List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. FAA–2006–25085; Directorate Identifier 2006–SW–02–AD.

Applicability: Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, and AS350D1 helicopters with a hydraulic drive belt (drive belt), part number (P/N) 704A33–690–004, or a hydraulic pump drive shaft (drive shaft), P/N 704A34–310–006, installed, certificated in any category.

Compliance: Required as indicated.

To prevent loss of hydraulic power to the flight control system and subsequent loss of control of the helicopter, accomplish the following:

(a) At or before the next 500-hour time-in-service (TIS) inspection, unless accomplished previously, replace the drive belt with an airworthy drive belt that is not included in the applicability of this AD.

(b) Within 110 hours TIS or at the next scheduled lubrication interval for the drive shaft splines, and thereafter at intervals not to exceed 110 hours TIS or 6 months, whichever occurs first, lubricate the drive shaft splines.

(c) This action reduces the interval for lubricating the drive shaft splines from 550 hours TIS or 2 years, whichever occurs first, to 110 hours TIS or 6 months, whichever occurs first.

Note: Eurocopter Service Bulletin No. 63.00.08, dated May 27, 2002, and No. 29.00.04, Revision 1, dated January 27, 2004, pertain to the subject of this AD.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Rotorcraft Directorate, Regulations and Guidance Group, FAA, ATTN: Gary Roach, Aviation Safety Engineer, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on June 22, 2006.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 06–5880 Filed 6–29–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 764 and 766

[Docket No 060511128–6128–01]

RIN 0694–AD36

Antiboycott Penalty Guidelines

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule would set 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 proposed rule also would set 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 cases.

DATES: Comments must be received by August 29, 2006.

ADDRESSES: Comments may be made via the Federal e-Rulemaking portal at, *http://www.regulations.gov*, by e-mail directly to BIS at *publiccomments@bis.doc.gov*, via fax at (202) 482–3355 or to U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, Room 2703, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Please refer to RIN 0694–AD36 in all comments.

FOR FURTHER INFORMATION CONTACT: Edward O. Weant III, Acting 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 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). This proposed rule would: Set forth specific procedures for voluntary self disclosures of violations to OAC, provide guidance about how OAC responds to violations of the antiboycott provisions, and describe how OAC makes penalty determinations in the settlement of administrative enforcement cases related to the antiboycott provisions.

This rule would 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.

Proposed Changes to the EAR in This Rule

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

This rule would provide 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 would also inform the public of the factors that OAC 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 and their counsel on a more equal footing because procedures for making voluntary disclosures, information about how OAC responds to violations and how OAC makes penalty determinations in the settlement of administrative enforcement cases will all be matters of public record. BIS also believes such publication will make settlement of administrative cases more efficient, as respondents and OAC will be able to focus on the important factors in administrative enforcement cases and because OAC generally expends fewer resources to obtain information received through voluntary self-disclosure than information obtained by other means.

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

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

Proposed § 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. The proposed § 764.8 would provide that persons 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 believes that requiring voluntary self-disclosures to be in writing reduces the possibility of confusion as to whether a particular communication was intended to be a voluntary self-disclosure and is likely to produce more complete disclosures than would oral disclosures.

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 regulations 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. The proposed rule 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 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 person requesting such advice may disclose that it has 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 fully disclose all relevant facts when making telephone or e-mail inquiries for advice concerning the antiboycott provisions. Therefore, OAC will not treat violations revealed in telephone or e-mail requests for advice concerning the antiboycott provisions as information received from another source. However, to meet the requirements of § 764.8, the person wishing to make a voluntary self-disclosure would have to make a written disclosure pursuant to § 764.8. 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 people who reveal violations in the course of seeking such advice of their opportunity to make a voluntary disclosure.

Proposed § 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.'' OAC believes that this requirement 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 disclosed wrongdoing by the firm's management.

Creation of Supplement No. 2 to Part 764

This rule would also create a new supplement to part 764 to set forth publicly BIS's practice with respect to violations of the antiboycott provisions. The proposed 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 proposed 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 proposed supplement sets forth the three actions that OAC may take in response to a violation, which are: Issue a warning letter, pursue an administrative case, and refer a case to the Department of Justice for criminal prosecution. This paragraph also lists the factors that often cause OAC to issue a warning letter. It also notes OAC'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), OAC is not required to issue a proposed charging letter. Finally paragraph (b) notes that OAC may refer a case to the Department of Justice for criminal prosecution in addition to pursuing an administrative enforcement action.

Paragraph (c) of the proposed supplement lists the types of administrative sanctions that may be imposed in administrative 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 OAC determines what sanctions are appropriate in settlement of 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. OAC generally looks to the presence or absence of these specific factors in determining what sanctions should apply in a given settlement.

Paragraph (d) begins by listing seven general factors to which OAC 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 OAC 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 OAC generally considers when determining what sanctions should apply. The listed factors are not exhaustive and OAC may consider other factors as well in a particular case. However, the listed factors are those that OAC's experience indicates are commonly relevant to penalty determinations in cases that are settled. Factors identified by the phrase ''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 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 or good faith misinterpretation.

The nine specific aggravating factors in paragraph (b) 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 violations, 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, violations 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 administrative 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 OAC considers to be particularly relevant when deciding whether to impose a denial or exclusion order in the settlement of administrative 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 (f). 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 OAC may consider in deciding whether to suspend or defer a monetary penalty, or suspend an order denying export privileges or an order providing an exclusion from practice. With respect to suspension or deferral of monetary penalties OAC 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 OAC 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. If adopted as a final rule, this proposed rule would expand the scope of information collected pursuant to Office of Management and Budget Control Number 0694–0058. Such an expansion would be subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requiring Office of Management and Budget authorization before implementation. BIS will prepare documentation for presentation to OMB to obtain authorization for this expansion. Send comments about this collection, including suggestions for reducing the burden, 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; 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 of the Department of Commerce has certified to the Counsel for Advocacy that this proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Number of Small Entities

As a strictly legal matter, the antiboycott provisions of the Export Administration Regulations apply to any activities in the interstate or foreign commerce of the United States by any individual, or any association or organization, public or private who meets the regulatory definition of ''United States Person.'' Pursuant to this standard, virtually any small entity located in the United States could be subject to these provisions and affected by this proposed rule. However, the rule addresses self-disclosure of *violations* of the antiboycott provisions and OAC's practices in administrative settlements of alleged or self-disclosed violations of those provisions. In practice, conduct that would be a violation of the antiboycott provisions almost always occurs among international banks and among companies that export to or provide services in the Middle East. Violations of the antiboycott provisions generally occur in response to a request to take an action the antiboycott provisions prohibit or require to be reported or both. Such requests usually arise in connection with trade in the Middle East. Entities whose business does not involve transactions originating in the Middle East (or, in the case of banks, a correspondence relationship with another bank that deals with transactions originating in the Middle East) are unlikely to encounter circumstances in which a violation of the antiboycott provisions could occur. OAC has no information as to what percentage of small entities are engaged in such transactions, but expects that it would be only a small fraction of such entities. For example, entities such as local retailers, gas stations, farm labor contractors, or entities engaged in local services such as dry cleaning or trash removal are extremely unlikely to encounter the kind of commercial transactions in which a violation of the antiboycott provisions is possible. Furthermore, the absolute numbers of enforcement cases are small.

OAC opened investigations on 33 entities during the period from October 2, 2004 through May 16, 2006. Based on the criteria in the Small Business Administration Table of Small Business Size Standards effective as of January 5, 2006, OAC believes that 18 of these entities would qualify as small entities and 15 wold not qualify.

Even assuming that the number of small entities impacted by this rule is deemed to be significant, the economic impact of this rule would not impose a significant burden on such entities.

Economic Impact

This proposed rule addresses procedures to be followed in connection with voluntary self-disclosures of violations of the antiboycott provisions of the Export Administration Regulations and describes OAC's practices in settling administrative enforcement cases. The penalties for violations of the antiboycott provisions can include civil monetary penalties, denial of export privileges, exclusion from practice before BIS criminal fine and jail sentences.

Apart from a written initial notification generally describing the violations and a subsequent written narrative describing the violation in more detail, the documents that this rule would require persons making voluntary self disclosures to provide to OAC are documents that the preexisting recordkeeping requirements of the Export Administration Regulations require such persons to keep. These documents are currently collected either by request or pursuant to a subpoena in the course of enforcement investigations. Under the proposed rule, the documents would be submitted by the person or organization making the voluntary self-disclosure as part of that disclosure in advance of a specific request by OAC. Such voluntary self-disclosures benefit the government because investigations initiated through voluntary self-disclosures typically require fewer enforcement staff hours to complete. The rule recognizes this benefit to the government by treating voluntary disclosures made in accordance with the provisions of the rule as one of two possible mitigating factors of ''great weight.'' By the terms of the rule such factors ''will ordinarily be given considerably more weight than a factor that is not so designated.'' Thus, a firm that elected to make a voluntary disclosure under the proposed rule would likely incur a lesser penalty than a firm that commits a similar violation that OAC discovers through other means, although both firms would be likely to incur similar costs in connection with supplying documents to OAC.

OAC estimates that voluntary disclosures can take require as little as one staff hour or as much as fifty staff hours to prepare and submit with the average being about ten staff hours. At an average costs of $40 per hour, the estimated range of costs is from $40 if one hour is required to $2,000 if 50 hours are required. The projected average cost would be $400 per disclosure. However, as noted above, the cost of supplying documents to OAC in course of an investigation likely would be incurred by the firm even without this rule or even if the firm makes no voluntary self-disclosure. Moreover, this rule would reduce uncertainty for entities that become involved in administrative enforcement proceedings with BIS regardless of whether the entity made a voluntary self disclosure because the rule would set forth as a matter of public record the factors that BIS typically considers in settling administrative enforcement cases.

This proposed rule would not alter the elements of the offense with respect to any violation of the EAR, it would not expand scope of the information that OAC collects when it conducts individual enforcement investigations and it would not authorize OAC to collect this information in situations other than individual enforcement investigations. The effect of this proposed rule would be to reduce uncertainty for persons contemplating voluntary self-disclosures and for persons engaged in administrative

enforcement settlement negotiations with OAC.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel of Advocacy that this proposed rule will not have a significant economic impact on a substantial number of small entities.

BIS will consider all comments received on or before August 29, 2006. BIS will consider comments received after that date if possible but cannot assure such consideration. 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, Law enforcement, Penalties.

15 CFR Part 766

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

For the reasons discussed in the preamble, this proposed rule would amend the Export Administration Regulations 15 CFR Parts 764 and 766 as follows:

PART 764—[AMENDED]

1. 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 2, 2005, 70 FR 45273 (August 5, 2005).

2. 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 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 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 part 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 and commences an investigation or inquiry in connection with that information before it receives the same or substantially similar information 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 is 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 is not receipt of information from another source. Such revelation also is not a voluntary disclosure or initial notification of a voluntary 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 OAC, 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 OAC, 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, OAC would notify the Department of Justice of the voluntary self-disclosure, but the consideration of 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.

(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 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, OAC 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, OAC 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 pursuant to § 766.18 of the EAR and attempt to settle the matter;

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

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

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

(f) *Treatment of unlawful transactions after voluntary self-disclosure.* Any person taking certain actions with knowledge that a violation of the EAA or the EAR has occurred has violated § 764.2(e) of this part. Any person who has made a voluntary self-disclosure knows that a violation may have occurred. Therefore, at the time that a voluntary self-disclosure is made, the person making the disclosure may request permission from BIS to engage in the activities described in § 764.2(e) of this part that would otherwise be prohibited. If the request is granted by Office of Exporter Services in consultation with OAC, future activities with respect to those items that would otherwise violate § 764.2(e) of this part will not constitute violations. However, even if permission is granted, the person making the voluntary self-disclosure is not absolved from liability for any violations disclosed.

3. 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 2, 2005, 70 FR 45273 (August 5, 2005).

PART 766—[AMENDED]

4. 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 numbers 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 Numbers 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 a 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 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 OAC 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. OAC carefully considers each settlement offer in light of the facts and circumstances of the case, relevant precedent, and OAC's objective to achieve in each case an appropriate level of penalty and deterrent effect. In settlement negotiations, OAC 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.* OAC'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 penalties BIS may seek in litigating a case or what posture OAC may take toward settling a case. Parties do not have a right to a settlement offer, or particular settlement terms, from OAC, regardless of settlement postures OAC 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 OAC has reason to believe that such a violation has occurred, OAC 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 OAC's belief that a violation has occurred. In the exercise of its discretion, OAC 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) OAC often issues 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) OAC 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) OAC will not issue a warning letter if it concludes, based on available information, that a violation did not occur.

(iv) OAC may reopen its investigation of this matter should it receive additional evidence or if it appears that information previously provided to OAC 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, OAC 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 OAC expects that those violations would be charged. Issuance of the proposed charging letter provides an opportunity for the party and OAC to consider settlement of the case prior to the initiation of formal enforcement proceedings.

(3) *Referring for criminal prosecution.* In appropriate cases, OAC 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. The maximum such penalty is stated in § 764.3(a)(1) of the EAR, and 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;

(2) An order denying a party's export privileges 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.* OAC 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, OAC 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), OAC is more likely to seek a denial of export privileges or an exclusion from practice, and/or a greater monetary penalty as OAC 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, and/or a denial order and 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 provisions 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, OAC may choose to impose a smaller or greater penalty per violation. In exercising its discretion, OAC 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 OAC 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 supplier fails to report the receipt of the request. The supplier 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, OAC 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, OAC 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. OAC 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, OAC 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. OAC takes this approach because multiple violations may indicate serious compliance problems and a resulting risk of future violations. OAC 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 served—has the benefit of freeing resources for OAC to deploy in other matters. In contrast, for example, the OAC resources saved by settlement on the eve of an adversary hearing under § 766.13 of this part are fewer, insofar as OAC has already expended significant resources on discovery, motions practice, and trial preparation. Given the importance of allocating OAC resources to maximize enforcement of the EAR, OAC 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, OAC 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, OAC may find that sufficient deterrence may be achieved by lesser administrative sanctions than would be appropriate in the absence of criminal penalties. Conversely, OAC 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, OAC 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, OAC 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, in particular cases, OAC 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) *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.* In the case of a party that has done previous business with or in boycotted countries or boycotting countries, the party has an effective antiboycott compliance program and its overall antiboycott compliance efforts have been of high quality. 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. OAC may deem it appropriate to review the party's internal business documents relating to antiboycott compliance (*e.g.,*. corporate compliance manuals, employee training materials). In this context, OAC will also consider whether a party's antiboycott compliance program 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.

(*2*) *Compliance with reporting and recordkeeping requirements.* In the case of a party that has received reportable boycott requests in the past, OAC may examine whether the party complied with the reporting and recordkeeping requirements of the antiboycott provisions. With respect to recordkeeping, whether records were destroyed deliberately or intentionally may be an issue.

(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. OAC 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 and export-related laws and regulations.*

(*1*) OAC 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 never 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; or

(*iv*) In the past 5 years, the party has never 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 OAC conduct that gave rise to violations that the acquired business committed *before* the acquisition, OAC 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 Regulations and export-related laws and regulations.*

(*1*) OAC 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 OAC; or

(*v*) 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 OAC conduct that gave rise to violations that the acquired business committed *before* the acquisition, OAC 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 credits 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. OAC 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/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 isolated violation that is 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 or good-faith misinterpretation 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)(ii)(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; in a business context, 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 monetary penalty can be expected to have a sufficient deterrent effect.

(f) *How OAC 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, OAC 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 OAC 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, OAC 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 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 penalty) to achieve the necessary deterrent effect.

Dated: June 26, 2006.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT38

Endangered and Threatened Wildlife and Plants; Designating the Greater Yellowstone Ecosystem Population of Grizzly Bears as a Distinct Population Segment; Removing the Yellowstone Distinct Population Segment of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice seeking to recover public comments.

SUMMARY: On November 17, 2005, the U.S. Fish and Wildlife Service (Service,