding what posture or penalties BIS may seek in settling or litigating a case. Parties do not have a right to a settlement offer or particular settlement terms from BIS, regardless of settlement postures BIS has taken in other cases.

(b) *Responding to Violations.* OAC within BIS investigates possible violations of Section 8 of the Export Administration Act of 1979, as amended (''Foreign Boycotts''), the antiboycott provisions of EAR, or any order or authorization related thereto. When BIS has reason to believe that such a violation has occurred, BIS may issue a warning letter or initiate an administrative enforcement proceeding. A violation may also be referred to the Department of Justice for criminal prosecution.

(1) *Issuing a warning letter.* Warning letters represent BIS's belief that a violation has occurred. In the exercise of its discretion, BIS may determine in certain instances that issuing a warning letter, instead of bringing an administrative enforcement proceeding, will fulfill the appropriate enforcement objective. A warning letter will fully explain the violation.

(i) BIS may issue warning letters where:

(A) The investigation commenced as a result of a voluntary self-disclosure satisfying the requirements of § 764.8 of the EAR; or

(B) The party has not previously committed violations of the antiboycott provisions.

(ii) BIS may also consider the category of violation as discussed in paragraph (d)(2) of this supplement in determining whether to issue a warning letter or initiate an enforcement proceeding. A violation covered by Category C (failure to report or late reporting of receipt of boycott requests) might warrant a warning letter rather than initiation of an enforcement proceeding.

(iii) BIS will not issue a warning letter if it concludes, based on available information, that a violation did not occur.

(iv) BIS may reopen its investigation of a matter should it receive additional evidence or if it appears that information previously provided to BIS during the course of its investigation was incorrect.

(2) *Pursuing an administrative enforcement case.* The issuance of a charging letter under § 766.3 of this part initiates an administrative proceeding.

(i) Charging letters may be issued when there is reason to believe that a violation has occurred. Cases may be settled before or after the issuance of a charging letter. *See* § 766.18 of this part.

(ii) Although not required to do so by law, BIS may send a proposed charging letter to a party to inform the party of the violations that BIS has reason to believe occurred and how BIS expects that those violations would be charged. Issuance of the proposed charging letter provides an opportunity for the party and BIS to consider settlement of the case prior to the initiation of formal enforcement proceedings.

(3) *Referring for criminal prosecution.* In appropriate cases, BIS may refer a case to the Department of Justice for criminal prosecution, in addition to pursuing an administrative enforcement action.

(c) *Types of administrative sanctions.* Administrative enforcement cases generally are settled on terms that include one or more of three administrative sanctions:

(1) A monetary penalty may be assessed for each violation as provided in § 764.3(a)(1) of the EAR;

Note to paragraph (c)(1): The maximum penalty is subject to adjustments under the Federal Civil Penalties Adjustment Act of 1990 (28 U.S.C. 2461, note (2000)), which are codified at 15 CFR 6.4. For violations that occurred before March 9, 2006, the maximum monetary penalty per violation is $11,000. For violations occurring on or after March 9, 2006, the maximum monetary penalty per violation is $50,000.

(2) An order denying a party's export privileges under the EAR may be issued, under § 764.3(a)(2) of the EAR; or

(3) Exclusion from practice under § 764.3(a)(3) of the EAR.

(d) *How BIS determines what sanctions are appropriate in a settlement.*

(1) *General Factors.* BIS looks to the following general factors in determining what administrative sanctions are appropriate in each settlement.

(i) *Degree of seriousness.* In order to violate the antiboycott provisions of the EAR, a U.S. person does not need to have actual ''knowledge'' or a reason to know, as that term is defined in § 772.1 of the EAR, of relevant U.S. laws and regulations. Typically, in cases that do not involve knowing violations, BIS will seek a settlement for payment of a civil penalty (unless the matter is resolved with a warning letter). However, in cases involving knowing violations, conscious disregard of the antiboycott provisions, or other such serious violations (*e.g.,* furnishing prohibited information in response to a boycott questionnaire with knowledge that such furnishing is in violation of the EAR), BIS is more likely to seek a denial of export privileges or an exclusion from practice, and/or a greater monetary penalty as BIS considers such violations particularly egregious.

(ii) *Category of violations.* In connection with its activities described in paragraph (a)(1) of this supplement, BIS recognizes three categories of violations under the antiboycott provisions of the EAR. (*See* § 760.2, § 760.4 and § 760.5 of the EAR for examples of each type of violation other than recordkeeping). These categories reflect the relative seriousness of a violation, with Category A violations typically warranting the most stringent penalties, including up to the maximum monetary penalty, a denial order and/or an exclusion order. Through providing these categories in this penalty guidelines notice, BIS hopes to give parties a general sense of how it views the seriousness of various violations. This guidance, however, does not confer any right or impose any obligation as to what penalties BIS may impose based on its review of the specific facts of a case.

(A) The Category A violations and the sections of the EAR that set forth their elements are:

(*1*) Discriminating against U.S. persons on the basis of race, religion, sex, or national origin—§ 760.2(b);

(*2*) Refusing to do business or agreeing to refuse to do business—§ 760.2(a);

(*3*) Furnishing information about race, religion, sex, or national origin of U.S. persons including, but not limited to, providing information in connection with a boycott questionnaire about the religion of employees—§ 760.2(c);

(*4*) Evading the provisions of part 760—§ 760.4;

(*5*) Furnishing information about business relationships with boycotted countries or blacklisted persons—§ 760.2(d); and

(*6*) Implementing letters of credit—§ 760.2(f).

(B) The Category B violations and the sections of the EAR that set forth their elements are:

(*1*) Furnishing information about associations with charitable or fraternal organizations which support a boycotted country—§ 760.2(e); and

(*2*) Making recordkeeping violations—part 762.

(C) The Category C violation and the section of the EAR that sets forth its elements is: Failing to report timely receipt of boycott requests—§ 760.5.

(iii) *Violations arising out of related transactions.* Frequently, a single transaction can give rise to multiple violations. Depending on the facts and circumstances, BIS may choose to impose a smaller or greater penalty per violation. In exercising its discretion, BIS typically looks to factors such as whether the violations resulted from conscious disregard of the requirements of the antiboycott provisions; whether they stemmed from the same underlying error or omission; and whether they resulted in distinguishable or separate harm. The three scenarios set forth below are illustrative of how BIS might view transactions that lead to multiple violations.

(A) *First scenario.* An exporter enters into a sales agreement with a company in a boycotting country. In the course of the negotiations, the company sends the exporter a request for a signed statement certifying that the goods to be supplied do not originate in a boycotted country. The exporter provides the signed certification. Subsequently, the exporter fails to report the receipt of the request. The exporter has committed two violations of the antiboycott provisions, first, a violation of § 760.2(d) for furnishing information concerning the past or present business relationships with or in a boycotted country, and second, a violation of § 760.5 for failure to report the receipt of a request to engage in a restrictive trade practice or boycott. Although the supplier has committed two violations, BIS may impose a smaller mitigated penalty on a per violation basis than if the violations had stemmed from two separate transactions.

(B) *Second scenario.* An exporter receives a boycott request to provide a statement that the goods at issue in a sales transaction do not contain raw materials from a boycotted country and to include the signed statement along with the invoice. The goods are shipped in ten separate shipments. Each shipment includes a copy of the invoice and a copy of the signed boycott-related statement. Each signed statement is a certification that has been furnished in violation of § 760.2(d)'s bar on the furnishing of prohibited business information. Technically, the exporter has committed ten separate violations of § 760.2(d) and one violation of § 760.5 for failure to report receipt of the boycott request. Given that the violations arose from a single boycott request, however, BIS may treat the violations as related and impose a smaller penalty than it would if the furnishing had stemmed from ten separate requests.

(C) *Third scenario.* An exporter has an ongoing relationship with a company in a boycotting country. The company places three separate orders for goods on different dates with the exporter. In connection with each order, the company requests the exporter to provide a signed statement certifying that the goods to be supplied do not originate in a boycotted country. The exporter provides a signed certification with each order of goods that it ships to the company. BIS has the discretion to penalize the furnishing of each of these three items of information as a separate violation of § 760.2(d) of the EAR for furnishing information concerning past or present business relationships with or in a boycotted country.

(iv) *Multiple violations from unrelated transactions.* In cases involving multiple unrelated violations, BIS is more likely to seek a denial of export privileges, an exclusion from practice, and/or a greater monetary penalty than in cases involving isolated incidents. For example, the repeated furnishing of prohibited boycott-related information about business relationships with or in boycotted countries during a long period of time could warrant a denial order, even if a single instance of furnishing such information might warrant only a monetary penalty. BIS takes this approach because multiple violations may indicate serious compliance problems and a resulting risk of future violations. BIS may consider whether a party has taken effective steps to address compliance concerns in determining whether multiple violations warrant a denial or exclusion order in a particular case.

(v) *Timing of settlement.* Under § 766.18 of this part, settlement can occur before a charging letter is served, while a case is before an administrative law judge, or while a case is before the Under Secretary for Industry and Security under § 766.22 of this part. However, early settlement—for example, before a charging letter has been filed—has the benefit of freeing resources for BIS to deploy in other matters. In contrast, for example, the BIS resources saved by settlement on the eve of an adversary hearing under § 766.13 of this part are fewer, insofar as BIS has already expended significant resources on discovery, motions practice, and trial preparation. Given the importance of allocating BIS resources to maximize enforcement of the EAR, BIS has an interest in encouraging early settlement and will take this interest into account in determining settlement terms.

(vi) *Related criminal or civil violations.* Where an administrative enforcement matter under the antiboycott provisions involves conduct giving rise to related criminal charges, BIS may take into account the related violations and their resolution in determining what administrative sanctions are appropriate under part 766 of the EAR. A criminal conviction indicates serious, willful misconduct and an accordingly high risk of future violations, absent effective administrative sanctions. However, entry of a guilty plea can be a sign that a party accepts responsibility for complying with the antiboycott provisions and will take greater care to do so in the future. In appropriate cases where a party is receiving substantial criminal penalties, BIS may find that sufficient deterrence may be achieved by lesser administrative sanctions than would be appropriate in the absence of criminal penalties. Conversely, BIS might seek greater administrative sanctions in an otherwise similar case where a party is not subjected to criminal penalties. The presence of a related criminal or civil disposition may distinguish settlements among civil penalty cases that appear to be otherwise similar. As a result, the factors set forth for consideration in civil penalty settlements will often be applied differently in the context of a ''global settlement'' of both civil and criminal cases, or multiple civil cases involving other agencies, and may therefore be of limited utility as precedent for future cases, particularly those not involving a global settlement.

(vii) *Familiarity with the Antiboycott Provisions.* Given the scope and detailed nature of the antiboycott provisions, BIS will consider whether a party is an experienced participant in the international business arena who may possess (or ought to possess) familiarity with the antiboycott laws. In this respect, the size of the party's business, the presence or absence of a legal division or corporate compliance program, and the extent of prior involvement in business with or in boycotted or boycotting countries, may be significant.

(2) *Specific mitigating and aggravating factors.* In addition to the general factors described in paragraph (d)(1) of this supplement, BIS also generally looks to the presence or absence of the specific mitigating and aggravating factors in this paragraph in determining what sanctions should apply in a given settlement. These factors describe circumstances that, in BIS's experience, are commonly relevant to penalty determinations in settled cases. However, this listing of factors is not exhaustive and BIS may consider other factors that may further indicate the blameworthiness of a party's conduct, the actual or potential harm associated with a violation, the likelihood of future violations, and/or other considerations relevant to determining what sanctions are appropriate. The assignment of mitigating or aggravating factors will depend upon the attendant circumstances of the party's conduct. Thus, for example, one prior violation should be given less weight than a history of multiple violations, and a previous violation reported in a voluntary self-disclosure by a party whose overall compliance efforts are of high quality should be given less weight than previous violation(s) not involving such mitigating factors. Some of the mitigating factors listed in this paragraph are designated as having ''great weight.'' When present, such a factor should ordinarily be given considerably more weight than a factor that is not so designated.

(i) *Specific mitigating factors.*

(A) *Voluntary self-disclosure.* (GREAT WEIGHT) The party has made a voluntary self-disclosure of the violation, satisfying the requirements of § 764.8 of the EAR.

(B) *Effective compliance program.* (GREAT WEIGHT)

(*1*) *General policy or program pertaining to Antiboycott Provisions.* BIS will consider whether a party's compliance efforts uncovered a problem, thereby preventing further violations, and whether the party has taken steps to address compliance concerns raised by the violation, including steps to prevent recurrence of the violation, that are reasonably calculated to be effective. The focus is on the party's demonstrated compliance with the antiboycott provisions. Whether a party has an effective export compliance program covering other provisions of the EAR is not relevant as a mitigating factor. In the case of a party that has done previous business with or in boycotted countries or boycotting countries, BIS will examine whether the party has an effective antiboycott compliance program and whether its overall antiboycott compliance efforts have been of high quality. BIS may deem it appropriate to review the party's internal business documents relating to antiboycott compliance (*e.g.*, corporate compliance manuals, employee training materials).

(*2*) *Compliance with reporting and recordkeeping requirements.* In the case of a party that has received reportable boycott requests in the past, BIS may examine whether the party complied with the reporting and recordkeeping requirements of the antiboycott provisions.

(C) *Limited business with or in boycotted or boycotting countries.* The party has had little to no previous experience in conducting business with or in boycotted or boycotting countries. Prior to the current enforcement proceeding, the party had not engaged in business with or in such countries, or had only transacted such business on isolated occasions. BIS may examine the volume of business that the party has conducted with or in boycotted or boycotting countries as demonstrated by the size and dollar amount of transactions or the percentage of a party's overall business that such business constitutes.

(D) *History of compliance with the Antiboycott Provisions of the EAR.*

(*1*) BIS will consider it to be a mitigating factor if:

(*i*) The party has never been convicted of a criminal violation of the antiboycott provisions;

(*ii*) In the past 5 years, the party has not entered into a settlement or been found liable in a boycott-related administrative enforcement case with BIS or another U.S. government agency;

(*iii*) In the past 3 years, the party has not received a warning letter from BIS relating to the antiboycott provisions; or

(*iv*) In the past 5 years, the party has not otherwise violated the antiboycott provisions.

(*2*) Where necessary to ensure effective enforcement, the prior involvement in violations of the antiboycott provisions of a party's owners, directors, officers, partners, or other related persons may be imputed to a party in determining whether these criteria are satisfied. When an acquiring firm takes reasonable steps to uncover, correct, and disclose to BIS conduct that gave rise to violations that the acquired business committed before the acquisition, BIS typically will not take such violations into account in applying this factor in settling other violations by the acquiring firm.

(E) *Exceptional cooperation with the investigation.* The party has provided exceptional cooperation to OAC during the course of the investigation.

(F) *Clarity of request to furnish prohibited information or take prohibited action.* The party responded to a request to furnish information or take action that was ambiguously worded or vague.

(G) *Violations arising out of a party's ''passive'' refusal to do business in connection with an agreement.* The party has acquiesced in or abided by terms or conditions that constitute a prohibited refusal to do business (*e.g.*, responded to a tender document that contains prohibited language by sending a bid). *See* ''active'' agreements to refuse to do business in paragraph (d)(2)(ii)(I) of this supplement.

(H) *Isolated occurrence of violation.* The violation was an isolated occurrence. (Compare to long duration or high frequency of violations as an aggravating factor in paragraph (d)(2)(ii)(F) of this supplement.)

(ii) *Specific Aggravating Factors.*

(A) *Concealment or obstruction.* The party made a deliberate effort to hide or conceal the violation. (GREAT WEIGHT)

(B) *Serious disregard for compliance responsibilities.* (GREAT WEIGHT] There is evidence that the party's conduct demonstrated a serious disregard for responsibilities associated with compliance with the antiboycott provisions (*e.g.:* knowing violation of party's own compliance policy or evidence that a party chose to treat potential penalties as a cost of doing business rather than develop a compliance policy).

(C) *History of compliance with the Antiboycott Provisions.*

(*1*) BIS will consider it to be an aggravating factor if:

(*i*) The party has been convicted of a criminal violation of the antiboycott provisions;

(*ii*) In the past 5 years, the party has entered into a settlement or been found liable in a boycott-related administrative enforcement case with BIS or another U.S. government agency;

(*iii*) In the past 3 years, the party has received a warning letter from BIS relating to the antiboycott provisions; or

(*iv*) In the past 5 years, the party has otherwise violated the antiboycott provisions.

(*2*) Where necessary to ensure effective enforcement, the prior involvement in violations of the antiboycott provisions of a party's owners, directors, officers, partners, or other related persons may be imputed to a party in determining whether these criteria are satisfied.

(*3*) When an acquiring firm takes reasonable steps to uncover, correct, and disclose to BIS conduct that gave rise to violations that the acquired firm committed before being acquired, BIS typically will not take such violations into account in applying this factor in settling other violations by the acquiring firm.

(D) *Familiarity with the type of transaction at issue in the violation.* For example, in the case of a violation involving a letter of credit or related financial document, the party routinely pays, negotiates, confirms, or otherwise implements letters of credit or related financial documents in the course of its standard business practices.

(E) *Prior history of business with or in boycotted countries or boycotting countries.* The party has a prior history of conducting business with or in boycotted and boycotting countries. BIS may examine the volume of business that the party has conducted with or in boycotted and boycotting countries as reflected by the size and dollar amount of transactions or the percentage of a party's overall business that such business constitutes.

(F) *Long duration or high frequency of violations.* Violations that occur at frequent intervals or repeated violations occurring over an extended period of time may be treated more seriously than a single violation or related violations that are committed within a brief period of time, particularly if the violations are committed by a party with a history of business with or in boycotted and boycotting countries. (Compare to isolated occurrence of violation in paragraph (d)(2)(i)(H) of this supplement.)

(G) *Clarity of request to furnish prohibited information or take prohibited action.* The request to furnish information or take other prohibited action (*e.g.*, enter into agreement to refuse to do business with a boycotted country or entity blacklisted by a boycotting country) is facially clear as to its intended purpose.

(H) *Violation relating to specific information concerning an individual entity or individual.* The party has furnished prohibited information about business relationships with specific companies or individuals.

(I) *Violations relating to ''active'' conduct concerning an agreement to refuse to do business.* The party has taken action that involves altering, editing, or enhancing prohibited terms or language in an agreement to refuse to do business, including a letter of credit, or drafting a clause or provision including prohibited terms or language in the course of negotiating an agreement to refuse to do business, including a letter of credit. *See* ''passive'' agreements to refuse to do business in paragraph (d)(2)(i)(G) of this supplement.

(e) *Determination of Scope of Denial or Exclusion Order.* In deciding whether and what scope of denial or exclusion order is appropriate, the following factors are particularly relevant: The presence of mitigating or aggravating factors of great weight; the degree of seriousness involved; the extent to which senior management participated in or was aware of the conduct in question; the number of violations; the existence and seriousness of prior violations; the likelihood of future violations (taking into account relevant efforts to comply with the antiboycott provisions); and whether a civil monetary penalty can be expected to have a sufficient deterrent effect.

(f) *How BIS Makes Suspension and Deferral Decisions.*

(1) *Civil Penalties.* In appropriate cases, payment of a civil monetary penalty may be

deferred or suspended. See § 764.3(a)(1)(iii) of the EAR. In determining whether suspension or deferral is appropriate, BIS may consider, for example, whether the party has demonstrated a limited ability to pay a penalty that would be appropriate for such violations, so that suspended or deferred payment can be expected to have sufficient deterrent value, and whether, in light of all the circumstances, such suspension or deferral is necessary to make the impact of the penalty consistent with the impact of BIS penalties on other parties who committed similar violations.

(2) *Denial of Export Privileges and Exclusion from Practice.* In deciding whether a denial or exclusion order should be suspended, BIS may consider, for example, the adverse economic consequences of the order on the party, its employees, and other persons, as well as on the national interest in maintaining or promoting the competitiveness of U.S. businesses. An otherwise appropriate denial or exclusion order will be suspended on the basis of adverse economic consequences only if it is found that future violations of the antiboycott provisions are unlikely and if there are adequate measures (usually a substantial civil monetary penalty) to achieve the necessary deterrent effect.

Dated: July 9, 2007.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E7–13717 Filed 7–16–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 070426097–7099–01]

RIN 0694–AE02

Export Licensing Jurisdiction for Microelectronic Circuits

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule provides clarifying guidance for distinguishing the export and reexport licensing jurisdiction of the U.S. Department of State from that of the U.S. Department of Commerce concerning microelectronic circuits. In this same issue of the **Federal Register**, the U.S. Department of State is amending the International Traffic in Arms Regulations (ITAR) with respect to radiation-hardened microelectronic circuits in Category XV(d) of the United States Munitions List (USML). The Bureau of Industry and Security (BIS) is publishing this rule to assist readers of the Export Administration Regulations (EAR) in evaluating agency licensing jurisdiction over microelectronic circuits while taking into account the new standard in Category XV(d) of the USML.

DATES: *Effective Date:* This rule is effective July 17, 2007.

ADDRESSES: Although this is a final rule, comments are welcome and should be sent to *publiccomments@bis.doc.gov,* fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AE02 in all comments, and in the subject line of e-mail comments. Comments on the collection of information should also be sent to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Brian Baker, Deemed Exports and Electronics Division, Office of National Security and Technology Transfer Controls, by telephone at 202–482–5534 or by e-mail at *bbaker@bis.doc.gov.*

SUPPLEMENTARY INFORMATION: Entries for certain Export Control Classification Numbers (ECCNs) contain ''Related Controls'' paragraphs that alert readers to the possible application of export controls administered by other U.S. government agencies or that of export controls set forth in other similar ECCNs. The ''Related Controls'' paragraph of ECCN 3A001 currently provides guidance on the licensing jurisdiction of the Directorate of Defense Trade Controls of the U.S. Department of State with respect to certain ''space qualified'' and certain radiation-hardened commodities.

Concurrent with this final rule, the U.S. Department of State is publishing a final rule amending the ITAR with respect to State's jurisdiction over radiation-hardened microelectronic circuits in Category XV(d) of the USML (22 CFR part 121). Within Category XV(d) of the USML, the U.S. Department of State is changing the measurement for the single event upset rate parameter. As a result, radiation-hardened microelectronic circuits that meet or exceed the four unchanged parameters in Category XV(d) and whose single event upset rate parameter lies between the old and new standard will be moved to the Commerce Control List (CCL) under ECCN 3A001.a.1.

To reflect the new licensing jurisdiction standard in the USML, this rule adds language to the ''Related Controls'' paragraph of ECCN 3A001 to assist readers in correctly determining whether certain microelectronic circuits are covered by the CCL and subject to the licensing jurisdiction of the Bureau of Industry and Security of the U.S. Department of Commerce, or are on the USML and subject to the licensing jurisdiction of the Directorate of Defense Trade Controls of the U.S. Department of State.

Specifically, the language added to ECCN 3A001 states that the following are subject to the licensing jurisdiction of the Department of State, Directorate of Defense Trade Controls: Radiation-hardened microelectronic circuits controlled by Category XV(d) of the United States Munitions List (USML) and all specifically designed or modified systems or subsystems, components, parts, accessories, attachments, and associated equipment controlled by Category XV(e) of the USML.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (August 7, 2006), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This 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 requirements of the PRA. This collection has previously 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. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS expects that this rule will not change that burden hour estimate.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. BIS finds that there is good cause under 5 U.S.C. 553 (b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment