

ECCN 5D002 that is subject to the EAR (see § 734.3(b)(3) of the EAR). Such source code is eligible for License Exception TSU under this paragraph (e) even if it is subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code.

(2) *Restrictions.* This paragraph (e) does not authorize:

(i) Export or reexport of any encryption software classified under ECCN 5D002 that does not meet the requirements of paragraph (e)(1), even if the software incorporates or is specially designed to use other encryption software that meets the requirements of paragraph (e)(1) of this section; or

(ii) Any knowing export or reexport to a country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR.

(3) *Notification requirement.* You must notify BIS and the ENC Encryption Request Coordinator via e-mail of the Internet location (e.g., URL or Internet address) of the publicly available encryption source code or provide each of them a copy of the publicly available encryption source code. If you update or modify the source code, you must also provide additional copies to each of them each time the cryptographic functionality of the source code is updated or modified. In addition, if you posted the source code on the Internet, you must notify BIS and the ENC Encryption Request Coordinator each time the Internet location is changed, but you are not required to notify them of updates or modifications made to the encryption source code at the previously notified location. In all instances, submit the notification or copy to *crypt@bis.doc.gov* and to *enc@nsa.gov*.

Note to paragraph (e): Posting encryption source code on the Internet (e.g., FTP or World Wide Web site) where it may be downloaded by anyone neither establishes “knowledge” of a prohibited export or reexport for purposes of this paragraph, nor triggers any “red flags” imposing a duty to inquire under the “Know Your Customer” guidance provided in Supplement No. 3 to part 732 of the EAR. Publicly available encryption object code software classified under ECCN 5D002 is not subject to the EAR when the corresponding source code meets the criteria specified in this paragraph (e), see § 734.3(b)(3) of the EAR.

\* \* \* \* \*

**PART 742—[AMENDED]**

■ 11. The authority citation for part 742 continues 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 August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

■ 11. Section 742.15 is amended:

■ a. By revising the fourth sentence of paragraph (b) introductory text; and

■ b. By adding a note to paragraph (b) introductory text to read as follows:

\* \* \* \* \*

(b) \* \* \* Exports and reexports authorized under paragraphs (b)(1) and (b)(3) of this section (including of mass market encryption software that would be considered publicly available under § 734.3(b)(3) of the EAR) must be supported by an encryption registration in accordance with paragraph (b)(7) of this section and the specific instructions of paragraph (r)(1) of Supplement No. 2 to part 748 of the EAR. \* \* \*

**Note to introductory text of paragraph (b):** Mass market encryption software that would be considered publicly available under § 734.3(b)(3) of the EAR, and is authorized for export and reexport under this paragraph (b), remains subject to the EAR until the encryption registration and all applicable classification or self-classification requirements set forth in this section are fulfilled.

\* \* \* \* \*

**PART 772—[AMENDED]**

■ 11. The authority citation for part 772 continue 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 12, 2010, 75 FR 50681 (August 16, 2010).

**§ 772.1 [Amended]**

■ 12. In § 772.1, the definition of the term “commodity” is amended by removing the last two sentences of the definition.

**PART 774—[AMENDED]**

■ 13. 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; 15 U.S.C. 1824a; 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 August 12, 2010, 75 FR 50681 (August 16, 2010).

■ 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5, Part 2, Export Control Classification Number (ECCN) 5D002 is amended by adding the heading “License Requirements” after the ECCN heading and revising the last note in the License Requirements section to read as follows:

**Supplement No. 1 to Part 774**

\* \* \* \* \*

**5D002 Information Security—  
“Software as follows (see List of Items Controlled).”**

**License Requirements**

\* \* \* \* \*

**Note:** Encryption source code classified under this entry remains subject to the EAR even when made publicly available in accordance with part 734 of the EAR. However, publicly available encryption object code software classified under ECCN 5D002 is not subject to the EAR when the corresponding source code meets the criteria specified in § 740.13(e), see also § 734.3(b)(3) of the EAR.

\* \* \* \* \*

Dated: December 20, 2010.

**Kevin J. Wolf,**  
*Assistant Secretary for Export Administration.*

[FR Doc. 2010–32803 Filed 1–6–11; 8:45 am]

**BILLING CODE 3510–33–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9513]

**RIN 1545–BJ30**

**Modifications of Debt Instruments**

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

**ACTION:** Final regulation.

**SUMMARY:** This document contains final regulations relating to the modification of debt instruments. The regulations clarify the extent to which the deterioration in the financial condition of the issuer is taken into account to determine whether a modified debt instrument will be recharacterized as an instrument or property right that is not debt. The regulations provide needed

guidance to issuers and holders of debt instruments.

**DATES:** *Effective Date:* These regulations are effective on January 7, 2011.

*Applicability Date:* For dates of applicability, see § 1.1001-3(h).

**FOR FURTHER INFORMATION CONTACT:** Diana Imholtz at (202) 622-3920 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains amendments to 26 CFR part 1. On June 4, 2010, a notice of proposed rulemaking (REG-106750-10, 2010-25 IRB 765) was published in the **Federal Register** (75 FR 31736) that proposed amendments to § 1.1001-3 to clarify the circumstances in which the credit quality of the issuer should be considered in determining the nature of the instrument resulting from an alteration or modification of a debt instrument. Because no requests to speak were submitted by August 11, 2010, no public hearing was held. One written comment was received in response to the notice of proposed rulemaking. After consideration of this comment, the proposed regulations are adopted as revised by this Treasury decision. The revisions are discussed in this preamble.

**Explanation and Summary of Comments**

The only comment received on the proposed regulations requested that the regulations clarify that § 1.1001-3 applies not only to determine whether an exchange of the original debt instrument for a modified instrument has occurred but also to classify the modified instrument resulting from the exchange. The IRS and the Treasury Department intend that Federal income tax principles be used to determine the classification of a modified instrument resulting from an exchange except as specifically provided in § 1.1001-3(f)(7). To avoid doubt on the operation of the rules in the proposed regulations, the final regulations add language to the general rule of § 1.1001-3(b) to make clear that the rules provided in § 1.1001-3(f)(7) apply to determine whether the modified instrument received in an exchange will be classified as debt for Federal income tax purposes. Thus, unless there is a substitution of a new obligor or the addition or deletion of a co-obligor, all relevant factors (for example, creditor rights or subordination) other than any deterioration in the financial condition of the issuer are taken into account in determining whether a modified

instrument is properly classified as debt for Federal income tax purposes.

**Effective/Applicability Date**

The regulations apply to alterations of the terms of a debt instrument on or after January 7, 2011. A taxpayer, however, may rely on § 1.1001-3(f)(7) for alterations of the terms of a debt instrument occurring before that date.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these final regulations is Diana Imholtz, Office of Associate Chief Counsel (Financial Institutions & Products), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of the Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 is amended as follows:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.1001-3 is amended by:

■ 1. Revising paragraphs (b), (c)(2)(ii), (e)(5)(i) and (h).

■ 2. Adding paragraph (f)(7).

The revisions and addition read as follows:

**§ 1.1001-3 Modifications of debt instruments.**

\* \* \* \* \*

(b) *General rule.* For purposes of § 1.1001-1(a), a significant modification of a debt instrument, within the meaning of this section, results in an exchange of the original debt instrument for a modified instrument that differs materially either in kind or in extent. A modification that is not a significant modification is not an exchange for purposes of § 1.1001-1(a). Paragraphs (c) and (d) of this section define the term *modification* and contain examples illustrating the application of the rule. Paragraphs (e) and (f) of this section provide rules for determining when a modification is a significant modification. Paragraph (f) of this section also provides rules for determining whether the modified instrument received in an exchange will be classified as an instrument or property right that is not debt for federal income tax purposes. Paragraph (g) of this section contains examples illustrating the application of the rules in paragraphs (e) and (f) of this section.

(c) \* \* \*

(2) \* \* \*

(ii) *Property that is not debt.* An alteration that results in an instrument or property right that is not debt for Federal income tax purposes is a modification unless the alteration occurs pursuant to a holder's option under the terms of the instrument to convert the instrument into equity of the issuer (notwithstanding paragraph (c)(2)(iii) of this section). The rules of paragraph (f)(7) of this section apply to determine whether an alteration or modification results in an instrument or property right that is not debt.

\* \* \* \* \*

(e) \* \* \*

(5) *Changes in the nature of a debt instrument—(i) Property that is not debt.* A modification of a debt instrument that results in an instrument or property right that is not debt for Federal income tax purposes is a significant modification. The rules of paragraph (f)(7) of this section apply to determine whether a modification results in an instrument or property right that is not debt.

\* \* \* \* \*

(f) \* \* \*

(7) *Rules for determining whether an alteration or modification results in an instrument or property right that is not debt—(i) In general.* Except as provided in paragraph (f)(7)(ii) of this section, the determination of whether an instrument resulting from an alteration or modification of a debt instrument will be recharacterized as an instrument or property right that is not debt for Federal income tax purposes shall take

into account all of the factors relevant to such a determination.

(ii) *Financial condition of the obligor*—(A) *Deterioration in financial condition of the obligor generally disregarded.* Except as provided in paragraph (f)(7)(ii)(B) of this section, in making a determination as to whether an instrument resulting from an alteration or modification of a debt instrument will be recharacterized as an instrument or property right that is not debt, any deterioration in the financial condition of the obligor between the issue date of the debt instrument and the date of the alteration or modification (as it relates to the obligor's ability to repay the debt instrument) is not taken into account. For example, any decrease in the fair market value of a debt instrument (whether or not the debt instrument is publicly traded) between the issue date of the debt instrument and the date of the alteration or modification is not taken into account to the extent that the decrease in fair market value is attributable to the deterioration in the financial condition of the obligor and not to a modification of the terms of the instrument.

(B) *Substitution of a new obligor; addition or deletion of co-obligor.* If there is a substitution of a new obligor or the addition or deletion of a co-obligor, the rules in paragraph (f)(7)(ii)(A) of this section do not apply.

\* \* \* \* \*

(h) *Effective/applicability date*—(1) *In general.* Except as otherwise provided in paragraph (h)(2) of this section, this section applies to alterations of the terms of a debt instrument on or after September 24, 1996. Taxpayers, however, may rely on this section for alterations of the terms of a debt instrument after December 2, 1992, and before September 24, 1996.

(2) *Exception.* Paragraph (f)(7) of this section applies to an alteration of the terms of a debt instrument on or after January 7, 2011. A taxpayer, however, may rely on paragraph (f)(7) of this section for alterations of the terms of a debt instrument occurring before that date.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 21, 2010.

**Michael Mundaca,**

*Assistant Secretary of the Treasury (Tax Policy).*

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**BILLING CODE 4830-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-1133]

RIN 1625-AA87

#### Security Zone; 23rd Annual North American International Auto Show, Detroit River, Detroit, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone on the Detroit River, Detroit, Michigan. This zone is intended to restrict vessels from a portion of the Detroit River in order to ensure the safety of participants, visitors and public officials at the 23rd Annual North American International Auto Show (NAIAS) being held at Cobo Hall in downtown Detroit, MI.

**DATES:** This rule is effective from 9 a.m. (local) on January 10, 2011, through 10 p.m. (local) on January 23, 2011.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2010-1133 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-1133 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail LT Katie Stanko, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568-9508, e-mail [Katie.R.Stanko@uscg.mil](mailto:Katie.R.Stanko@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to

comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delaying this rule would be contrary to the public interest of ensuring the security of the spectators and participants during this event should immediate action be necessary to prevent possible loss of life or property.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the security of the spectators and participants during this event should immediate action be necessary to prevent possible loss of life or property.

##### Background and Purpose

This temporary security zone is necessary to ensure the safety of the participants, visitors of the 23rd Annual North American International Auto Show (NAIAS) being held at Cobo Hall in downtown Detroit, MI from possible sabotage or other subversive acts. The public showing days of the NAIAS begin January 15 and extend through January 23. Prior to the public showing, there will also be multiple high profile events; including the press preview days (January 10-11, 2011), industry preview days (January 12-13, 2011), and the charity preview event (January 14, 2011). In 2010, the NAIAS attendance for the public showing was over 650,000 people and industry preview days attracted nearly 16,000 people representing 1,700 companies from 23 countries. Attendance and participation at the 2011 NAIAS is anticipated to rival last year's attendance and will likely be one of the largest media events in North America. Given the expected number of attendees, which includes high-profile visitors, at this event and the recent terrorist threats directed toward the City of Detroit, the Coast Guard is establishing and enforcing a security zone to safeguard the waterways from destruction, loss, or injury from sabotage or other subversive acts.

All persons other than those approved by the Captain of the Port Detroit, or his authorized on-scene representative, are prohibited from entering or moving within this security zone. The Captain of the Port Detroit, or his authorized on-scene representative, may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. The public will be