

national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Russellville, AL.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

#### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### **§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, effective October 31, 2008, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

#### **ASO AL E5 Russellville, AL [NEW]**

Russellville Municipal Airport, AL  
(Lat. 34°26'42" N., long. 87°42'42" W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.5-mile radius of the Russellville Municipal Airport.

\* \* \* \* \*

Issued in College Park, Georgia, on November 20, 2008.

Signed By:

**Barry A. Knight,**

*Acting Manager, Operations Support Group,  
Eastern Service Center, Air Traffic  
Organization.*

[FR Doc. E8–29243 Filed 12–12–08; 8:45 am]

**BILLING CODE 4910–13–P**

## **DEPARTMENT OF COMMERCE**

### **Bureau of Industry and Security**

**15 CFR Parts 730, 734, 736, 740, 742, 743, 745, 747, 754, 758, 764, 766, 768, 772, and 774**

**[Docket No. 0811171457–81460–01]**

**RIN 0694–AE49**

#### **Export Administration Regulations: Authority Citations Updates and Technical Corrections**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the authority citation paragraphs for 14 parts of the Export Administration Regulations to include citations to the most recent presidential notices that extend authority for those parts or to remove an outdated citation or both. This rule also updates addresses, telephone numbers, procedures and a definition, removes some potentially confusing language, makes a necessary conforming change to one Export Control Classification Number (ECCN) and restores some language that was dropped during a Code of Federal Regulations compilation. BIS is making these changes to clarify the regulations and to

provide accurate authority citations for the Code of Federal Regulations edition that is to be compiled as of January 1, 2009.

**DATES:** This rule is effective December 15, 2008.

**FOR FURTHER INFORMATION CONTACT:** William H. Arvin, Regulatory Policy Division, e-mail [warvin@bis.doc.gov](mailto:warvin@bis.doc.gov), telephone 202–482–2440.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This rule updates authority citation paragraphs and makes technical clarifications and revisions to the Export Administration Regulations as more fully described below.

##### *Authority Citation Updates*

Since 2001, the authority citations for all parts of the Export Administration Regulations except part 745 have changed annually as successive presidential notices have extended the emergency declared in Executive Order 13222 of August 17, 2001 (which continued the Export Administration Act (EAA) and the EAR in force upon expiration of the EAA). Most recently the notice of July 23, 2008 (73 FR 43603, July 25, 2008) extended this emergency until August 17, 2009. In addition, the authority citations for parts 730, 734, 736, 742, 744 and 745 of the EAR have changed annually as successive presidential notices have extended the emergency declared in Executive Order 12938—Proliferation of Weapons of Mass Destruction. Most recently the notice of November 10, 2008 (73 FR 67097, November 12, 2008) extended this emergency until November 14, 2009. This rule updates the authority citations paragraphs for parts 730, 734, 736, 742, 743, 745, 747, 754, 758, 764, 766, and 768 of the EAR to reflect the most recent applicable authority citations because authority citation paragraphs for those parts have not been updated by other EAR amendments. This rule also revises the authority citation paragraph for parts 740, 754 and 772 to remove one outdated citation. These revisions are needed so that the annual compilation of Title 15 of the Code of Federal Regulations as of January 1, 2009 will reflect current authority citations for all EAR parts.

##### *Updated Address and Telephone Information*

This rule updates the BIS office address and telephone number information in § 730.8(c).

### *Updated Display of Approved Information Collections*

Supplement No. 1 to part 730 of the EAR contains a table displaying the control numbers, the titles and the references in the EAR of information collections contained in the EAR that have been approved by the Office of Management and Budget (OMB). This rule revises the title of the information collection identified by control number 0607-0152 to read "Automated Export System (AES) Program" to reflect the name change for that collection that OMB approved on November 5, 2008.

### *Updated Address and Procedure for Requests To Appoint a Technical Advisory Committee*

Supplement No. 2 to part 730 sets forth certain provisions regarding BIS's technical advisory committees. This rule adds the title "Assistant Secretary for Export Administration" to the address to which requests to appoint a new technical advisory committee should be sent and removes the statement that such requests be sent via courier. These changes reflect BIS's actual practice regarding requests to appoint technical advisory committees.

### *Removal of Potentially Confusing Language Regarding De Minimis Content of Foreign Made Items*

The Export Administration Regulations do not apply to most items that were produced and are located outside the United States and that contain no more than the "*de minimis*" level of U.S. origin content as set forth in § 734.4. As noted in § 732.2(d), this *de minimis* exclusion applies only to items that are not located in the United States. This rule removes § 734.3(b)(4), which could have been read as applying the *de minimis* exclusion to items in the United States. Section 734.3(b)(4) is also redundant to § 734.3(a)(3)(ii), indicating that the Regulations do apply to items that contain U.S. origin commodities, software or technology in quantities exceeding the *de minimis* levels.

### *Clarification of Procedure for Requests To Take an Action That Would Otherwise Be Prohibited by a Denial Order*

Section 764.3(a)(2), among other things, describes the procedure for requesting authorization to take an action that would otherwise be prohibited by an order denying export privileges. Requests for such authorizations must be submitted to the Office of Exporter Services. This rule adds the main mailing address for that office and replaces the word "application" with the phrase "written

request" to emphasize the distinction between such requests and license applications.

### *Updated Definition of Export Administration Review Board*

Section 772.1 contains definitions of terms that are used in the EAR. Prior to publication of this rule, one such definition "Export Administration Review Board," described that board in terms of its duties and members. However, the duties and membership of that board can change from time-to-time. This rule revises the definition to identify the Export Administration Review Board unambiguously in terms of the Executive Order that created it and the Executive Order that gives it a role in export licensing decisions. BIS has no power to alter the membership of this board as set by Executive Order.

### *Technical and Conforming Change to ECCN 1C202*

On January 15, 1998, the heading of Export Control Classification Number 1C202 was revised to read in pertinent part "Alloys other than those controlled by 1C002.a.2.c or [1C002.a.2].d \* \* \*." (63 FR 2475, January 15, 1998). Subsequently, ECCN 1C002 was revised to move the items controlled under paragraphs .a.2.c and .a.2.d to paragraphs .b.3 and .b.4, respectively (67 FR 462, January 3, 2002). However, the language in the heading of ECCN 1C202 (referencing the now revised ECCN 1C002) was not changed. This rule revises the pertinent language in the heading of ECCN 1C202 to read "Alloys other than those controlled by 1C002.b.3 or 1C002.b.4 \* \* \*." thereby reflecting the intent of exclusionary language in the heading of ECCN 1C202 as originally adopted.

### *Correcting Header Language in Category 5, Part II of the Commerce Control List*

The Commerce Control List contains headers at points in the text that identify the ten categories into which the CCL is divided and the five product groups that can appear within each category. Prior to publication of this rule, certain headers in Category 5, Part II did not follow the pattern for such headers that is used in the rest of the CCL. This rule makes editorial changes to conform to that pattern. Specifically, this rule: Adds the letter "A" to the header that identifies product group A—Systems, Equipment and Components; removes a misplaced (and duplicative) header for Category 5, Part 2; adds a previously omitted header for Category 5, Part II, Product Group B—Test, Inspection and Production Equipment; and adds the letter "E" to the header

that identifies product group E—Technology.

### *Restoring an ECCN Removed in Code of Federal Regulations Compilation*

Export Control Classification Number (ECCN) 5B991 was created in 1998 (63 FR 2521, January 15, 1998). In 1999, BIS published two rules that revised Category 5 on the Commerce Control List.

The first such rule revised ECCNs 5A991, 5D001 and 5E001 but made no changes to 5B991 (64 FR 10861, March 5, 1999). The second such rule revised ECCNs 5A001, 5A991, 5B001, 5C001, and 5C991 but made no changes to ECCN 5B991 (64 FR 40106, July 23, 1999). BIS issued no other **Federal Register** notice changing Category 5, Part I of the Commerce Control List during calendar year 1999. Nevertheless, ECCN 5B991, which had been in the January 1, 1999 CFR compilation was not in the January 1, 2000 compilation (Compare 15 CFR Part 774, Supp. No. 1 (1999) to 15 CFR Part 774 (Supp. No. 1 (2000))). This rule restores ECCN 5B991, which appears to have been inadvertently omitted from the January 1, 2000 CFR compilation and has not appeared in the CFR since. This rule also replaces the phrase LVS: "\$1,000 for Syria; N/A to Iran" in the License Exception of ECCN 5B991 with "LVS: N/A" because any authorization to use License Exception LVS for shipments to Syria is precluded by BIS's General Order No. 2 of May 14, 2004 (15 CFR Part 736, Supp. No. 1) and the reference to Iran is merely a specific instance of the general principle set forth in § 740.3(a) of the EAR that License Exception LVS may be used only when identified by a stated value limit in the applicable ECCN. With the removal the value limit for Syria, there is no longer any stated value limit in ECCN 5B991 that would apply to any destination. Therefore, continued reference to Iran would be superfluous.

### **Rulemaking Requirements**

1. This rule is not a significant rule 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 involves a collection of information that has been approved by the OMB under control number 0694-0088, 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 believes that this rule will make no change to the number of submissions or to the burden imposed by this collection.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. For all provisions of this rule other than the revision it makes to ECCN 1C202, BIS finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary given that these revisions are not substantive changes to the EAR. These revisions are administrative in nature and do not affect the rights and obligations of the public. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. With respect to the revision that this rule makes to ECCN 1C202, the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States under 5 U.S.C. 553(a)(1). No other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule; therefore, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

#### 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 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

##### 15 CFR Parts 736, 770 and 772

Exports.

##### 15 CFR Parts 740, 747, and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

##### 15 CFR Part 742

Exports, Terrorism.

##### 15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

##### 15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

##### 15 CFR Part 754

Agricultural commodities, Exports, Forests and forest products, Horses, Petroleum, Reporting and recordkeeping requirements.

##### 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.

##### 15 CFR Part 768

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements, Science and technology.

##### 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, the Export Administration Regulations (15 CFR parts 730-774) are amended as follows.

#### PART 730—[AMENDED]

■ 1. The authority citation for part 730 is revised 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; 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; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; 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 July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

■ 2. In § 730.8(c), revise the second sentence to read as follows:

#### § 730.8 How to proceed and where to get help.

\* \* \* \* \*

(c) \* \* \* General information including assistance in understanding the EAR, information on how to obtain forms, electronic services, publications, and information on training programs offered by BIS, is available from the Office of Export Services at the following locations: Outreach and Educational Services Division, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room H1099D, Washington, DC 20230, Tel: (202) 482-4811, Fax: (202) 482-2927, and Bureau of Industry and Security, Western Regional Office, U.S. Department of Commerce, 3300 Irvine Avenue, Suite 345, Newport Beach, CA 92660, Tel: (949) 660-0144, Fax: (949) 660-9347, and Bureau of Industry and Security, Western Regional Office, Northern California Branch, U.S. Department of Commerce, 160 W. Santa Clara Street, Suite 725, San Jose, CA 95113, Tel: (408) 998-8806, Fax: (408) 998-8677.

■ 3. In part 730, Supplement No. 1, revise the final entry in the table 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
* * * * *		
0607-0152	Automated Export System (AES) Program	§§ 740.1(d), 740.3(a)(3), 752.7(b), 752.15(a), 754.2(h), 754.4(c), 758.1, 758.2 and 758.3 of the EAR.

■ 4. In Supplement No. 2 to part 730—Technical Advisory Committees revise the first sentence of paragraph (b)(1) to read as follows:

**Supplement No. 2 to Part 730—Technical Advisory Committees**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* Each request for the appointment of a TAC shall be submitted in writing to: Assistant Secretary for Export Administration, 14th Street and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230. \* \* \*

**PART 734—[AMENDED]**

■ 5. The Authority citation for part 734 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; 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. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

**§ 734.4 [Amended]**

■ 6. In § 734.4, remove paragraph (b)(4).

**PART 736—[AMENDED]**

■ 7. The authority citation for part 736 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; 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. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

**PART 740—[AMENDED]**

■ 8. The authority citation for part 740 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

**PART 742—[AMENDED]**

■ 9. The authority citation for part 742 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O.

13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

**PART 743—[AMENDED]**

■ 10. The authority citation for part 743 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; Pub. L. 106–508; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

**PART 745—[AMENDED]**

■ 11. The authority citation for part 745 is revised to read as follows:

**Authority:** 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

**PART 747—[AMENDED]**

■ 12. The authority citation for part 747 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

**PART 754—[AMENDED]**

■ 13. The authority citation for part 754 is revised 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); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

**PART 758—[AMENDED]**

■ 14. The authority citation for part 758 is revised 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 July 23, 2008, 73 FR 43603 (July 25, 2008).

**PART 764—[AMENDED]**

■ 15. The authority citation for part 764 is revised 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 July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 16. In § 764.3, revise the sixth sentence of paragraph (a)(2) and add a

new sentence following the sixth sentence to read as follows:

**§ 764.3 Sanctions.**

(a) \* \* \*

(2) \* \* \* Authorization to engage in actions otherwise prohibited by a denial order may be given by the Office of Exporter Services after consultation with the Office of Export Enforcement upon a written request by a person named in the denial order or by a person seeking permission to deal with a named person. Submit such requests to: Bureau of Industry and Security, Office of Exporter Services, Room H 2705, U.S. Department of Commerce, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230.

\* \* \* \* \*

**PART 766—[AMENDED]**

■ 17. The authority citation for part 766 is revised 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 July 23, 2008, 73 FR 43603 (July 25, 2008).

**PART 768—[AMENDED]**

■ 18. The authority citation for part 768 is revised 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 July 23, 2008, 73 FR 43603 (July 25, 2008).

**PART 772—[AMENDED]**

■ 19. The authority citation for part 772 is revised 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 July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 20. In § 772.1, revise the definition of “Export Administration Review Board” to read as follows:

**§ 772.1 Definitions of terms as used in the Export Administration Regulations.**

\* \* \* \* \*

*Export Administration Review Board*—The body authorized by Executive Order 12002 as amended by Executive Orders 12755 and 13286. The Export Administration Review Board’s role in license application review is in accordance with Executive Order 12981 as amended by Executive Orders 13020, 13026 and 13117.

\* \* \* \* \*

**PART 774—[AMENDED]**

■ 21. The authority citation for part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C.

7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 22. In supplement No. 1 to part 774, Category 1, Export Control Classification Number 1C202, revise the heading to read as follows:

**1C202 Alloys other than those controlled by 1C002.b.3 or 1C002.b.4 as follows (see List of Items Controlled)**

\* \* \* \* \*

■ 24. In Supplement No. 1 to part 774, Category 5 “Telecommunications and Information Security”, Part I—“Telecommunications”, immediately following the text of Export Control Classification Number 5B001 and immediately preceding the header that reads “C. Materials” add Export Control Classification Number 5B991 to read as follows:

**5B991 Telecommunications test equipment, n.e.s.**

**License Requirements**

*Reason for Control:* AT

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

**License Exceptions**

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

**List of Items Controlled**

*Unit:* \$ value  
*Related Controls:* N/A  
*Related Definitions:* N/A  
*Items:*

The list of items controlled is contained in the ECCN heading.

■ 25. In Supplement No. 1 to part 774, Category 5 “Telecommunications and Information Security”, Part II “Information Security,” immediately following the end of Note 3, paragraph .d and immediately preceding Export Control Classification Number 5A002 revise the header that reads “Systems, Equipment and Components” to read “A. Systems, Equipment and Components”

■ 26. In Supplement No. 1 to part 774, Category 5 “Telecommunications and Information Security”, Part II “Information Security,” immediately following Export Control Classification Number 5A002 and immediately preceding Export Control classification Number 5A992, remove the heading that reads “Part 2—Information Security.”

■ 27. In Supplement No. 1 to part 774, Category 5 “Telecommunications and Information Security”, Part II—“Information Security,” immediately following Export Control Classification Number 5A992 and immediately preceding Export Control classification Number 5B002, insert a heading reading “B. Test, Inspection and Production Equipment.”

■ 28. In Supplement No. 1 to part 774, Category 5 “Telecommunications and Information Security”, Part II—“Information Security,” immediately following the text of Export Control Classification Number 5D992 and immediately preceding Export Control Classification Number 5E002 revise the header that reads “Technology” to read “E. Technology”.

Dated: December 8, 2008.

**Christopher R. Wall,**

*Assistant Secretary for Export Administration.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9435]

RIN 1545–BH61

#### Guidance Regarding the Treatment of Stock of a Controlled Corporation Under Section 355(a)(3)(B)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations that provide guidance regarding the distribution of stock of a controlled corporation acquired in a transaction described in section 355(a)(3)(B) of the Internal Revenue Code (Code). This action is necessary in light of amendments to section 355(b). These temporary regulations will affect corporations and their shareholders. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These final and temporary regulations are effective on *December 15, 2008*.

*Applicability Date:* For dates of applicability, see § 1.355–2T(i).

**FOR FURTHER INFORMATION CONTACT:** Russell P. Subin, (202) 622–7790 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 355 provides the rules for tax-free distributions of the stock of certain controlled corporations. Since 2006 Congress has enacted several amendments to section 355. See sections 202 and 507 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345); Division A, Section 410 of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922, 2963); Section 4(b) of the Tax Technical Corrections Act of 2007, Public Law 110–172 (121 Stat. 2473, 2476) (Technical Corrections). Furthermore, the IRS and Treasury Department have issued proposed § 1.355–3 (72 FR 26012 (May 8, 2007), 2007–23 IRB 1357), which would provide guidance regarding satisfaction of the active trade or business (ATB) requirement of section 355(b).

Section 355(a) provides that, under certain circumstances, a corporation may distribute stock and securities in a corporation it controls to its shareholders and security holders without causing either the distributing corporation (distributing) or its shareholders and security holders to recognize income, gain, or loss. For this purpose, control is defined under section 368(c).

Sections 355(a)(1)(C) and 355(b)(1) generally require that distributing and the controlled corporation (controlled) each be engaged, immediately after the distribution, in the active conduct of a trade or business. Section 355(b)(2)(A) provides that a corporation shall be treated as engaged in the active conduct of a trade or business if and only if it is engaged in the active conduct of a trade or business.

Section 355(b)(2)(B) requires that the trade or business have been actively conducted throughout the five-year period ending on the date of the distribution (pre-distribution period). Section 355(b)(2)(C) provides that the trade or business must not have been acquired in a transaction in which gain or loss was recognized, in whole or in part (taxable transaction or taxable acquisition), within the pre-distribution period. Section 355(b)(2)(D) provides that control of a corporation that (at the time of acquisition of control) was conducting the trade or business must not have been directly or indirectly acquired by any distributee corporation or by distributing during the pre-distribution period in a taxable