

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Parts 764 and 766**

[Docket No. 030909226–3226–01]

RIN 0694–AC92

Export Administration Regulations: Penalty Guidance in the Settlement of Administrative Enforcement Cases**AGENCY:** Bureau of Industry and Security, Commerce.**ACTION:** Proposed rule.

SUMMARY: The Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations by incorporating guidance on how BIS makes penalty determinations when settling administrative enforcement cases under part 766 of the Export Administration Regulations (EAR), 15 CFR 730–799 (2003). This guidance also addresses related aspects of how BIS responds to violations of the EAR, such as charging decisions. This rule also proposes to amend parts 764 and 766 of the EAR to conform to this guidance.

DATES: Comments must be received by November 17, 2003.

ADDRESSES: Written comments should be addressed to: Chief Counsel for Industry and Security, Attention: Philip D. Golrick, Room H–3839, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Please mark envelopes containing comments with the words “Settlement Guidance.”

FOR FURTHER INFORMATION CONTACT: For further information regarding this proposed rule, contact Philip D. Golrick, Office of Chief Counsel for Industry and Security, United States Department of Commerce, at (202) 482–5301.

SUPPLEMENTARY INFORMATION:**Background**

As an essential part of its administration of the export control system, BIS brings administrative enforcement actions for violations of the Export Administration Regulations (EAR). Many administrative enforcement cases are resolved through settlements between BIS and the respondent.

The rule proposes to incorporate guidance in the EAR on how BIS determines what penalty is appropriate for the settlement of an administrative enforcement case. This guidance would appear in a new Supplement No. 1 to part 766 of the EAR. The proposed guidance identifies both general factors, such as the destination for the export

and degree of willfulness involved in violations, and specific mitigating and aggravating factors which BIS typically takes into account in determining an appropriate penalty. The proposed guidance also describes factors that BIS's Office of Export Enforcement (OEE) typically considers in describing whether a violation should be addressed in a warning letter, rather than in an administrative enforcement case. The guidance would not apply to antiboycott matters arising under part 760 of the EAR.

In part 764, the rule proposes to amend section 764.5(e) to state that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding whether to pursue an administrative enforcement case regarding violations reported in a voluntary self-disclosure under section 764.5, and what administrative sanctions to seek in settling such a case.

In part 766, the rule proposes to amend section 766.3(a) to state that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding the issuance of charging letters, other than in antiboycott matters under part 760. The rule proposes to amend section 766.18 to add a new paragraph (f), stating that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding the terms under which it is willing to settle particular cases, other than antiboycott matters under part 760.

This guidance is consistent with the objectives of section 223 of the Small Business Regulatory Enforcement Fairness Act (Title II, Pub. L. 104–121).

Rulemaking Requirements

1. This proposed 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 (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under Control Number 0694–0058, and carries an annual burden hour estimate of 800 hours and a cost to the public of approximately \$32,000.

3. This rule does not contain policies with Federalism implications as this

term is defined in Executive Order 13132.

4. Pursuant to 5 U.S.C. 553(b)(A), the provisions of the Administrative Procedure Act requiring a notice of proposed rulemaking and the opportunity for public comment are waived, because this regulation involves a general statement of policy and rule of agency procedure. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. However, in view of the importance of this proposed rule, which represents the first comprehensive statement of BIS's approach toward these issues, BIS is seeking public comments before the proposed rule takes effect. The period for submission of comments will close November 17, 2003. BIS will consider all comments received before the close of the comment period in developing a final rule. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of the final rule. All public comments on this proposed rule must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying. The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this web site, please call BIS's Office of Administration at (202) 482–0637 for assistance.

List of Subjects**15 CFR Part 764**

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