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CODE OF FEDERAL REGULATIONS

Title 31

Money and Finance:Treasury

Parts 500 to End

Revised as of July 1, 2011

Containing a codification of documents
of general applicability and future effect

As of July 1, 2011

Published by the Office of the Federal Register
National Archives and Records Administration
as a Special Edition of the Federal Register

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Table of Contents

	Page
Explanation	v
Title 31:	
SUBTITLE B—REGULATIONS RELATING TO MONEY AND FINANCE (CONTINUED)	
Chapter V—Office of Foreign Assets Control, Department of the Treasury	5
Chapter VI—Bureau of Engraving and Printing, Department of the Treasury	527
Chapter VII—Federal Law Enforcement Training Center, Department of the Treasury	533
Chapter VIII—Office of Investment Security, Department of the Treasury	537
Chapter IX—Federal Claims Collection Standards (Department of the Treasury—Department of Justice)	563
Chapter X—Financial Crimes Enforcement Network, Department of the Treasury	583
Finding Aids:	
Table of CFR Titles and Chapters	715
Alphabetical List of Agencies Appearing in the CFR	735
List of CFR Sections Affected	745

Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 31 CFR 501.101 *refers to title 31, part 501, section 101.*

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.
July 1, 2011.

THIS TITLE

Title 31—MONEY AND FINANCE: TREASURY is composed of three volumes. The parts in these volumes are arranged in the following order: Parts 0–199, parts 200–499, and part 500 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 2011.

For this volume, Robert J. Sheehan, III was Chief Editor. The Code of Federal Regulations publication program is under the direction of Michael L. White, assisted by Ann Worley.

Title 31—Money and Finance: Treasury

(This book contains part 500 to end)

SUBTITLE B—REGULATIONS RELATING TO MONEY AND FINANCE (CONTINUED)

Part

CHAPTER V—Office of Foreign Assets Control, Department of the Treasury 500

CHAPTER VI—Bureau of Engraving and Printing, Department of the Treasury 601

CHAPTER VII—Federal Law Enforcement Training Center, Department of the Treasury 700

CHAPTER VIII—Office of Investment Security, Department of the Treasury 800

CHAPTER IX—Federal Claims Collection Standards (Department of the Treasury—Department of Justice) 900

CHAPTER X—Financial Crimes Enforcement Network, Department of the Treasury 1010

Subtitle B—Regulations Relating to Money and Finance (Continued)

CHAPTER V—OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

Part		*Page*
501	Reporting, procedures and penalties regulations	7
510	North Korea sanctions regulations	53
515	Cuban assets control regulations	64
535	Iranian assets control regulations	119
536	Narcotics trafficking sanctions regulations	144
537	Burmese sanctions regulations	156
538	Sudanese sanctions regulations	179
539	Weapons of mass destruction trade control regulations	209
540	Highly Enriched Uranium (HEU) Agreement assets control regulations	216
541	Zimbabwe sanctions regulations	227
542	Syrian sanctions regulations	240
543	Côte D'Ivoire sanctions regulations	253
544	Weapons of mass destruction proliferators sanctions regulations	266
546	Darfur sanctions regulations	279
547	Democratic Republic of the Congo sanctions regulations	292
548	Belarus sanctions regulations	305
549	Lebanon sanctions regulations	318
551	Somalia sanctions regulations	331
560	Iranian transactions regulations	339
561	Iranian financial sanctions regulations	377
562	Iranian human rights abuses sanctions regulations	387
570	Libyan sanctions regulations	396
576	Iraq stabilization and insurgency sanctions regulations	406
588	Western Balkans stabilization regulations	422
592	Rough diamonds control regulations	435
593	Former Liberian regime of Charles Taylor sanctions regulations	443
594	Global terrorism sanctions regulations	457
595	Terrorism sanctions regulations	476
596	Terrorism List Governments sanctions regulations	492

Part		*Page*
597	Foreign terrorist organizations sanctions regulations	497
598	Foreign narcotics kingpin sanctions regulations	513
APPENDIX A TO CHAPTER V—INFORMATION PERTAINING TO THE SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST		525

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

Subpart A—Relation of This Part to Other Parts in This Chapter

Sec.
501.101 Relation of this part to other parts in this chapter.

Subpart B—Definitions

501.301 Definitions.

Subpart C—Reports

501.601 Records and recordkeeping requirements.
501.602 Reports to be furnished on demand.
501.603 Reports on blocked property.
501.604 Reports by U.S. financial institutions on rejected funds transfers.
501.605 Reports on litigation, arbitration, and dispute resolution proceedings.
501.606 Reporting and recordkeeping requirements applicable to economic sanctions programs.

Subpart D—Trading With the Enemy Act (TWEA) Penalties

501.700 Applicability.
501.701 Penalties.
501.702 Definitions.
501.703 Overview of civil penalty process and construction of rules.
501.704 Appearance and practice.
501.705 Service and filing.
501.706 Prepenalty Notice; issuance by Director.
501.707 Response to Prepenalty Notice.
501.708 Director's finding of no penalty warranted.
501.709 Penalty Notice.
501.710 Settlement.
501.711 Hearing request.
501.712 Acknowledgment of hearing request.
501.713 Order Instituting Proceedings.
501.714 Answer to Order Instituting Proceedings.
501.715 Notice of hearing.
501.716 Default.
501.717 Consolidation of proceedings.
501.718 Conduct and order of hearings.
501.719 Ex parte communications.
501.720 Separation of functions.
501.721 Hearings to be public.
501.722 Prehearing conferences.
501.723 Prehearing disclosures; methods to discover additional matter.
501.724 Documents that may be withheld.
501.725 Confidential treatment of information in certain filings.
501.726 Motions.
501.727 Motion for summary disposition.
501.728 Subpoenas.
501.729 Sanctions.
501.730 Depositions upon oral examination.
501.731 Depositions upon written questions.
501.732 Evidence.
501.733 Evidence: confidential information; protective orders.
501.734 Introducing prior sworn statements of witnesses into the record.
501.735 Proposed findings, conclusions and supporting briefs.
501.736 Authority of Administrative Law Judge.
501.737 Adjustments of time, postponements and adjournments.
501.738 Disqualification and withdrawal of Administrative Law Judge.
501.739 Record in proceedings before Administrative Law Judge; retention of documents; copies.
501.740 Decision of Administrative Law Judge.
501.741 Review of decision or ruling.
501.742 Secretary's designee's consideration of decisions by Administrative Law Judge.
501.743 Briefs filed with the Secretary's designee.
501.744 Record before the Secretary's designee.
501.745 Orders and decisions: signature, date and public availability.
501.746 Referral to United States Department of Justice; administrative collection measures.
501.747 Procedures on remand of decisions.

Subpart E—Procedures

501.801 Licensing.
501.802 Decisions.
501.803 Amendment, modification, or revocation.
501.804 Rulemaking.
501.805 Rules governing availability of information.
501.806 Procedures for unblocking funds believed to have been blocked due to mistaken identity.
501.807 Procedures governing delisting from the Specially Designated Nationals and Blocked Persons List.
501.808 License application and other procedures applicable to economic sanctions programs.

Subpart F—Paperwork Reduction Act

501.901 Paperwork Reduction Act notice.

APPENDIX A TO PART 501—ECONOMIC SANCTIONS ENFORCEMENT GUIDELINES

AUTHORITY: 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901–3913; 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 22 U.S.C. 2370(a), 6009, 6032, 7205; 28 U.S.C. 2461 note; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44.

SOURCE: 62 FR 45101, Aug. 25, 1997, unless otherwise noted.

Subpart A—Relation of This Part to Other Parts in This Chapter

§ 501.101 Relation of this part to other parts in this chapter.

This part sets forth standard reporting and recordkeeping requirements and license application and other procedures governing transactions regulated pursuant to other parts codified in this chapter, as well as to economic sanctions programs for which implementation and administration are delegated to the Office of Foreign Assets Control. Substantive prohibitions and policies particular to each economic sanctions program are not contained in this part but are set forth in the particular part of this chapter dedicated to that program, or, in the case of economic sanctions programs not yet implemented in regulations, in the applicable executive order or other authority. License application procedures and reporting requirements set forth in this part govern transactions undertaken pursuant to general or specific licenses. The criteria for general and specific licenses pertaining to a particular economic sanctions program are set forth in subpart E of the individual parts in this chapter. Statements of licensing policy contained in subpart E of the individual parts in this chapter, however, may contain additional information collection provisions that require production of specified documentation unique to a given general license or statement of licensing policy.

[62 FR 52494, Oct. 8, 1997]

Subpart B—Definitions

§ 501.301 Definitions.

Definitions of terms used in this part are found in subpart C of the part within this chapter applicable to the relevant application, record, report, procedure or transaction. In the case of economic sanctions programs for which implementation and administration are delegated to the Office of Foreign Assets Control but for which regulations have not yet been issued, the definitions of terms in this part are governed by definitions contained in the implementing statute or Executive order.

Subpart C—Reports

§ 501.601 Records and recordkeeping requirements.

Except as otherwise provided, every person engaging in any transaction subject to the provisions of this chapter shall keep a full and accurate record of each such transaction engaged in, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 5 years after the date of such transaction. Except as otherwise provided, every person holding property blocked pursuant to the provisions of this chapter or funds transfers retained pursuant to § 596.504(b) of this chapter shall keep a full and accurate record of such property, and such record shall be available for examination for the period of time that such property is blocked and for at least 5 years after the date such property is unblocked.

NOTE: See subpart F of part 597 for the relationship between this section and part 597.

[62 FR 45101, Aug. 25, 1997, as amended at 62 FR 52494, Oct. 8, 1997]

§ 501.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Director, Office of Foreign Assets Control, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this chapter or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect. The Director may require that such reports include the production of any books of account, contracts, letters or other papers connected with any such transaction or property, in the custody or control of

the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. Except as provided in parts 596 and 597, the Director may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

NOTE: See subpart F of part 597 for the relationship between this section and part 597.

[62 FR 45101, Aug. 25, 1997, as amended at 62 FR 52494, Oct. 8, 1997]

§ 501.603 Reports on blocked property.

(a) *Who must report*—(1) *Holders of blocked property*. Any person, including a financial institution, holding property blocked pursuant to this chapter must report. The requirement includes financial institutions that receive and block payments or transfers. This requirement is mandatory and applies to all U.S. persons (or persons subject to U.S. jurisdiction in the case of parts 500 and 515 of this chapter) who have in their possession or control any property or interests in property blocked pursuant to this chapter.

(2) *Primary responsibility to report*. A report may be filed on behalf of a holder of blocked property by an attorney, agent, or other person. Primary responsibility for reporting blocked property, however, rests with the actual holder of the property, or the person exercising control over property located outside the United States, with the following exceptions: primary responsibility for reporting any trust assets rest with the trustee; and primary responsibility for reporting real property rests with any U.S. co-owner, legal representative, agent, or property manager in the United States. No person is excused from filing a report by reason of the fact that another person has submitted a report with regard to the same property, except upon actual knowledge of the report filed by such other person. Reports filed are regarded as privileged and confidential.

(3) *Financial institutions*. For purposes of this section, the term ''financial institution'' shall include a banking institution, domestic bank, United States depository institution, financial institution, or U.S. financial institution, as those terms are defined in the applicable part of this chapter.

(b) *What must be reported*—(1) *Initial reports*—(i) *When reports are due*. Reports are required to be filed within 10 business days from the date that property becomes blocked. This reporting requirement includes payments or transfers that are received and blocked by financial institutions.

(ii) *Contents of reports*. Initial reports on blocked property shall describe the owner or account party, the property, its location, any existing or new account number or similar reference necessary to identify the property, actual or estimated value and the date it was blocked, and shall include the name and address of the holder, along with the name and telephone number of a contact person from whom compliance information can be obtained. If the report is filed by a financial institution and involves the receipt of a payment or transfer of funds which are blocked by the financial institution, the report shall also include a photocopy of the payment or transfer instructions received and shall confirm that the payment has been deposited into a new or existing blocked account which is labeled as such and is established in the name of, or contains a means of clearly identifying the interest of, the individual or entity subject to blocking pursuant to the requirements of this chapter.

(2) *Annual reports*—(i) *When reports are due*. A comprehensive report on all blocked property held as of June 30 of the current year shall be filed annually by September 30. The first annual report is due September 30, 1997.

(ii) *Contents of reports*. Annual reports shall be filed using Form TDF 90–22.50, Annual Report of Blocked Property. Copies of Form TDF 90–22.50 may be obtained directly from the Office of Foreign Assets Control, by calling the fax-on-demand service maintained by the Office of Foreign Assets Control at 202/

622–0077, or by downloading the form from the ''OFAC Press Releases and Miscellaneous Documents'' file library (''FAC_MISC'') located on the Government Printing Office's Federal Bulletin Board Online via GPO Access (Internet site: *http://fedbbs.access.gpo.gov/libs/fac_misc.htm*). Photocopies of the report form may be used. Requests to submit the information required on Form TDF 90–22.50 in an alternative format developed by the reporter are invited and will be considered by the Office of Foreign Assets Control on a case-by-case basis. A copy of reports filed using form TDF 90–22.50 or in alternative formats must be retained for the reporter's records.

(c) *Reports on retained funds pursuant to § 596.504(b) of this chapter*. The reporting requirements set forth in this section are applicable to any financial institution retaining funds pursuant to § 596.504(b) of this chapter, except that the account name shall reflect the name of the person whose interest required retention of the funds.

(d) *Where to report*. All reports must be filed with the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW.—Annex, Washington, DC 20220.

NOTE: See subpart F of part 597 for the relationship between this section and part 597.

[62 FR 45101, Aug. 25, 1997, as amended at 62 FR 52495, Oct. 8, 1997]

§ 501.604 Reports by U.S. financial institutions on rejected funds transfers.

(a) *Who must report*. Any financial institution that rejects a funds transfer where the funds are not blocked under the provisions of this chapter, but where processing the transfer would nonetheless violate, or facilitate an underlying transaction that is prohibited under, other provisions contained in this chapter, must report. For purposes of this section, the term ''financial institution'' shall include a banking institution, depository institution or United States depository institution, domestic bank, financial institution or U.S. financial institution, as those terms are defined in the applicable part of this chapter.

(b) *Rejected transfers*. Examples of transactions involving rejected funds transfers include funds transfer instructions:

(1) Referencing a blocked vessel but where none of the parties or financial institutions involved in the transaction is a blocked person;

(2) Sending funds to a person in Iraq;

(3) Transferring unlicensed gifts or charitable donations from the Government of Syria to a U.S. person;

(4) Crediting Iranian accounts on the books of a U.S. financial institution; and

(5) Making unauthorized transfers from U.S. persons to Iran or the Government of Iran.

(c) *When reports are due*. Reports are required to be filed within 10 business days by any financial institution rejecting instructions to execute payments or transfers involving underlying transactions prohibited by the provisions of this chapter.

(d) *What must be reported*. The report shall include the name and address of the transferee financial institution, the date of the transfer, the amount of the payment transfer, and a photocopy of the payment or transfer instructions received, and shall state the basis for the rejection of the transfer instructions. The report shall also provide the name and telephone number of a contact person at the transferee financial institution from whom compliance information may be obtained.

(e) *Where to report*. Reports must be filed with the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW.—Annex, Washington, DC 20220.

[62 FR 45101, Aug. 25, 1997, as amended 70 FR 34061, June 13, 2005]

§ 501.605 Reports on litigation, arbitration, and dispute resolution proceedings.

(a) U.S. persons (or persons subject to the jurisdiction of the United States in the case of parts 500 and 515 of this chapter) participating in litigation, arbitration, or other binding alternative dispute resolution proceedings in the United States on behalf of or against persons whose property or interests in property are blocked or whose funds

have been retained pursuant to § 596.504(b) of this chapter, or when the outcome of any proceeding may affect blocked property or retained funds, must:

(1) Provide notice of such proceedings upon their commencement or upon submission or receipt of documents bringing the proceedings within the terms of the introductory text to this paragraph (a);

(2) Submit copies of all pleadings, motions, memoranda, exhibits, stipulations, correspondence, and proposed orders or judgments (including any proposed final judgment or default judgment) submitted to the court or other adjudicatory body, and all orders, decisions, opinions, or memoranda issued by the court, to the Chief Counsel, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220, within 10 days of filing, submission or issuance. This paragraph (a)(2) shall not apply to discovery requests or responses, documents filed under seal, or requests for procedural action not seeking action dispositive of the proceedings (such as requests for extension of time to file); and

(3) Report by immediate facsimile transmission to the Chief Counsel, Office of Foreign Assets Control, at facsimile number 202/622–1911, the scheduling of any hearing or status conference in the proceedings whenever it appears that the court or other adjudicatory body may issue an order or judgment in the proceedings (including a final judgment or default judgment) or is considering or may decide any pending request dispositive of the merits of the proceedings or of any claim raised in the proceedings.

(b) The reporting requirements of paragraph (a) of this section do not apply to proceedings to which the Office of Foreign Assets Control is a party.

(c) Persons initiating proceedings subject to the reporting requirements of this section must notify the court or other adjudicatory body of the restrictions set forth under the applicable part in this chapter governing the transfer of blocked property or funds retained pursuant to § 596.504(b) of this chapter, including the prohibition on any unlicensed attachment, judgment, decree, lien, execution, garnishment or other judicial process with respect to any property in which, on or after the applicable effective date, there existed an interest of any person whose property and property interests were subject to blocking pursuant to this chapter or were subject to retention pursuant to § 596.504(b) of this chapter.

§ 501.606 Reporting and recordkeeping requirements applicable to economic sanctions programs.

The reporting and recordkeeping requirements set forth in this subpart are applicable to economic sanctions programs for which implementation and administration have been delegated to the Office of Foreign Assets Control.

Subpart D—Trading With the Enemy Act (TWEA) Penalties

SOURCE: 68 FR 53642, Sept. 11, 2003, unless otherwise noted.

§ 501.700 Applicability.

This subpart is applicable only to those parts of chapter V promulgated pursuant to the TWEA, which include parts 500, 505, and 515.

§ 501.701 Penalties.

(a) Attention is directed to section 16 of the TWEA, as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note), which provides that:

(1) Persons who willfully violate any provision of TWEA or any license, rule, or regulation issued thereunder, and persons who willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of TWEA shall, upon conviction, be fined not more than $1,000,000 or, if an individual, be fined not more than $100,000 or imprisoned for not more than 10 years, or both; and an officer, director, or agent of any corporation who knowingly participates in such violation shall, upon conviction, be fined not more than $100,000 or imprisoned for not more than 10 years, or both.

(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, concerned in a violation of TWEA may upon conviction be forfeited to the United States Government.

(3) The Secretary of the Treasury may impose a civil penalty of not more than $65,000 per violation on any person who violates any license, order, or regulation issued under TWEA.

NOTE TO PARAGRAPH (a)(3). The current $65,000 civil penalty cap may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

(4) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation subject to a civil penalty issued pursuant to TWEA shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

(b) The criminal penalties provided in TWEA are subject to increase pursuant to 18 U.S.C. 3571 which, when read in conjunction with section 16 of TWEA, provides that persons convicted of violating TWEA may be fined up to the greater of either $250,000 for individuals and $1,000,000 for organizations or twice the pecuniary gain or loss from the violation.

(c) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

[68 FR 53642, Sept. 11, 2003, as amended at 68 FR 61361, Oct. 28, 2003]

§ 501.702 Definitions.

(a) *Chief Counsel* means the Chief Counsel (Foreign Assets Control), Office of the General Counsel, Department of the Treasury.

(b) *Day* means calendar day. In computing any period of time prescribed in or allowed by this subpart, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday. Intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail. If on the day a filing is to be made, weather or other conditions have caused the designated filing location to close, the filing deadline shall be extended to the end of the next day that the filing location is not closed and that is not a Saturday, a Sunday, or a Federal legal holiday. If service is made by mail, three days shall be added to the prescribed period for response.

(c) *Department* means the Department of the Treasury.

(d) *Director* means the Director of the Office of Foreign Assets Control, Department of the Treasury.

(e) *Ex Parte Communication* means any material oral or written communication not on the public record concerning the merits of a proceeding with respect to which reasonable prior notice to all parties is not given, on any material matter or proceeding covered by these rules, that takes place between: A party to the proceeding, a party's counsel, or any other interested individual; and the Administrative Law Judge or Secretary's designee handling that proceeding. A request to learn the status of a proceeding does not constitute an ex parte communication; and settlement inquiries and discussions do not constitute ex parte communications.

(f) *General Counsel* means the General Counsel of the U.S. Department of the Treasury.

(g) *Order of Settlement* means a written order issued by the Director terminating a civil penalty action. An Order of Settlement does not constitute an agency decision that any violation took place.

(h) *Order Instituting Proceedings* means a written order issued by the Director to initiate a civil penalty hearing.

(i) *Prepenalty Notice* means a written notification from the Director informing a respondent of the alleged violation(s) and the respondent's right to respond.

(j) *Penalty Notice* means a written notification from the Director informing a respondent that the Director has made a finding of violation and, absent a request for a hearing, will impose a civil monetary penalty.

(k) *Proceeding* means any agency process initiated by an ''Order Instituting Proceedings,'' or by the filing of a petition for review of an Administrative Law Judge's decision or ruling.

(l) *Respondent* means any individual alleged by the Director to have violated a TWEA-based sanctions regulation.

(m) *Secretary's designee* means a U.S. Treasury Department official delegated responsibility by the Secretary of the Treasury to consider petitions for review of Administrative Law Judge decisions made in civil penalty hearings conducted pursuant to this subpart.

(n) *Secretary* means the Secretary of the Treasury.

§ 501.703 Overview of civil penalty process and construction of rules.

(a) The administrative process for enforcing TWEA sanctions programs proceeds as follows:

(1) The Director of the Office of Foreign Assets Control will notify a suspected violator (hereinafter ''respondent'') of an alleged violation by issuing a ''Prepenalty Notice.'' The Prepenalty Notice shall describe the alleged violation(s) and include a proposed civil penalty amount.

(2) The respondent will have 60 days from the date the Prepenalty Notice is served to make a written presentation either defending against the alleged violation or admitting the violation. A respondent who admits a violation may offer information as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(3) Absent a settlement agreement or a finding that no violation occurred, the Director of the Office of Foreign Assets Control will issue a ''Penalty Notice.'' The respondent will have 30 days from the date of service to either pay the penalty or request a hearing.

(4) If the respondent requests a hearing, the Director of the Office of Foreign Assets Control will have two options:

(i) The Director may issue an ''Order Instituting Proceedings'' and refer the matter to an Administrative Law Judge for a hearing and decision; or

(ii) The Director may determine to discontinue the penalty action based on information presented by the respondent.

(5) Absent review by a Secretary's designee, the decision of the Administrative Law Judge will become the final decision of the Department without further proceedings.

(6) If review is taken by a Secretary's designee, the Secretary's designee reaches the final decision of the Department.

(7) A respondent may seek judicial review of the final decision of the Department.

(b) *Construction of rules.* The rules contained in this subpart shall be construed and administered to promote the just, speedy, and inexpensive determination of every action. To the extent there is a conflict between the rules contained in this subpart and a procedural requirement contained in any statute, the requirement in the statute shall control.

§ 501.704 Appearance and practice.

No person shall be represented before the Director in any civil penalty matter, or an Administrative Law Judge or the Secretary's designee in a civil penalty hearing, under this subpart except as provided in this section.

(a) *Representing oneself.* In any proceeding, an individual may appear on his or her own behalf.

(b) *Representative.* Upon written notice to the Director,

(1) A respondent may be represented by a personal representative. If a respondent wishes to be represented by counsel, such counsel must be an attorney at law admitted to practice before the Supreme Court of the United States, the highest court of any State, commonwealth, possession, or territory of the United States, or the District of Columbia;

(2) A duly authorized member of a partnership may represent the partnership; and

(3) A bona fide officer, director, or employee of a corporation, trust or association may represent the corporation, trust or association.

(c) *Director representation.* The Director shall be represented by members of the Office of Chief Counsel or any other counsel specifically assigned by the General Counsel.

(d) *Conflicts of interest*—(1) *Conflict of interest in representation.* No individual shall appear as representative for a respondent in a proceeding conducted pursuant to this subpart if it reasonably appears that such representation may be materially limited by that representative's responsibilities to a third person, or by that representative's own interests.

(2) *Corrective measures.* An Administrative Law Judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

§ 501.705 Service and filing.

(a) *Service of Prepenalty Notice, Penalty Notice, Acknowledgment of Hearing Request and Order Instituting Proceedings.* The Director shall cause any Prepenalty Notice, Penalty Notice, Acknowledgment of Hearing Request, Order Instituting Proceedings, and other related orders and decisions, or any amendments or supplements thereto, to be served upon the respondent.

(1) *Service on individuals.* Service shall be complete:

(i) Upon the date of mailing by first class (regular) mail to the respondent at the respondent's last known address, or to a representative authorized to receive service, including qualified representatives noticed to the Director pursuant to § 501.704. Absent satisfactory evidence in the administrative record to the contrary, the Director may presume that the date of mailing is the date stamped on the first page of the notice or order. The respondent may rebut the presumption that a notice or order was mailed on the stamped mailing date only by presenting evidence of the postmark date on the envelope in which the notice or order was mailed;

(ii) Upon personal service on the respondent; or leaving a copy at the respondent's place of business with a clerk or other person in charge thereof; or leaving a copy at the respondent's dwelling house or usual place of abode with a person at least 18 years of age then residing therein; or with any other representative authorized by appointment or by law to accept or receive service for the respondent, including representatives noticed to the Director pursuant to § 501.704; and evidenced by a certificate of service signed and dated by the individual making such service, stating the method of service and the identity of the individual with whom the notice or order was left; or

(iii) Upon proof of service on a respondent who is not resident in the United States by any method of service permitted by the law of the jurisdiction in which the respondent resides or is located, provided the requirements of such foreign law satisfy due process requirements under United States law with respect to notice of administrative proceedings, and where applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraphs (a)(1)(i) and (ii) of this section inappropriate or ineffective for service upon the nonresident respondent.

(2) *Service on corporations and other entities.* Service is complete upon delivering a copy of the notice or order to a partner, bona fide officer, director, managing or general agent, or any other agent authorized by appointment or by law to receive such notice, by any method specified in paragraph (a)(1) of this section.

(b) *Service of responses to Prepenalty Notice, Penalty Notice, and requests for a hearing.* A respondent shall serve a response to a Prepenalty Notice and any request for a hearing on the Director through the Chief of Civil Penalties, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington DC 20220, with the envelope prominently marked ''Urgent: Part 501 Action.'' Service shall be complete upon the date of mailing, as evidenced by the post-mark date on the envelope, by first class (regular) mail.

(c) *Service or filing of papers in connection with any hearing by an Administrative Law Judge or review by the Secretary's designee*—(1) *Service on the Director and/or each respondent.* (i) Each paper, including each notice of appearance, written motion, brief, petition for review, statement in opposition to petition for review, or other written communication, shall be served upon the Director and/or each respondent in the proceeding in accordance with paragraph (a) of this section; provided, however, that no service shall be required in the case of documents that are the subject of a motion seeking a protective order to limit or prevent disclosure to another party.

(ii) Service upon the Director shall be made through the Chief Counsel (Foreign Assets Control), U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, with the envelope prominently marked ''Urgent: Part 501 Proceeding.''

(iii) Service may be made:

(A) As provided in paragraph (a) of this section;

(B) By mailing the papers through the U.S. Postal Service by Express Mail; or

(C) By transmitting the papers by facsimile machine where the following conditions are met:

(*1*) The persons serving each other by facsimile transmission have agreed to do so in a writing, signed by each party, which specifies such terms as they deem necessary with respect to facsimile machine telephone numbers to be used, hours of facsimile machine operation, the provision of non-facsimile original or copy, and any other such matters; and

(*2*) Receipt of each document served by facsimile is confirmed by a manually signed receipt delivered by facsimile machine or other means agreed to by the parties.

(iv) Service by U.S. Postal Service Express Mail is complete upon delivery as evidenced by the sender's receipt. Service by facsimile is complete upon confirmation of transmission by delivery of a manually signed receipt.

(2) *Filing with the Administrative Law Judge.* Unless otherwise provided, all briefs, motions, objections, applications or other filings made during a proceeding before an Administrative Law Judge, and all requests for review by the Secretary's designee, shall be filed with the Administrative Law Judge.

(3) *Filing with the Secretary's designee.* And all briefs, motions, objections, applications or other filings made during a proceeding before the Secretary's designee shall be filed with the Secretary's designee.

(4) *Certificate of service.* Papers filed with an Administrative Law Judge or Secretary's designee shall be accompanied by a certificate stating the name of each person served, the date of service, the method of service and the mailing address or facsimile telephone number to which service was made, if not made in person. If the method of service to any person is different from the method of service to any other person, the certificate shall state why a different means of service was used.

(5) *Form of briefs.* All briefs containing more than 10 pages shall, to the extent applicable, include a table of contents, an alphabetized table of cases, a table of statutes, and a table of other authorities cited, with references to the pages of the brief wherein they are cited.

(6) *Specifications.* All original documents shall be filed with the Administrative Law Judge or Secretary's designee, as appropriate. Papers filed in connection with any proceeding shall:

(i) Be on one grade of unglazed white paper measuring 8.5×11 inches, except that, to the extent that the reduction of larger documents would render them illegible, such documents may be filed on larger paper;

(ii) Be typewritten or printed in either 10- or 12-point typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;

(iii) Include at the head of the paper, or on a title page, the title of the proceeding, the name(s) of each respondent, the subject of the particular paper or pleading, and the file number assigned to the proceeding;

(iv) Be formatted with all margins at least 1 inch wide;

(v) Be double-spaced, with single-spaced footnotes and single-spaced indented quotations; and

(vi) Be stapled, clipped or otherwise fastened in the upper left corner.

(7) *Signature requirement and effect.* All papers must be dated and signed by a member of the Office of Chief Counsel, or other counsel assigned by the General Counsel to represent the Director, or a respondent or respondent's representative, as appropriate. If a filing is signed by a respondent's representative it shall state that representative's mailing address and telephone number. A respondent who represents himself or herself shall sign his or her individual name and state his or her address and telephone number on every filing. A witness deposition shall be signed by the witness.

(i) *Effect of signature.* The signature shall constitute a certification that:

(A) The person signing the filing has read the filing;

(B) To the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(C) The filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.

(ii) If a filing is not signed, the Administrative Law Judge (or the Secretary's designee) shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

(d) Service of written orders or decisions issued by the Administrative Law Judge or Secretary's designee. Written orders or decisions issued by the Administrative Law Judge or the Secretary's designee shall be served promptly on each respondent and the Director pursuant to any method of service authorized under paragraph (a) of this section. Service of such orders or decisions shall be made by the Administrative Law Judge or the Secretary's designee, as appropriate.

§ 501.706 Prepenalty Notice; issuance by Director.

(a) *When required.* If the Director has reason to believe there has occurred a violation of any provision of parts 500 or 515 of this chapter or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary pursuant to parts 500 or 515 of this chapter or otherwise under the Trading With the Enemy Act, and the Director determines that further civil proceedings are warranted, the Director shall issue a Prepenalty Notice. The Prepenalty Notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The Prepenalty Notice shall describe the alleged violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The Prepenalty Notice shall inform the respondent of respondent's right to make a written presentation within the time prescribed in § 501.707 as to why the respondent believes there should be no finding of a violation or why, if the respondent admits the violation, a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed. The Prepenalty Notice shall also inform the respondent that:

(i) The act of submitting a written response by the respondent is a factor that may result in a lower penalty absent any aggravating factors; and

(ii) If the respondent fails to respond to the Prepenalty Notice within the applicable 60-day period set forth in § 501.707, the Director may proceed with the issuance of a Penalty Notice.

(3) *Right to request a hearing.* The Prepenalty Notice shall inform the respondent of respondent's right, if a subsequent Penalty Notice is issued, to request an administrative hearing. The Director will not consider any request for an administrative hearing until a Penalty Notice has been issued.

§ 501.707 Response to Prepenalty Notice.

(a) Deadline for response.

(1) The respondent shall have 60 days after the date of service of the Prepenalty Notice pursuant to § 501.705(a) to respond thereto. The response, signed and dated, shall be served as provided in § 501.705(b).

(2) In response to a written request by the respondent, the Director may, at his or her discretion for the purpose of conducting settlement negotiations or for other valid reasons, grant additional time for a respondent to submit a response to the Prepenalty Notice.

(3) The failure to submit a response within the time period set forth in this paragraph (a), including any additional time granted by the Director, shall be deemed to be a waiver of the right to respond to the Prepenalty Notice.

(b) Form and contents of response.

(1) *In general.* The response need not be in any particular form, but must be typewritten and contain the heading ''Response to Prepenalty Notice'' and the Office of Foreign Assets Control identification number shown near the top of the Prepenalty Notice. It should be responsive to the allegations contained therein and set forth the nature of the respondent's admission of the violation, or defenses and claims for mitigation, if any.

(i) The response must admit or deny specifically each separate allegation of violation made in the Prepenalty Notice. If the respondent is without knowledge as to an allegation, the response shall so state, and such statement shall constitute a denial. Any allegation not specifically addressed in the response shall be deemed admitted.

(ii) The response must set forth any additional or new matter or arguments the respondent seeks, or shall seek, to use in support of all defenses or claims for mitigation. Any defense the respondent wishes to assert must be included in the response.

(iii) The response must accurately state (for each respondent, if applicable) the respondent's full name and address for future service, together with a current telephone and, if applicable, facsimile machine number. If respondent is represented, the representative's full name and address, together with telephone and facsimile numbers, may be provided instead of service information for the respondent. The respondent or respondent's representative of record is responsible for providing timely written notice to the Director of any subsequent changes in the information provided.

(iv) *Financial disclosure statement requirement.* Any respondent who asserts financial hardship or an inability to pay a penalty shall include with the response a financial disclosure statement setting forth in detail the basis for asserting the financial hardship or inability to pay a penalty, subject to 18 U.S.C. 1001.

(2) *Settlement.* In addition, or as an alternative, to a written response to a Prepenalty Notice, the respondent or respondent's representative may seek settlement of the alleged violation(s). See § 501.710. In the event of settlement prior to the issuance of a Penalty Notice, the claim proposed in the Prepenalty Notice will be withdrawn and the respondent will not be required to make a written response to the Prepenalty Notice. In the event no settlement is reached, a written response to the Prepenalty Notice is required pursuant to paragraph (c) of this section.

§ 501.708 Director's finding of no penalty warranted.

If after considering any written response to the Prepenalty Notice submitted pursuant to § 501.707 and any other relevant facts, the Director determines that there was no violation or that the violation does not warrant the imposition of a civil monetary penalty, the Director promptly shall notify the respondent in writing of that determination and that no civil monetary penalty pursuant to this subpart will be imposed.

§ 501.709 Penalty notice.

(a) If, after considering any written response to the Prepenalty Notice, and any other relevant facts, the Director determines that there was a violation by the respondent and that a monetary penalty is warranted, the Director promptly shall issue a Penalty Notice informing the respondent that, absent a timely request for an administrative hearing, the Director will impose the civil monetary penalty described in the Penalty Notice. The Penalty Notice shall inform the respondent:

(1) Of the respondent's right to submit a written request for an administrative hearing not later than 30 days after the date of service of the Penalty Notice;

(2) That in the absence of a timely request for a hearing, the issuance of the Penalty Notice constitutes final agency action;

(3) That, absent a timely request for a hearing, payment (or arrangement with the Financial Management Service of the Department for installment payment) of the assessed penalty must be made not later than 30 days after the date of service of the Penalty Notice; and

(4) That absent a timely request for a hearing, the respondent must furnish respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that the Director intends to use such information for the purposes of collecting and reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

§ 501.710 Settlement.

(a) *Availability*. Either the Director or any respondent may, at any time during the administrative civil penalty process described in this subpart, propose an offer of settlement. The amount accepted in settlement may be less than the civil penalty that might be imposed in the event of a formal determination of violation. Upon mutual agreement by the Director and a respondent on the terms of a settlement, the Director shall issue an Order of Settlement.

(b) *Procedure*—(1) *Prior to issuance of Penalty Notice*. Any offer of settlement made by a respondent prior to the issuance of a Penalty Notice shall be submitted, in writing, to the Chief of Civil Penalties, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

(2) *After issuance of Penalty Notice*. Any offer of settlement made by a respondent after issuance of a Penalty Notice shall state that it is made pursuant to this section; shall recite or incorporate as a part of the offer the provisions of paragraphs (b)(5)(ii) and (b)(6) of this section; shall be signed by the respondent making the offer, and not only by his or her representative; and shall be submitted to the Chief Counsel.

(3) *Extensions of time*. The submission of any settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of the administrative civil penalty process.

(i) *Prior to issuance of Order Instituting Proceedings*. Any respondent (or potential respondent in the case of a pending Prepenalty Notice) may request, in writing, that the Director withhold issuance of any such notice, or grant an extension of time to respond to any such Notice, for a period not to exceed 60 days for the exclusive purpose of effecting settlement. The Director may grant any such request, in writing, under terms and conditions within his or her discretion.

(ii) *After issuance of Order Instituting Proceedings*. Upon mutual agreement of the Director and a respondent, the Administrative Law Judge may grant an extension of time, for a period not to exceed 60 days, for the exclusive purpose of effecting settlement.

(4) *Views of Administrative Law Judge*. Where an Administrative Law Judge is assigned to a proceeding, the Director or the respondent may request that the Administrative Law Judge express his or her views regarding the appropriateness of the offer of settlement. A request for the Administrative Law Judge to express his or her views on an offer of settlement or otherwise to participate in a settlement conference constitutes a waiver by the party making the request of any right to claim bias or prejudgment by the Administrative Law Judge based on the views expressed.

(5) *Waivers.* (i) By submitting an offer of settlement, a respondent making the offer waives, subject to acceptance of the offer:

(A) All hearings pursuant to section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16);

(B) The filing of proposed findings of fact and conclusions of law;

(C) Proceedings before, and a decision by, an Administrative Law Judge;

(D) All post-hearing procedures; and

(E) Judicial review by any court.

(ii) By submitting an offer of settlement the respondent further waives:

(A) Such provisions of this subpart or other requirements of law as may be construed to prevent any member of the Director's staff, or members of the Office of Chief Counsel or other counsel assigned by the General Counsel, from participating in or advising the Director as to any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

(B) Any right to claim bias or prejudgment by the Director based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

(6) If the Director rejects the offer of settlement, the respondent shall be so notified in writing and the offer of settlement shall be deemed withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the respondent making the offer, provided, however, that rejection of an offer of settlement does not affect the continued validity of waivers pursuant to paragraph (b)(5) of this section with respect to any discussions concerning the rejected offer of settlement.

(7) No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any administrative proceeding initiated by the Director.

§ 501.711 Hearing request.

(a) *Deadline for request.* A request for an agency hearing shall be served on the Director not later than 30 days after the date of service of the Penalty Notice. See § 501.705(b). A respondent may not reserve the right to request a hearing after expiration of the 30 calendar day period. A request for a hearing that is not made as required by this paragraph shall constitute a waiver of the respondent's right to a hearing.

(b) *Form and contents of request.* The request need not be in any particular form, but must be typewritten and contain the heading ''Request for Agency Hearing''. The request must include the Office of Foreign Assets Control identification number shown near the top of the Penalty Notice. It should be responsive to the determination contained in the Penalty Notice and set forth the nature of the respondent's defenses or claims for mitigation, if any.

(1) The request must admit or deny specifically each separate determination of violation made in the Penalty Notice. If the respondent is without knowledge as to a determination, the request shall so state, and such statement shall constitute a denial. Any determination not specifically addressed in the response shall be deemed admitted.

(2) The request must set forth any additional or new matter or arguments the respondent seeks, or shall seek, to use in support of all defenses or claims for mitigation. Any defense the respondent wishes to assert must be included in the request.

(3) The request must accurately state, for each respondent (if applicable), the respondent's full name and address for future service, together with current telephone and, if applicable, a facsimile machine number. If respondent is represented, the representative's full name and address, together with telephone and facsimile numbers, may be provided in lieu of service information for the respondent. The respondent or respondent's representative is responsible for providing timely written notice to the Director of any subsequent changes in the information provided.

(c) *Signature requirement.* The respondent or, if represented, the respondent's representative, must sign the hearing request.

§ 501.712 Acknowledgment of hearing request.

No later than 60 days after service of any hearing request, the Director shall

acknowledge receipt and inform a respondent, in writing, whether an Order Instituting Proceedings shall be issued.

§ 501.713 Order Instituting Proceedings.

If a respondent makes a timely request for a hearing, the Director shall determine, at his or her option, whether to dismiss the violation(s) set forth in the Penalty Notice or to issue an Order Instituting Proceedings to initiate the hearing process. The Order shall be served on the respondent(s) as provided in § 501.705(c)(1). The Director may, in his or her discretion, withdraw an Order Instituting Proceedings at any time prior to the issuance of a decision by the Administrative Law Judge.

(a) *Content of Order*. The Order Instituting Proceedings shall:

(1) Be prepared by the Office of the Chief Counsel or other counsel assigned by the General Counsel and based on information provided by the Director;

(2) State the legal authority under which the hearing is to be held;

(3) Contain a short and plain statement of the alleged violation(s) to be considered and determined (including the matters of fact and law asserted) in such detail as will permit a specific response thereto;

(4) State the amount of the penalty sought in the proceeding; and

(5) Be signed by the Director.

(b) *Combining penalty actions*. The Director may combine claims contained in two or more Penalty Notices involving the same respondent, and for which hearings have been requested, into a single Order Instituting Proceedings.

(c) *Amendment to Order Instituting Proceedings*. Upon motion by the Director, the Administrative Law Judge may, at any time prior to issuance of a decision, permit the Director to amend an Order Instituting Proceedings to include new matters of fact or law that are within the scope of the original Order Instituting Proceedings.

§ 501.714 Answer to Order Instituting Proceedings.

(a) *When required*. Not later than 45 days after service of the Order Instituting Proceedings, the respondent shall file, with the Administrative Law Judge and the Office of Chief Counsel, an answer to each of the allegations contained therein. If the Order Instituting Proceedings is amended, the Administrative Law Judge may require that an amended answer be filed and, if such an answer is required, shall specify a date for the filing thereof.

(b) *Contents; effect of failure to deny*. Unless otherwise directed by the Administrative Law Judge, an answer shall specifically admit, deny, or state that the respondent does not have, and is unable to obtain, sufficient information to admit or deny each allegation in the Order Instituting Proceedings. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. A statement of lack of information shall have the effect of a denial. A defense of res judicata, statute of limitations or any other matter constituting an affirmative defense shall be asserted in the answer. Any allegation not specifically addressed in the answer shall be deemed admitted.

(c) *Motion for more definite statement*. A respondent may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

(d) *Amendments*. A respondent may amend its answer at any time by written consent of the Director or with permission of the Administrative Law Judge. Permission shall be freely granted when justice so requires.

(e) *Failure to file answer:* default. If a respondent fails to file an answer required by this subpart within the time prescribed, such respondent may be deemed in default pursuant to § 501.716(a). A party may make a motion to set aside a default pursuant to § 501.726(e).

§ 501.715 Notice of Hearing.

(a) If the Director issues an Order Instituting Proceedings, the respondent

shall receive not less than 45 days notice of the time and place of the hearing.

(b) *Time and place of hearing.* All hearings shall be held in the Washington, DC metropolitan area unless, based on extraordinary reasons, otherwise mutually agreed by the respondent and the Director. The time for any hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives. Requests to change the time of a hearing may be submitted to the Administrative Law Judge, who may modify the hearing date(s) and/or time(s) and place. All requests for a change in the date and time and/or place of a hearing must be received by the Administrative Law Judge and served upon the parties no later than 15 days before the scheduled hearing date.

(c) *Failure to appear at hearings: default.* Any respondent named in an order instituting proceedings as a person against whom findings may be made or penalties imposed who fails to appear (in person or through a representative) at a hearing of which he or she has been duly notified may be deemed to be in default pursuant to § 501.716(a). Without further proceedings or notice to the respondent, the Administrative Law Judge may enter a finding that the right to a hearing was waived, and the Penalty Notice shall constitute final agency action as provided in § 501.709(a)(2). A respondent may make a motion to set aside a default pursuant to § 501.726(e).

§ 501.716 Default.

(a) A party to a proceeding may be deemed to be in default and the Administrative Law Judge (or the Secretary's designee during review proceedings) may determine the proceeding against that party upon consideration of the record if that party fails:

(1) To appear, in person or through a representative, at any hearing or conference of which the party has been notified;

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to prosecute or defend the proceeding; or

(3) To cure a deficient filing within the time specified by the Administrative Law Judge (or the Secretary's designee) pursuant to § 501.729(b).

(b) In deciding whether to determine the proceedings against a party deemed to be in default, the Administrative Law Judge shall consider the record of the proceedings (including the Order Instituting Proceedings) and shall construe contested matters of fact and law against the party deemed to be in default.

(c) For information and procedures pertaining to a motion to set aside a default, see § 501.726(e).

§ 501.717 Consolidation of proceedings.

By order of the Administrative Law Judge, proceedings involving common questions of law and fact may be consolidated for hearing of any or all the matters at issue in such proceedings. The Administrative Law Judge may make such orders concerning the conduct of such proceedings as he or she deems appropriate to avoid unnecessary cost or delay. Consolidation shall not prejudice any rights under this subpart and shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

§ 501.718 Conduct and order of hearings.

All hearings shall be conducted in a fair, impartial, expeditious and orderly manner. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the relevant facts. The Director shall present his or her case-in-chief first. The Director shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement.

§ 501.719 Ex parte communications.

(a) *Prohibition.* (1) From the time the Director issues an Order Instituting Proceedings until the date of final decision, no party, interested person, or representative thereof shall knowingly make or cause to be made an ex parte communication.

(2) Except to the extent required for the disposition of ex parte communication matters as authorized by law, the Secretary's designee and the Administrative Law Judge presiding over any proceeding may not:

(i) Consult a person or party on an issue, unless on notice and opportunity for all parties to participate; or

(ii) Be responsible to or subject to the supervision, direction of, or evaluation by, an employee engaged in the performance of investigative or prosecutorial functions for the Department.

(b) Procedure upon occurrence of ex parte communication. If an ex parte communication is received by the Administrative Law Judge or the Secretary's designee, the Administrative Law Judge or the Secretary's designee, as appropriate, shall cause all of such written communication (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. A party may, not later than 10 days after the date of service, file a response thereto and may recommend that the person making the prohibited communication be sanctioned pursuant to paragraph (c) of this section.

(c) *Sanctions*. Any party to the proceeding, a party's representative, or any other interested individual, who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Administrative Law Judge or the Secretary's designee, as appropriate, for good cause shown, including, but not limited to, exclusion from the hearing and an adverse ruling on the issue that is the subject of the prohibited communication.

§ 501.720 Separation of functions.

Any officer or employee engaged in the performance of investigative or prosecutorial functions for the Department in a proceeding as defined in § 501.702 may not, in that proceeding or one that is factually related, participate or advise in the decision pursuant to Section 557 of the Administrative Procedure Act, 5 U.S.C. 557, except as a witness or counsel in the proceeding.

§ 501.721 Hearings to be public.

All hearings, except hearings on applications for confidential treatment filed pursuant to § 501.725(b), shall be public unless otherwise ordered by the Administrative Law Judge or the Secretary's designee, as appropriate, on his or her own motion or the motion of a party.

§ 501.722 Prehearing conferences.

(a) *Purposes of conferences*. The purposes of prehearing conferences include, but are not limited to:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control of the proceeding by the Administrative Law Judge; and

(3) Improving the quality of the hearing through more thorough preparation.

(b) *Procedure*. On his or her own motion or at the request of a party, the Administrative Law Judge may direct a representative or any party to attend one or more prehearing conferences. Such conferences may be held with or without the Administrative Law Judge present as the Administrative Law Judge deems appropriate. Where such a conference is held outside the presence of the Administrative Law Judge, the Administrative Law Judge shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) *Subjects to be discussed*. At a prehearing conference consideration may be given and action taken with respect to the following:

(1) Simplification and clarification of the issues;

(2) Exchange of witness and exhibit lists and copies of exhibits;

(3) Admissions of fact and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;

(4) Matters of which official notice may be taken;

(5) The schedule for exchanging prehearing motions or briefs, if any;

(6) The method of service for papers;

(7) Summary disposition of any or all issues;

(8) Settlement of any or all issues;

(9) Determination of hearing dates (when the Administrative Law Judge is present);

(10) Amendments to the Order Instituting Proceedings or answers thereto;

(11) Production of documents as set forth in § 501.723, and prehearing production of documents in response to subpoenas duces tecum as set forth in § 501.728; and

(12) Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) *Timing of conferences.* Unless the Administrative Law Judge orders otherwise, an initial prehearing conference shall be held not later than 14 days after service of an answer. A final conference, if any, should be held as close to the start of the hearing as reasonable under the circumstances.

(e) *Prehearing orders.* At or following the conclusion of any conference held pursuant to this rule, the Administrative Law Judge shall enter written rulings or orders that recite the agreement(s) reached and any procedural determinations made by the Administrative Law Judge.

(f) *Failure to appear: default.* A respondent who fails to appear, in person or through a representative, at a prehearing conference of which he or she has been duly notified may be deemed in default pursuant to § 501.716(a). A respondent may make a motion to set aside a default pursuant to § 501.726(e).

§ 501.723 Prehearing disclosures; methods to discover additional matter.

(a) *Initial disclosures.* (1) Except to the extent otherwise stipulated or directed by order of the Administrative Law Judge, a party shall, without awaiting a discovery request, provide to the opposing party:

(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment of a witness appearing in person or by deposition, identifying the subjects of the information; and

(ii) A copy, or a description by category and location, of all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment of a witness appearing in person or by deposition;

(2) The disclosures described in paragraph (a)(1)(i) of this section shall be made not later than 30 days after the issuance of an Order Instituting Proceedings, unless a different time is set by stipulation or by order of the Administrative Law Judge.

(b) *Prehearing disclosures.* (1) In addition to the disclosures required by paragraph (a) of this section, a party must provide to the opposing party, and promptly file with the Administrative Law Judge, the following information regarding the evidence that it may present at hearing for any purpose other than solely for impeachment of a witness appearing in person or by deposition:

(i) An outline or narrative summary of its case or defense (the Order Instituting Proceedings will usually satisfy this requirement for the Director and the answer thereto will usually satisfy this requirement for the respondent);

(ii) The legal theories upon which it will rely;

(iii) Copies and a list of documents or exhibits that it intends to introduce at the hearing; and

(iv) A list identifying each witness who will testify on its behalf, including the witness's name, occupation, address, phone number, and a brief summary of the expected testimony.

(2) Unless otherwise directed by the Administrative Law Judge, the disclosures required by paragraph (b)(1) of this section shall be made not later than 30 days before the date of the hearing.

(c) *Disclosure of expert testimony.* A party who intends to call an expert witness shall submit, in addition to the information required by paragraph (b)(1)(iv) of this section, a statement of the expert's qualifications, a list of other proceedings in which the expert has given expert testimony, and a list of publications authored or co-authored by the expert.

(d) *Form of disclosures*. Unless the Administrative Law Judge orders otherwise, all disclosures under paragraphs (a) through (c) of this section shall be made in writing, signed, and served as provided in § 501.705.

(e) *Methods to discover additional matter*. Parties may obtain discovery by one or more of the following methods: Depositions of witnesses upon oral examination or written questions; written interrogatories to another party; production of documents or other evidence for inspection; and requests for admission. All depositions of Federal employees must take place in Washington, DC, at the Department of the Treasury or at the location where the Federal employee to be deposed performs his or her duties, whichever the Federal employee's supervisor or the Office of Chief Counsel shall deem appropriate. All depositions shall be held at a date and time agreed by the Office of Chief Counsel and the respondent or respondent's representative, and for an agreed length of time.

(f) *Discovery scope and limits*. Unless otherwise limited by order of the Administrative Law Judge in accordance with paragraph (f)(2) of this section, the scope of discovery is as follows:

(1) *In general*. The availability of information and documents through discovery is subject to the assertion of privileges available to the parties and witnesses. Privileges available to the Director and the Department include exemptions afforded pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)) and the Privacy Act (5 U.S.C. 552a). Parties may obtain discovery regarding any matter, not privileged, that is relevant to the merits of the pending action, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of any persons having knowledge of any discoverable matter. For good cause, the Administrative Law Judge may order discovery of any matter relevant to the subject matter involved in the proceeding. Relevant information need not be admissible at the hearing if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Limitations*. The Administrative Law Judge may issue any order that justice requires to ensure that discovery requests are not unreasonable, oppressive, excessive in scope or unduly burdensome, including an order to show cause why a particular discovery request is justified upon motion of the objecting party. The frequency or extent of use of the discovery methods otherwise permitted under this section may be limited by the Administrative Law Judge if he or she determines that:

(i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) The burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the hearing, the importance of the issues at stake, and the importance of the proposed discovery in resolving the issues.

(3) *Interrogatories*. Respondent's interrogatories shall be served upon the Office of the Chief Counsel not later than 30 days after issuance of the Order Instituting Proceedings. The Director's interrogatories shall be served by the later of 30 days after the receipt of service of respondent's interrogatories or 40 days after issuance of the Order Instituting Proceedings if no interrogatories are filed by respondent. Parties shall respond to interrogatories not later than 30 days after the date interrogatories are received. Interrogatories shall be limited to 20 questions only. Each subpart, section, or other designation of a part of a question shall be counted as one complete question in computing the permitted 20 question total. Where more than 20 questions are served upon a party, the receiving party may determine which of the 20 questions the receiving party shall answer. The limitation on the number of questions in an interrogatory may be waived by the Administrative Law Judge.

(4) *Privileged matter*. Privileged documents are not discoverable. Privileges

include, but are not limited to, the attorney-client privilege, attorney work-product privilege, any government's or government agency's deliberative-process or classified information privilege, including materials classified pursuant to Executive Order 12958 (3 CFR, 1995 Comp., p. 333) and any future Executive orders that may be issued relating to the treatment of national security information, and all materials and information exempted from release to the public pursuant to the Privacy Act (5 U.S.C. 552a) or the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)).

(g) *Updating discovery*. A party who has made an initial disclosure under paragraph (a) of this section or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired whenever:

(1) The party learns that in some material respect the information disclosed is incomplete or incorrect, if the additional or corrective information has not otherwise been made known to the other party during the discovery process or in writing; or

(2) Ordered by the Administrative Law Judge. The Administrative Law Judge may impose sanctions for failure to supplement or correct discovery.

(h) *Time limits*. All discovery, including all responses to discovery requests, shall be completed not later than 20 days prior to the date scheduled for the commencement of the hearing, unless the Administrative Law Judge finds on the record that good cause exists to grant additional time to complete discovery.

(i) *Effect of failure to comply*. No witness may testify and no document or exhibit may be introduced at the hearing if such witness, document, or exhibit is not listed in the prehearing submissions pursuant to paragraphs (b) and (c) of this section, except for good cause shown.

§ 501.724 Documents that may be withheld.

(a) Notwithstanding § 501.723(f), the Director or respondent may withhold a document if:

(1) The document is privileged;

(2) The document would disclose the identity of a confidential source; or

(3) The Administrative Law Judge grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding or otherwise, for good cause shown.

(b) Nothing in paragraph (a) of this section authorizes the Director to withhold documents that contain material exculpatory evidence.

(c) *Withheld document list*. The Director and respondent shall provide the Administrative Law Judge, for review, a list of documents withheld pursuant to paragraphs (a)(1)–(3) of this section. The Administrative Law Judge shall determine whether any such document should be made available for inspection and copying.

§ 501.725 Confidential treatment of information in certain filings.

(a) *Filing document under seal*. (1) The Director may file any document or any part of a document under seal and/or seek a protective order concerning any document if disclosure of the document would be inconsistent with the protection of the public interest or if justice requires protection of any person, including a source or a party, from annoyance, threat, oppression, or undue burden or expense, or the disclosure of the information would be, or might reasonably lead to a disclosure, contrary to Executive Order 12958, as amended by Executive Order 13292, or other Executive orders concerning disclosure of information, Department regulations, or the Privacy Act, or information exempt from release under the Freedom of Information Act. The Administrative Law Judge shall allow placement of any such document under seal and/or grant a protective order upon a showing that the disclosure would be inconsistent with any such statute or Executive order, or that the harm resulting from disclosure would outweigh the benefits of disclosure.

(2) A respondent may file any document or any part of a document under seal and/or seek a protective order to limit such document from disclosure to other parties or to the public. The Administrative Law Judge shall allow placement of any document under seal and/or grant a protective order upon a

showing that the harm resulting from disclosure would outweigh the benefits of disclosure.

(3) The Administrative Law Judge shall safeguard the security and integrity of any documents under seal or protective order and shall take all appropriate steps to preserve the confidentiality of such documents or any parts thereof, including closing a hearing or portions of a hearing to the public. Release of any information under seal or to the extent inconsistent with a protective order, in any form or manner, is subject to the sanctions and the exercise of the authorities as are provided with respect to ex parte communications under § 501.719.

(4) If the Administrative Law Judge denies placement of any document under seal or under protective order, any party, and any person whose document or material is at issue, may obtain interlocutory review by the Secretary's designee. In such cases the Administrative Law Judge shall not release or expose any of the records or documents in question to the public or to any person for a period of 20 days from the date of the Administrative Law Judge's ruling, in order to permit a party the opportunity either to withdraw the records and documents or obtain interlocutory review by the Secretary's designee and an order that the records be placed under seal or a protective order.

(5) Upon settlement, final decision, or motion to the Administrative Law Judge for good cause shown, all materials (including all copies) under seal or protective order shall be returned to the submitting parties, except when it may be necessary to retain a record until any judicial process is completed.

(6)(i) Written notice of each request for release of documents or materials under seal or subject to a protective order shall be given to the parties at least 20 days prior to any permitted release or prior to any access not specifically authorized under a protective order. A copy of each request for information, including the name, address, and telephone number of the requester, shall be provided to the parties.

(ii) Each request for access to protected material shall include the names, addresses, and telephone numbers of all persons on whose behalf the requester seeks access to protected information. The Administrative Law Judge may impose sanctions as provided under § 501.729 for failure to provide this information.

(b) *Application*. An application for a protective order or to place under seal shall be filed with the Administrative Law Judge. The application shall be accompanied by a sealed copy of the materials as to which confidential treatment is sought.

(1) *Procedure for supplying additional information*. The person making the application may be required to furnish in writing additional information with respect to the grounds for objection to public disclosure. Failure to supply the information so requested within 14 days from the date of receipt of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the information to which the additional information relates, unless the Administrative Law Judge shall otherwise order for good cause shown at or before the expiration of such 14-day period.

(2) *Confidentiality of materials pending final decision*. Pending the determination of the application for confidential treatment, transcripts, non-final orders including an initial decision, if any, and other materials in connection with the application shall be placed under seal; shall be for the confidential use only of the Administrative Law Judge, the Secretary's designee, the applicant, the Director, and any other respondent and representative; and shall be made available to the public only in accordance with orders of the Administrative Law Judge or the Secretary's designee.

(3) *Public availability of orders*. Any final order of the Administrative Law Judge or the Secretary's designee denying or sustaining an application for confidential treatment shall be made public. Any prior findings or opinions relating to an application for confidential treatment under this section shall be made public at such time as the material as to which confidentiality was requested is made public.

§ 501.726 Motions.

(a) *Generally*. Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. Motions by a respondent must be filed with the Administrative Law Judge and served upon the Director through the Office of Chief Counsel and with any other party respondent or respondent's representative, unless otherwise directed by the Administrative Law Judge. Motions by the Director must be filed with the Administrative Law Judge and served upon each party respondent or respondent's representative. All written motions must be served in accordance with, and otherwise meet the requirements of, § 501.705. The Administrative Law Judge may order that an oral motion be submitted in writing. No oral argument shall be heard on any motion unless the Administrative Law Judge otherwise directs.

(b) *Opposing and reply briefs*. Except as provided in § 501.741(e), briefs in opposition to a motion shall be filed not later than 15 days after service of the motion. Reply briefs shall be filed not later than 3 days after service of the opposition. The failure of a party to oppose a written motion or an oral motion made on the record shall be deemed a waiver of objection by that party to the entry of an order substantially in the form of any proposed order accompanying the motion.

(c) *Dilatory motions*. Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(d) *Length limitation*. Except as otherwise ordered by the Administrative Law Judge, a brief in support of, or in opposition to, a motion shall not exceed 15 pages, exclusive of pages containing any table of contents, table of authorities, or addendum.

(e) A motion to set aside a default shall be made within a reasonable time as determined by the Administrative Law Judge, state the reasons for the failure to appear or defend, and, if applicable, specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the Administrative Law Judge, at any time prior to the filing of his or her decision, or the Secretary's designee, at any time during the review process, may for good cause shown set aside a default.

§ 501.727 Motion for summary disposition.

(a) At any time after a respondent's answer has been filed, the respondent or the Director may make a motion for summary disposition of any or all allegations contained in the Order Instituting Proceedings. If the Director has not completed presentation of his or her case-in-chief, a motion for summary disposition shall be made only with permission of the Administrative Law Judge. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noticed pursuant to § 501.732(b).

(b) *Decision on motion*. The Administrative Law Judge may promptly decide the motion for summary disposition or may defer decision on the motion. The Administrative Law Judge shall issue an order granting a motion for summary disposition if the record shows there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law.

(c) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, transcripts, affidavits, and any other evidentiary materials that the moving party contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the moving party's arguments. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. The

opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

§ 501.728 Subpoenas.

(a) *Availability; procedure.* In connection with any hearing before an Administrative Law Judge, either the respondent or the Director may request the issuance of subpoenas requiring the attendance and testimony of witnesses at the designated time and place of hearing, and subpoenas requiring the production of documentary or other tangible evidence returnable at a designated time and place. Unless made on the record at a hearing, requests for issuance of a subpoena shall be made in writing and served on each party pursuant to § 501.705.

(b) *Standards for issuance.* If it appears to the Administrative Law Judge that a subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the Administrative Law Judge determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue a modified subpoena as fairness requires. In making the foregoing determination, the Administrative Law Judge may inquire of the other participants whether they will stipulate to the facts sought to be proved.

(c) *Service.* Service of a subpoena shall be made pursuant to the provisions of § 501.705.

(d) *Application to quash or modify*—(1) *Procedure.* Any person to whom a subpoena is directed or who is an owner, creator or the subject of the documents or materials that are to be produced pursuant to a subpoena may, prior to the time specified therein for compliance, but not later than 15 days after the date of service of such subpoena, request that the subpoena be quashed or modified. Such request shall be made by application filed with the Administrative Law Judge and served on all parties pursuant to § 501.705. The party on whose behalf the subpoena was issued may, not later than 5 days after service of the application, file an opposition to the application.

(2) *Standards governing application to quash or modify.* If the Administrative Law Judge determines that compliance with the subpoena would be unreasonable, oppressive or unduly burdensome, the Administrative Law Judge may quash or modify the subpoena, or may order return of the subpoena only upon specified conditions. These conditions may include, but are not limited to, a requirement that the party on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the cost of copying or transporting evidence to the place for return of the subpoena.

(e) *Witness fees and mileage.* Witnesses summoned to appear at a proceeding shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 501.729 Sanctions.

(a) *Contemptuous conduct*—(1) *Subject to exclusion or suspension.* Contemptuous conduct by any person before an Administrative Law Judge or the Secretary's designee during any proceeding, including any conference, shall be grounds for the Administrative Law Judge or the Secretary's designee to:

(i) Exclude that person from such hearing or conference, or any portion thereof; and/or

(ii) If a representative, summarily suspend that person from representing others in the proceeding in which such conduct occurred for the duration, or any portion, of the proceeding.

(2) *Adjournment.* Upon motion by a party represented by a representative

subject to an order of exclusion or suspension, an adjournment shall be granted to allow the retention of a new representative. In determining the length of an adjournment, the Administrative Law Judge or the Secretary's designee shall consider, in addition to the factors set forth in § 501.737, the availability of another representative for the party or, if the representative was a counsel, of other members of a suspended counsel's firm.

(b) *Deficient filings; leave to cure deficiencies.* The Administrative Law Judge, or the Secretary's designee in the case of a request for review, may in his or her discretion, reject, in whole or in part, any filing that fails to comply with any requirements of this subpart or of any order issued in the proceeding in which the filing was made. Any such filings shall not be part of the record. The Administrative Law Judge or the Secretary's designee may direct a party to cure any deficiencies and to resubmit the filing within a fixed time period.

(c) *Failure to make required filing or to cure deficient filing.* The Administrative Law Judge (or the Secretary's designee during review proceedings) may enter a default pursuant to § 501.716, dismiss the case, decide the particular matter at issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that matter if a person fails:

(1) To make a filing required under this subpart; or

(2) To cure a deficient filing within the time specified by the Administrative Law Judge or the Secretary's designee pursuant to paragraph (b) of this section.

(d) *Failure to make required filing or to cure deficient filing in the case of a request for review.* The Secretary's designee, in any case of a request for review, may decide the issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that matter if a person fails:

(1) To make a filing required under this subpart; or

(2) To cure a deficient filing within the time specified by the Secretary's designee pursuant to paragraph (b) of this section.

§ 501.730 Depositions upon oral examination.

(a) *Procedure.* Any party desiring to take the testimony of a witness by deposition shall make a written motion setting forth the reasons why such deposition should be taken including the specific reasons why the party believes the witness may be unable to attend or testify at the hearing; the name and address of the prospective witness; the matters concerning which the prospective witness is expected to be questioned; and the proposed time and place for the taking of the deposition.

(b) *Required finding when ordering a deposition.* In the discretion of the Administrative Law Judge, an order for deposition may be issued upon a finding that the prospective witness will likely give testimony material to the proceeding, that it is likely the prospective witness will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment or other disability, and that the taking of a deposition will serve the interests of justice.

(c) *Contents of order.* An order for deposition shall designate by name a deposition officer. The designated officer may be the Administrative Law Judge or any other person authorized to administer oaths by the laws of the United States or of the place where the deposition is to be held. An order for deposition also shall state:

(1) The name of the witness whose deposition is to be taken;

(2) The scope of the testimony to be taken;

(3) The time and place of the deposition;

(4) The manner of recording, preserving and filing the deposition; and

(5) The number of copies, if any, of the deposition and exhibits to be filed upon completion of the deposition.

(d) *Procedure at depositions.* A witness whose testimony is taken by deposition shall swear or affirm before any questions are put to him or her. Examination and cross-examination of witnesses may proceed as permitted at a hearing. A witness being deposed may have counsel or a representative present during the deposition.

(e) *Objections to questions or evidence.* Objections to questions or evidence

shall be in short form, stating the grounds of objection relied upon. Objections to questions or evidence shall be noted by the deposition officer upon the deposition, but a deposition officer (other than an Administrative Law Judge) shall not have the power to decide on the competency, materiality or relevance of evidence. Failure to object to questions or evidence before the deposition officer shall not be deemed a waiver unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(f) *Filing of depositions.* The questions asked and all answers or objections shall be recorded or transcribed verbatim, and a transcript shall be prepared by the deposition officer, or under his or her direction. The transcript shall be subscribed by the witness and certified by the deposition officer. The original deposition transcript and exhibits shall be filed with the Administrative Law Judge. A copy of the deposition transcript and exhibits shall be served on the opposing party or parties. The cost of the transcript (including copies) shall be paid by the party requesting the deposition.

§ 501.731 Depositions upon written questions.

(a) *Availability.* Depositions may be taken and submitted on written questions upon motion of any party. The motion shall include the information specified in § 501.730(a). A decision on the motion shall be governed by § 501.730(b).

(b) *Procedure.* Written questions shall be filed with the motion. Not later than 10 days after service of the motion and written questions, any party may file objections to such written questions and any party may file cross-questions. When a deposition is taken pursuant to this section no persons other than the witness, representative or counsel to the witness, the deposition officer, and, if the deposition officer does not act as reporter, a reporter, shall be present at the examination of the witness. No party shall be present or represented unless otherwise permitted by order. The deposition officer shall propound the questions and cross-questions to the witness in the order submitted.

(c) *Additional requirements.* The order for deposition, filing of the deposition, form of the deposition and use of the deposition in the record shall be governed by paragraphs (b) through (g) of § 501.730, except that no cross-examination shall be made.

§ 501.732 Evidence.

The applicable evidentiary standard for proceedings under this subpart is proof by a preponderance of reliable, probative, and substantial evidence. The Administrative Law Judge shall admit any relevant and material oral, documentary, or demonstrative evidence. The Federal Rules of Evidence do not apply, by their own force, to proceedings under this subpart, but shall be employed as general guidelines. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

(a) *Objections and offers of proof*—(1) *Objections.* Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the Administrative Law Judge need not be noted at the time of the ruling. Such exceptions will be deemed waived on review by the Secretary's designee, however, unless raised:

(i) Pursuant to interlocutory review in accordance with § 501.741;

(ii) In a proposed finding or conclusion filed pursuant to § 501.738; or

(iii) In a petition for the Secretary's designee's review of an Administrative Law Judge's decision filed in accordance with § 501.741.

(2) *Offers of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record. Excluded material shall be retained pursuant to § 501.739(b).

(b) *Official notice.* An Administrative Law Judge or Secretary's designee may take official notice of any material fact that might be judicially noticed by a district court of the United States, any matter in the public official records of the Secretary, or any matter

that is particularly within the knowledge of the Department as an expert body. If official notice is requested or taken of a material fact not appearing in the evidence in the record, a party, upon timely request to the Administrative Law Judge, shall be afforded an opportunity to establish the contrary.

(c) *Stipulations*. The parties may, by stipulation, at any stage of the proceeding agree upon any pertinent fact in the proceeding. A stipulation may be received in evidence and, when accepted by the Administrative Law Judge, shall be binding on the parties to the stipulation.

(d) *Presentation under oath or affirmation*. A witness at a hearing for the purpose of taking evidence shall testify under oath or affirmation.

(e) *Presentation, rebuttal and cross-examination*. A party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Administrative Law Judge, may be required for a full and true disclosure of the facts.

§ 501.733 Evidence: confidential information, protective orders.

(a) *Procedure*. In any proceeding as defined in § 501.702, a respondent; the Director; any person who is the owner, subject or creator of a document subject to subpoena or which may be introduced as evidence; or any witness who testifies at a hearing may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony containing confidential information. The motion should include a general summary or extract of the documents without revealing confidential details. If a person seeks a protective order against disclosure to other parties as well as the public, copies of the documents shall not be served on other parties. Unless the documents are unavailable, the person shall file for inspection by the Administrative Law Judge a sealed copy of the documents as to which the order is sought.

(b) *Basis for issuance*. Documents and testimony introduced in a public hearing are presumed to be public. A motion for a protective order shall be granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.

(c) *Requests for additional information supporting confidentiality*. A person seeking a protective order under paragraph (a) of this section may be required to furnish in writing additional information with respect to the grounds for confidentiality. Failure to supply the information so requested not later than 5 days from the date of receipt by the person of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the documents to which the additional information relates, unless the Administrative Law Judge shall otherwise order for good cause shown at or before the expiration of such 5-day period.

(d) *Confidentiality of documents pending decision*. Pending a determination of a motion under this section, the documents as to which confidential treatment is sought and any other documents that would reveal the confidential information in those documents shall be maintained under seal and shall be disclosed only in accordance with orders of the Administrative Law Judge. Any order issued in connection with a motion under this section shall be made public unless the order would disclose information as to which a protective order has been granted, in which case that portion of the order that would reveal the protected information shall not be made public.

§ 501.734 Introducing prior sworn statements of witnesses into the record.

(a) At a hearing, any person wishing to introduce a prior, sworn statement of a witness who is not a party to the proceeding, that is otherwise admissible in the proceeding, may make a motion setting forth the reasons therefor. If only part of a statement is offered in evidence, the Administrative Law Judge may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the Administrative Law Judge may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement may be granted if:

(1) The witness is dead;

(2) The witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement;

(3) The witness is unable to attend or testify because of age, sickness, infirmity, imprisonment or other disability;

(4) The party offering the prior sworn statement has been unable to procure the attendance of the witness by subpoena; or,

(5) In the discretion of the Administrative Law Judge, it would be desirable, in the interests of justice, to allow the prior sworn statement to be used. In making this determination, due regard shall be given to the presumption that witnesses will testify orally in an open hearing. If the parties have stipulated to accept a prior sworn statement in lieu of live testimony, consideration shall also be given to the convenience of the parties in avoiding unnecessary expense.

§ 501.735 Proposed findings, conclusions and supporting briefs.

(a) *Opportunity to file.* Before a decision is issued by the Administrative Law Judge, each party shall have an opportunity, reasonable in light of all the circumstances, to file in writing proposed findings and conclusions.

(b) *Procedure.* Proposed findings of fact must be supported by citations to specific portions of the record. If successive filings are directed, the proposed findings and conclusions of the party assigned to file first shall be set forth in serially numbered paragraphs, and any counter statement of proposed findings and conclusions shall, in addition to any other matter presented, indicate those paragraphs of the proposals already filed as to which there is no dispute. A reply brief may be filed by the party assigned to file first, or, where simultaneous filings are directed, reply briefs may be filed by each party, within the period prescribed therefor by the Administrative Law Judge. No further briefs may be filed except with permission of the Administrative Law Judge.

(c) *Time for filing.* In any proceeding in which a decision is to be issued:

(1) At the close of each hearing, the Administrative Law Judge shall, by order, after consultation with the parties, prescribe the period within which proposed findings and conclusions and supporting briefs are to be filed. The party directed to file first shall make its initial filing not later than 30 days after the end of the hearing unless the Administrative Law Judge, for good cause shown, permits a different period and sets forth in the order the reasons why the different period is necessary.

(2) The total period within which all such proposed findings and conclusions and supporting briefs and any counter statements of proposed findings and conclusions and reply briefs are to be filed shall be no longer than 90 days after the close of the hearing unless the Administrative Law Judge, for good cause shown, permits a different period and sets forth in an order the reasons why the different period is necessary.

§ 501.736 Authority of Administrative Law Judge.

The Administrative Law Judge shall have authority to do all things necessary and appropriate to discharge his or her duties. No provision of these rules shall be construed to limit the powers of the Administrative Law Judge provided by the Administrative Procedure Act, 5 U.S.C. 556, 557. The powers of the Administrative Law Judge include, but are not limited to:

(a) Administering oaths and affirmations;

(b) Issuing subpoenas authorized by law and revoking, quashing, or modifying any such subpoena;

(c) Receiving relevant evidence and ruling upon the admission of evidence and offers of proof;

(d) Regulating the course of a proceeding and the conduct of the parties and their representatives;

(e) Holding prehearing and other conferences as set forth in § 501.726 and requiring the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning the resolution of issues in controversy;

(f) Subject to any limitations set forth elsewhere in this subpart, considering and ruling on all procedural and other motions;

(g) Upon notice to all parties, reopening any hearing prior to the issuance of a decision;

(h) Requiring production of records or any information relevant to any act or transaction subject to a hearing under this subpart, and imposing sanctions available under Federal Rule of Civil Procedure 37(b)(2) (Fed. R. Civ. P. 37(b)(2), 28 U.S.C.) for a party's failure to comply with discovery requests;

(i) Establishing time, place, and manner limitations on the attendance of the public and the media for any hearing; and

(j) Setting fees and expenses for witnesses, including expert witnesses.

§ 501.737 Adjustments of time, postponements and adjournments.

(a) *Availability*. Except as otherwise provided by law, the Administrative Law Judge or the Secretary's designee, as appropriate, at any time prior to the filing of his or her decision, may, for good cause and in the interest of justice, modify any time limit prescribed by this subpart and may, consistent with paragraph (b) of this section, postpone or adjourn any hearing.

(b) *Limitations on postponements, adjournments and adjustments*. A hearing shall begin at the time and place ordered, provided that, within the limits provided, the Administrative Law Judge or the Secretary's designee, as appropriate, may for good cause shown postpone the commencement of the hearing or adjourn a convened hearing for a reasonable period of time.

(1) *Additional considerations*. In considering a motion for postponement of the start of a hearing, adjournment once a hearing has begun, or extensions of time for filing papers, the Administrative Law Judge or the Secretary's designee, as appropriate, shall consider, in addition to any other factors:

(i) The length of the proceeding to date;

(ii) The number of postponements, adjournments or extensions already granted;

(iii) The stage of the proceedings at the time of the request; and

(iv) Any other matter as justice may require.

(2) *Time limit*. Postponements, adjournments or extensions of time for filing papers shall not exceed 21 days unless the Administrative Law Judge or the Secretary's designee, as appropriate, states on the record or sets forth in a written order the reasons why a longer period of time is necessary.

§ 501.738 Disqualification and withdrawal of Administrative Law Judge.

(a) *Notice of disqualification*. If at any time an Administrative Law Judge or Secretary's designee believes himself or herself to be disqualified from considering a matter, the Administrative Law Judge or Secretary's designee, as appropriate, shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.

(b) *Motion for Withdrawal*. Any party who has a reasonable, good faith basis to believe an Administrative Law Judge or Secretary's designee has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the Administrative Law Judge or Secretary's designee, as appropriate, that the Administrative Law Judge or Secretary's designee withdraw. The motion shall be accompanied by a statement subject to 18 U.S.C. 1001 setting forth in detail the facts alleged to constitute grounds for disqualification. If the Administrative Law Judge or Secretary's designee finds himself or herself qualified, he or she shall so rule and shall continue to preside over the proceeding.

§ 501.739 Record in proceedings before Administrative Law Judge; retention of documents; copies.

(a) *Recordation*. Unless otherwise ordered by the Administrative Law Judge, all hearings shall be recorded and a written transcript thereof shall be prepared.

(1) *Availability of a transcript*. Transcripts of hearings shall be available for purchase.

(2) *Transcript correction*. Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within

such earlier time as directed by the Administrative Law Judge, a party or witness may make a motion to correct the transcript. Proposed corrections of the transcript may be submitted to the Administrative Law Judge by stipulation pursuant to § 501.732(c), or by motion. Upon notice to all parties to the proceeding, the Administrative Law Judge may, by order, specify corrections to the transcript.

(b) *Contents of the record.* The record of each hearing shall consist of:

(1) The Order Instituting Proceedings, Answer to Order Instituting Proceedings, Notice of Hearing and any amendments thereto;

(2) Each application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(3) Each stipulation, transcript of testimony, interrogatory, deposition, and document or other item admitted into evidence;

(4) With respect to a request to disqualify an Administrative Law Judge or to allow the Administrative Law Judge's withdrawal under § 501.738, each affidavit or transcript of testimony taken and the decision made in connection with the request;

(5) All proposed findings and conclusions;

(6) Each written order issued by the Administrative Law Judge; and

(7) Any other document or item accepted into the record by the Administrative Law Judge.

(c) Retention of documents not admitted. Any document offered as evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be part of the record. The Administrative Law Judge shall retain any such document until the later of the date the proceeding becomes final, or the date any judicial review of the final proceeding is no longer available.

(d) *Substitution of copies.* A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (c) of this section.

§ 501.740 Decision of Administrative Law Judge.

The Administrative Law Judge shall prepare a decision that constitutes his or her final disposition of the proceedings.

(a) *Content.* (1) The Administrative Law Judge shall determine whether or not the respondent has violated any provision of parts 500 and 515 of this chapter or the provisions of any license, ruling, regulation, order, direction or instruction issued by or under the authority of the Secretary pursuant to part 500 or 515 of this chapter or otherwise under the Trading with the Enemy Act.

(2) The Administrative Law Judge's decision shall include findings and conclusions, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record.

(3) (i) Upon a finding of violation, the Administrative Law Judge shall award an appropriate monetary civil penalty in an amount consistent with the Penalty Guidelines published by the Director.

(ii) Notwithstanding paragraph (a)(3)(i) of this section, the Administrative Law Judge:

(A) Shall provide an opportunity for a respondent to assert his or her inability to pay a penalty, or financial hardship, by filing with the Administrative Law Judge a financial disclosure statement subject to 18 U.S.C. 1001 that sets forth in detail the basis for the financial hardship or the inability to pay; and

(B) Shall consider any such filing in determining the appropriate monetary civil penalty.

(b) *Administrative Law Judge's decision*—(1) *Service.* The Administrative Law Judge shall serve his or her decision on the respondent and on the Director through the Office of Chief Counsel, and shall file a copy of the decision with the Secretary's designee.

(2) *Filing of report with the Secretary's designee.* If the respondent or Director files a petition for review pursuant to § 501.741, or upon a request from the Secretary's designee, the Administrative Law Judge shall file his or her report with the Secretary's designee not later than 20 days after service of his

or her decision on the parties. The report shall consist of the record, including the Administrative Law Judge's decision, and any petition from the respondent or the Director seeking review.

(3) *Correction of errors.* Until the Administrative Law Judge's report has been directed for review by the Secretary's designee or, in the absence of a direction for review, until the decision has become a final order, the Administrative Law Judge may correct clerical errors and errors arising through oversight or inadvertence in decisions, orders, or other parts of the record.

(c) *Administrative Law Judge's decision final unless review directed.* Unless the Secretary's designee determines to review a decision in accordance with § 501.741(a)(1), the decision of the Administrative Law Judge shall become the final decision of the Department.

(d) *Penalty awarded.* The Director is charged with implementing all final decisions of the Department and, upon a finding of violation and/or award of a civil monetary penalty, shall carry out the necessary steps to close the action.

§ 501.741 Review of decision or ruling.

(a) *Availability.* (1)(i) Review of the decision of the Administrative Law Judge by the Secretary's designee is not a right. The Secretary's designee may, in his or her discretion, review the decision of the Administrative Law Judge on the petition of either the respondent or the Director, or upon his or her own motion. The Secretary's designee shall determine whether to review a decision:

(A) If a petition for review has been filed by the respondent or the Director, not later than 30 days after that date the Administrative Law Judge filed his or her report with the Secretary's designee pursuant to paragraph (b)(2) of this section; or

(B) If no petition for review has been filed by the respondent or the Director, not later than 40 days after the date the Administrative Law Judge filed his or her decision with the Secretary's designee pursuant to paragraph (b)(1) of this section.

(ii) In determining whether to review a decision upon petition of the respondent or the Director, the Secretary's designee shall consider whether the petition for review makes a reasonable showing that:

(A) A prejudicial error was committed in the conduct of the proceeding; or

(B) The decision embodies:

(*1*) A finding or conclusion of material fact that is clearly erroneous;

(*2*) A conclusion of law that is erroneous; or

(*3*) An exercise of discretion or decision of law or policy that is important and that the Secretary's designee should review.

(2) *Interlocutory review of ruling.* The Secretary's designee shall review any ruling of an Administrative Law Judge involving privileged or confidential material that is the subject of a petition for review. See § 501.725.

(b) *Filing.* Either the respondent or the Director, when adversely affected or aggrieved by the decision or ruling of the Administrative Law Judge, may seek review by the Secretary's designee by filing a petition for review. Any petition for review shall be filed with the Administrative Law Judge within 10 days after service of the Administrative Law Judge's decision or the issuance of a ruling involving privileged or confidential material.

(c) *Contents.* The petition shall state why the Secretary's designee should review the Administrative Law Judge's decision or ruling, including: Whether the Administrative Law Judge's decision or ruling raises an important question of law, policy or discretion; whether review by the Secretary's designee will resolve a question about which the Department's Administrative Law Judges have rendered differing opinions; whether the Administrative Law Judge's decision or ruling is contrary to law or Department precedent; whether a finding of material fact is not supported by a preponderance of the evidence; or whether a prejudicial error of procedure or an abuse of discretion was committed. A petition should concisely state the portions of the decision or ruling for which review is sought. A petition shall not incorporate by reference a brief or legal memorandum.

(d) *When filing effective.* A petition for review is filed when received by the Administrative Law Judge.

(e) *Statements in opposition to petition.* Not later than 8 days after the filing of a petition for review, either the respondent or the Director may file a statement in opposition to a petition. A statement in opposition to a petition for review shall be filed in the manner specified in this section for filing of petitions for review. Statements in opposition shall concisely state why the Administrative Law Judge's decision or ruling should not be reviewed with respect to each portion of the petition to which it is addressed.

(f) *Number of copies.* An original and three copies of a petition or a statement in opposition to a petition shall be filed with the Administrative Law Judge.

(g) *Prerequisite to judicial review.* Pursuant to section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition for review by the Secretary's designee of an Administrative Law Judge decision or ruling is a prerequisite to the seeking of judicial review of a final order entered pursuant to such decision or ruling.

§ 501.742 Secretary's designee's consideration of decisions by Administrative Law Judges.

(a) *Scope of review.* The Secretary's designee may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, a decision or ruling by an Administrative Law Judge and may make any findings or conclusions that in his or her judgment are proper and on the basis of the record and such additional evidence as the Secretary's designee may receive in his or her discretion.

(b) *Summary affirmance.* The Secretary's designee may summarily affirm an Administrative Law Judge's decision or ruling based upon the petition for review and any response thereto, without further briefing, if he or she finds that no issue raised in the petition for review warrants further consideration.

§ 501.743 Briefs filed with the Secretary's designee.

(a) *Briefing schedule order.* If review of a determination is mandated by judicial order or whenever the Secretary's designee reviews a decision or ruling, the Secretary's designee shall, unless such review results in summary affirmance pursuant to § 501.742(b), issue a briefing schedule order directing the parties to file opening briefs and specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed not later than 40 days after the date of the briefing schedule order. Opposition briefs shall be filed not later than 30 days after the date opening briefs are due. Reply briefs shall be filed not later than 14 days after the date opposition briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed without permission of the Secretary's designee. The briefing schedule order shall be issued not later than 21 days after the later of:

(1) The last day permitted for filing a brief in opposition to a petition for review pursuant to § 501.741(e); or

(2) Receipt by the Secretary's designee of the mandate of a court with respect to a judicial remand.

(b) *Contents of briefs.* Briefs shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the record. If the exception relates to interlocutory review, there is no requirement to reference pages of the transcript. Reply briefs shall be confined to matters in opposition briefs of other parties.

(c) *Length limitation.* Opening and opposition briefs shall not exceed 30 pages and reply briefs shall not exceed 20 pages, exclusive of pages containing

the table of contents, table of authorities, and any addendum, except with permission of the Secretary's designee.

§ 501.744 Record before the Secretary's designee.

The Secretary's designee shall determine each matter on the basis of the record and such additional evidence as the Secretary's designee may receive in his or her discretion. In any case of interlocutory review, the Administrative Law Judge shall direct that a transcript of the relevant proceedings be prepared and forwarded to the Secretary's designee.

(a) *Contents of the record.* In proceedings for final decision before the Secretary's designee the record shall consist of:

(1) All items that are part of the record in accordance with § 501.739;

(2) Any petitions for review, cross-petitions or oppositions;

(3) All briefs, motions, submissions and other papers filed on appeal or review; and

(4) Any other material of which the Secretary's designee may take administrative notice.

(b) *Review of documents not admitted.* Any document offered in evidence but excluded by the Administrative Law Judge and any document marked for identification but not offered as an exhibit shall not be considered a part of the record before the Secretary's designee on review but shall be transmitted to the Secretary's designee if he or she so requests. In the event that the Secretary's designee does not request the document, the Administrative Law Judge shall retain the document not admitted into the record until the later of:

(1) The date upon which the Secretary's designee's order becomes final; or

(2) The conclusion of any judicial review of that order.

§ 501.745 Orders and decisions: signature, date and public availability.

(a) *Signature required.* All orders and decisions of the Administrative Law Judge or Secretary's designee shall be signed.

(b) *Date of entry of orders.* The date of entry of an order by the Administrative Law Judge or Secretary's designee shall be the date the order is signed. Such date shall be reflected in the caption of the order, or if there is no caption, in the order itself.

(c) *Public availability of orders.* (1) In general, any final order of the Department shall be made public. Any supporting findings or opinions relating to a final order shall be made public at such time as the final order is made public.

(2) *Exception.* Any final order of the Administrative Law Judge or Secretary's designee pertaining to an application for confidential treatment shall only be available to the public in accordance with § 501.725(b)(3).

§ 501.746 Referral to United States Department of Justice; administrative collection measures.

In the event that the respondent does not pay any penalty imposed pursuant to this part within 30 calendar days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

§ 501.747 Procedures on remand of decisions.

Either an Administrative Law Judge or a Secretary's designee, as appropriate, shall reconsider any Department decision on judicial remand to the Department. The rules of practice contained in this subpart shall apply to all proceedings held on judicial remand.

Subpart E—Procedures

SOURCE: 62 FR 45101, Aug. 25, 1997, unless otherwise noted. Redesignated at 68 FR 53642, Sept. 11, 2003.

§ 501.801 Licensing.

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in this chapter. All such licenses are set forth in subpart E of each part contained in

this chapter. General licenses may also be issued authorizing under appropriate terms and conditions certain types of transactions which are subject to prohibitions contained in economic sanctions programs the implementation and administration of which have been delegated to the Director of the Office of Foreign Assets Control but which are not yet codified in this chapter. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses. Failure to file such reports or statements will nullify the authority of the general license.

(b) *Specific licenses*—(1) *General course of procedure*. Transactions subject to the prohibitions contained in this chapter, or to prohibitions the implementation and administration of which have been delegated to the Director of the Office of Foreign Assets Control, which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses*. Original signed applications for specific licenses to engage in any transactions prohibited by or pursuant to this chapter or sanctions programs that have been delegated to the Director of the Office of Foreign Assets Control for implementation and administration must be filed by mail or courier. Applications will not be accepted by fax or electronically, unless otherwise authorized. Applications may be submitted in letter form with the exception of license applications for the unblocking of funds transfers. Applications for the unblocking of funds transfers must be submitted using TD-F 90–22.54, ''Application for the Release of Blocked Funds,'' accompanied by two complete copies of the entire submission. The form, which requires information regarding the date of the blocking, the financial institutions involved in the transfer, and the beneficiary and amount of the transfer, may be obtained from the OFAC Internet Home Page: *http://www.treas.gov/ofac*, the OFAC fax-on-demand service: 202/622–0077, or the Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction.

(3) *Information to be supplied*. The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the names of all parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application, except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference in such application. Applicants are required to supply their taxpayer identifying number pursuant to 31 U.S.C. 7701, which number may be used for purposes of collecting and reporting on any delinquent amounts arising out of the applicant's relationship with the United States Government. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial*. The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses*. As a condition for the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license*. Licenses will be issued by the Office of Foreign Assets

Control acting on behalf of the Secretary of the Treasury or licenses may be issued by the Secretary of the Treasury acting directly or through any specifically designated person, agency, or instrumentality.

(7) *Address*. License applications, reports, and inquiries should be addressed to the appropriate division or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220.

(c) *Registration of nongovernmental organizations*—(1) *Purpose of registration*. For those parts of this chapter specifically authorizing the registration of nongovernmental organizations (''NGOs''), registration numbers may be issued on a case-by-case basis to NGOs involved in humanitarian or religious activities in countries or geographic areas subject to economic sanctions pursuant to this chapter V. A registration number authorizes certain transactions by or on behalf of the registered NGO otherwise prohibited by the specific part with respect to which the registration number is issued, including the exportation of goods, services, and funds to the country or geographic area subject to such part for the purpose of relieving human suffering. The transactions authorized for registered NGOs either will be specified by the statement of licensing policy in the part under which the registration number is issued or by the Office of Foreign Assets Control letter issuing the registration number.

(2) *Application information to be supplied*. Applications for registration numbers should be submitted to the Compliance Programs Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220, or by facsimile to (202) 622–2426, and must include:

(i) The organization's name in English, in the language of origin, and any acronym or other names used to identify the organization;

(ii) Address and phone number of the organization's headquarters location;

(iii) Full name in English, in the language of origin, and any acronym or other names used, as well as nationality, citizenship, current country of residence, place and date of birth for key staff at the organization's headquarters, such as the chairman and board members, president, director, etc.;

(iv) Identification of field offices or partner offices elsewhere, including addresses, phone numbers, and organizational names used, as well as the identification of the senior officer(s) at these locations, including the person's name, position, nationality, citizenship, and date of birth (names of individuals and organizations shall be provided in English, in the language of origin, and shall include any acronym or other names used to identify the individuals or organizations);

(v) Identification of subcontracting organizations, if any, to the extent known or contemplated at the time of the application;

(vi) Existing sources of income, such as official grants, private endowments, commercial activities;

(vii) Financial institutions that hold deposits on behalf of or extend lines of credit to the organization (names of individuals and organizations shall be provided in English, in the language of origin, and shall include any acronym or other names used to identify the individuals or organizations);

(viii) Independent accounting firms, if employed in the production of the organization's financial statements (names of individuals and organizations shall be provided in English, in the language of origin, and shall include any acronym or other names used to identify the individuals or organizations);

(ix) A detailed description of the organization's humanitarian or religious activities and projects in countries or geographic areas subject to economic sanctions pursuant to this chapter V;

(x) Most recent official registry documents, annual reports, and annual filings with the pertinent government, as applicable; and

(xi) Names and addresses of organizations to which the applicant currently provides or proposes to provide funding, services or material support, to the extent known at the time of the vetting, as applicable.

(3) *Use of registration number*. Registered NGOs conducting transactions authorized by their registrations to support their humanitarian or religious activities pursuant to any part of this chapter should reference the registration number on all payments and funds transfers and on all related documentation, including all purchasing, shipping, and financing documents.

(4) *Limitations*. Registered NGOs are not authorized to make remittances from blocked accounts. Registration numbers are not transferable and may be revoked or modified at any time at the discretion of the Director, Office of Foreign Assets Control. Registration numbers do not excuse compliance with any law or regulation administered by the Office of Foreign Assets Control or any other agency (including reporting requirements) applicable to the transaction(s) herein authorized, nor does it release the Registrant or third parties from civil or criminal liability for violation of any law or regulation.

(5) *Prior numbers*. Registration numbers already issued remain in effect.

[62 FR 45101, Aug. 25, 1997, as amended at 65 FR 10708, Feb. 29, 2000; 66 FR 2728, Jan. 11, 2001]

§ 501.802 Decisions.

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 501.803 Amendment, modification, or revocation.

Except as otherwise provided by law, the provisions of each part of this chapter and any rulings, licenses (whether general or specific), authorizations, instructions, orders, or forms issued thereunder may be amended, modified or revoked at any time.

[63 FR 35809, July 1, 1998]

§ 501.804 Rulemaking.

(a) All rules and other public documents are issued by the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comment, and delay in effective date.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

§ 501.805 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control which are required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552 and published at 31 CFR part 1.

NOTE TO PARAGRAPH § 501.805(a): Records or information obtained or created in the implementation of part 598 of this chapter are not subject to disclosure under section 552(a)(3) of the Freedom of Information Act. See § 598.802 of this chapter.

(b) The records of the Office of Foreign Assets Control which are required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published at 31 CFR part 1.

(c) Any form issued for use in connection with this chapter may be obtained in person or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220, or by calling 202/622–2480.

(d) *Certain Civil Penalties Information.* (1) After the conclusion of a civil penalties proceeding that results in either the imposition of a civil monetary penalty or an informal settlement, OFAC shall make available to the public certain information on a routine basis, not less frequently than monthly, as follows:

(i) In each such proceeding against an entity, OFAC shall make available to the public

(A) The name and address of the entity involved,

(B) The sanctions program involved,

(C) A brief description of the violation or alleged violation,

(D) A clear indication whether the proceeding resulted in an informal settlement or in the imposition of a penalty,

(E) An indication whether the entity voluntarily disclosed the violation or alleged violation to OFAC, and

(F) The amount of the penalty imposed or the amount of the agreed settlement.

(ii) In such proceedings against individuals, OFAC shall release on an aggregate basis

(A) The number of penalties imposed and informal settlements reached,

(B) The sanctions programs involved,

(C) A brief description of the violations or alleged violations,

(D) A clear indication whether the proceedings resulted in informal settlements, in the imposition of penalties, or in administrative hearing requests pursuant to the Trading With the Enemy Act (TWEA), 50 U.S.C. 5(b), and

(E) The amounts of the penalties imposed and the amounts of the agreed settlements.

(2) The medium through which information will be released is OFAC's website at *http://www.treas.gov/ofac.*

(3) The information made available pursuant to paragraph (d)(1) of this section shall not include the following:

(i) The name of any violator or alleged violator who is an individual.

(ii) Records or information obtained or created in the implementation of part 598 of this chapter.

(4) On a case-by-case basis, OFAC may release additional information concerning a particular civil penalties proceeding.

[62 FR 45101, Aug. 25, 1997, as amended at 65 FR 41335, July 5, 2000; 68 FR 6822, Feb. 11, 2003]

§ 501.806 Procedures for unblocking funds believed to have been blocked due to mistaken identity.

When a transaction results in the blocking of funds at a financial institution pursuant to the applicable regulations of this chapter and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the following administrative procedures:

(a) Any person who is a party to the transaction may request the release of funds which the party believes to have been blocked due to mistaken identity.

(b) Requests to release funds which a party believes to have been blocked due to mistaken identity must be made in writing and addressed to the Office of Foreign Assets Control, Compliance Programs Division, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220, or sent by facsimile transmission to the Compliance Programs Division at 202/622–1657.

(c) The written request to release funds must include the name, address, telephone number, and (where available) fax number of the party seeking the release of the funds. For individuals, the inclusion of a social security number is voluntary but will facilitate resolution of the request. For corporations or other entities, the application should include its principal place of business, the state of incorporation or organization, and the name and telephone number of the appropriate person to contact regarding the application.

(d) A request to release funds should include the following information, where known, concerning the transaction:

(1) The name of the financial institution in which the funds are blocked;

(2) The amount blocked;

(3) The date of the blocking;

(4) The identity of the original remitter of the funds and any intermediary financial institutions;

(5) The intended beneficiary of the blocked transfer;

(6) A description of the underlying transaction including copies of related documents (e.g., invoices, bills of lading, promissory notes, etc.);

(7) The nature of the applicant's interest in the funds; and

(8) A statement of the reasons why the applicant believes the funds were blocked due to mistaken identity.

(e) Upon receipt of the materials required by paragraph (d) of this section, OFAC may request additional material from the applicant concerning the transaction pursuant to § 501.602.

(f) Following review of all applicable submissions, the Director of the Office of Foreign Assets Control will determine whether to release the funds. In the event the Director determines that the funds should be released, the Office of Foreign Assets Control will direct the financial institution to return the funds to the appropriate party.

(g) For purposes of this section, the term ''financial institution'' shall include a banking institution, depository institution or United States depository institution, domestic bank, financial institution or U.S. financial institution, as those terms are defined in the applicable part of this chapter.

[62 FR 45101, Aug. 25, 1997, as amended at 62 FR 52495, Oct. 8, 1997]

§ 501.807 Procedures governing delisting from the Specially Designated Nationals and Blocked Persons List.

A person may seek administrative reconsideration of his, her or its designation or that of a vessel as blocked, or assert that the circumstances resulting in the designation no longer apply, and thus seek to have the designation rescinded pursuant to the following administrative procedures:

(a) A person blocked under the provisions of any part of this chapter, including a specially designated national, specially designated terrorist, or specially designated narcotics trafficker (collectively,''a blocked person''), or a person owning a majority interest in a blocked vessel may submit arguments or evidence that the person believes establishes that insufficient basis exists for the designation. The blocked person also may propose remedial steps on the person's part, such as corporate reorganization, resignation of persons from positions in a blocked entity, or similar steps, which the person believes would negate the basis for designation. A person owning a majority interest in a blocked vessel may propose the sale of the vessel, with the proceeds to be placed into a blocked interest-bearing account after deducting the costs incurred while the vessel was blocked and the costs of the sale. This submission must be made in writing and addressed to the Director, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220.

(b) The information submitted by the blocked person seeking unblocking or by a person seeking the unblocking of a vessel will be reviewed by the Office of Foreign Assets Control, which may request clarifying, corroborating, or other additional information.

(c) A blocked person seeking unblocking or a person seeking the unblocking of a vessel may request a meeting with the Office of Foreign Assets Control; however, such meetings are not required, and the office may, at its discretion, decline to conduct such meetings prior to completing a review pursuant to this section.

(d) After the Office of Foreign Assets Control has conducted a review of the request for reconsideration, it will provide a written decision to the blocked person or person seeking the unblocking of a vessel.

[64 FR 5614, Feb. 4, 1999]

§ 501.808 License application and other procedures applicable to economic sanctions programs.

Upon submission to the Office of Management and Budget of an amendment to the overall burden hours for the information collections imposed under this part, the license application and other procedures set forth in this subpart are applicable to economic sanctions programs for which implementation and administration have been delegated to the Office of Foreign Assets Control.

Subpart F—Paperwork Reduction Act

SOURCE: 62 FR 45101, Aug. 25, 1997, unless otherwise noted. Redesignated at 68 FR 53642, Sept. 11, 2003.

§ 501.901 Paperwork Reduction Act notice.

The information collection requirements in subparts C and D have been approved by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act (44 U.S.C. 3507(j)) and assigned control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

APPENDIX A TO PART 501—ECONOMIC SANCTIONS ENFORCEMENT GUIDELINES.

NOTE: This appendix provides a general framework for the enforcement of all economic sanctions programs administered by the Office of Foreign Assets Control (OFAC).

I. DEFINITIONS

A. *Apparent violation* means conduct that constitutes an actual or possible violation of U.S. economic sanctions laws, including the International Emergency Economic Powers Act (IEEPA), the Trading With the Enemy Act (TWEA), the Foreign Narcotics Kingpin Designation Act, and other statutes administered or enforced by OFAC, as well as Executive orders, regulations, orders, directives, or licenses issued pursuant thereto.

B. *Applicable schedule amount* means:

1. $1,000 with respect to a transaction valued at less than $1,000;
2. $10,000 with respect to a transaction valued at $1,000 or more but less than $10,000;
3. $25,000 with respect to a transaction valued at $10,000 or more but less than $25,000;
4. $50,000 with respect to a transaction valued at $25,000 or more but less than $50,000;
5. $100,000 with respect to a transaction valued at $50,000 or more but less than $100,000;
6. $170,000 with respect to a transaction valued at $100,000 or more but less than $170,000;
7. $250,000 with respect to a transaction valued at $170,000 or more, except that where the applicable schedule amount as defined above exceeds the statutory maximum civil penalty amount applicable to an apparent violation, the applicable schedule amount shall equal such applicable statutory maximum civil penalty amount.

C. *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

D. *Penalty* is the final civil penalty amount imposed in a Penalty Notice.

E. *Proposed penalty* is the civil penalty amount set forth in a Pre-Penalty Notice.

F. *Regulator* means any Federal, State, local or foreign official or agency that has authority to license or examine an entity for compliance with federal, state, or foreign law.

G. *Subject Person* means an individual or entity subject to any of the sanctions programs administered or enforced by OFAC.

H. *Transaction value* means the dollar value of a subject transaction. In export and import cases, the transaction value generally will be the domestic value in the United States of the goods, technology, or services sought to be exported from or imported into the United States, as demonstrated by commercial invoices, bills of lading, signed Customs declarations, or similar documents. In cases involving seizures by U.S. Customs and Border Protection (CBP), the transaction value generally will be the domestic value as determined by CBP. If the apparent violation at issue is a prohibited dealing in blocked property by a Subject Person, the transaction value generally will be the dollar value of the underlying transaction involved, such as the value of the property dealt in or the amount of the funds transfer that a financial institution failed to block or reject. Where the transaction value is not otherwise ascertainable, OFAC may consider the market value of the goods or services that were the subject of the transaction, the economic benefit conferred on the sanctioned party, and/or the economic benefit derived by the Subject Person from the transaction, in determining transaction value. For purposes of these Guidelines, ''transaction value'' will not necessarily have the same meaning, nor be applied in the same manner, as that term is used for import valuation purposes at 19 CFR 152.103.

I. *Voluntary self-disclosure* means self-initiated notification to OFAC of an apparent violation by a Subject Person that has committed, or otherwise participated in, an apparent violation of a statute, Executive order, or regulation administered or enforced by OFAC, prior to or at the same time that OFAC, or any other federal, state, or local government agency or official, discovers the apparent violation or another substantially similar apparent violation. For these purposes, ''substantially similar apparent violation'' means an apparent violation that is part of a series of similar apparent violations or is related to the same pattern or practice of conduct. Notification of an apparent violation to another government agency (but not to OFAC) by a Subject Person, which is considered a voluntary self-disclosure by that agency, may be considered a voluntary

self-disclosure by OFAC, based on a case-by-case assessment. Notification to OFAC of an apparent violation is not a voluntary self-disclosure if: a third party is required to and does notify OFAC of the apparent violation or a substantially similar apparent violation because a transaction was blocked or rejected by that third party (regardless of when OFAC receives such notice from the third party and regardless of whether the Subject Person was aware of the third party's disclosure); the disclosure includes false or misleading information; the disclosure (when considered along with supplemental information provided by the Subject Person) is materially incomplete; the disclosure is not self-initiated (including when the disclosure results from a suggestion or order of a federal or state agency or official); or, when the Subject Person is an entity, the disclosure is made by an individual in a Subject Person entity without the authorization of the entity's senior management. Responding to an administrative subpoena or other inquiry from, or filing a license application with, OFAC is not a voluntary self-disclosure. In addition to notification, a voluntary self-disclosure must include, or be followed within a reasonable period of time by, a report of sufficient detail to afford a complete understanding of an apparent violation's circumstances, and should also be followed by responsiveness to any follow-up inquiries by OFAC. (As discussed further below, a Subject Person's level of cooperation with OFAC is an important factor in determining the appropriate enforcement response to an apparent violation even in the absence of a voluntary self-disclosure as defined herein; disclosure by a Subject Person generally will result in mitigation insofar as it represents cooperation with OFAC's investigation.)

II. Types of Responses to Apparent Violations

Depending on the facts and circumstances of a particular case, an OFAC investigation may lead to one or more of the following actions:

A. *No Action*. If OFAC determines that there is insufficient evidence to conclude that a violation has occurred and/or, based on an analysis of the General Factors outlined in Section III of these Guidelines, concludes that the conduct does not rise to a level warranting an administrative response, then no action will be taken. In those cases in which OFAC is aware that the Subject Person has knowledge of OFAC's investigation, OFAC generally will issue a letter to the Subject Person indicating that the investigation is being closed with no administrative action being taken. A no-action determination represents a final determination as to the apparent violation, unless OFAC later learns of additional related violations or other relevant facts.

B. *Request Additional Information*. If OFAC determines that additional information regarding the apparent violation is needed, it may request further information from the Subject Person or third parties, including through an administrative subpoena issued pursuant to 31 CFR 501.602. In the case of an institution subject to regulation where OFAC has entered into a Memorandum of Understanding (MOU) with the Subject Person's regulator, OFAC will follow the procedures set forth in such MOU regarding consultation with the regulator. Even in the absence of an MOU, OFAC may seek relevant information about a regulated institution and/or the conduct constituting the apparent violation from the institution's federal, state, or foreign regulator. Upon receipt of information determined to be sufficient to assess the apparent violation, OFAC will decide, based on an analysis of the General Factors outlined in Section III of these Guidelines, whether to pursue further enforcement action or whether some other response to the apparent violation is appropriate.

C. *Cautionary Letter:* If OFAC determines that there is insufficient evidence to conclude that a violation has occurred or that a Finding of Violation or a civil monetary penalty is not warranted under the circumstances, but believes that the underlying conduct could lead to a violation in other circumstances and/or that a Subject Person does not appear to be exercising due diligence in assuring compliance with the statutes, Executive orders, and regulations that OFAC enforces, OFAC may issue a cautionary letter, which may convey OFAC's concerns about the underlying conduct and/or the Subject Person's OFAC compliance policies, practices and/or procedures. A cautionary letter represents a final enforcement response to the apparent violation, unless OFAC later learns of additional related violations or other relevant facts, but does not constitute a final agency determination as to whether a violation has occurred.

D. *Finding of Violation:* If OFAC determines that a violation has occurred and considers it important to document the occurrence of a violation and, based on an analysis of the General Factors outlined in Section III of these Guidelines, concludes that the Subject Person's conduct warrants an administrative response but that a civil monetary penalty is not the most appropriate response, OFAC may issue a Finding of Violation that identifies the violation. A Finding of Violation may also convey OFAC's concerns about the violation and/or the Subject Person's OFAC compliance policies, practices and/or procedures, and/or identify the need for further compliance steps to be taken. A Finding of

Violation represents a final enforcement response to the violation, unless OFAC later learns of additional related violations or other relevant facts, and constitutes a final agency determination that a violation has occurred. A Finding of Violation will afford the Subject Person an opportunity to respond to OFAC's determination that a violation has occurred before that determination becomes final. In the event a Subject Person so responds, the initial Finding of Violation will not constitute a final agency determination that a violation has occurred. In such cases, after considering the response received, OFAC will inform the Subject Person of its final enforcement response to the apparent violation.

E. *Civil Monetary Penalty*. If OFAC determines that a violation has occurred and, based on an analysis of the General Factors outlined in Section III of these Guidelines, concludes that the Subject Person's conduct warrants the imposition of a monetary penalty, OFAC may impose a civil monetary penalty. Civil monetary penalty amounts will be determined as discussed in Section V of these Guidelines. The imposition of a civil monetary penalty constitutes a final agency determination that a violation has occurred and represents a final civil enforcement response to the violation. OFAC will afford the Subject Person an opportunity to respond to OFAC's determination that a violation has occurred before a final penalty is imposed.

F. *Criminal Referral*. In appropriate circumstances, OFAC may refer the matter to appropriate law enforcement agencies for criminal investigation and/or prosecution. Apparent sanctions violations that OFAC has referred for criminal investigation and/or prosecution also may be subject to OFAC civil penalty or other administrative action.

G. *Other Administrative Actions*. In addition to or in lieu of other administrative actions, OFAC may also take the following administrative actions in response to an apparent violation:

1. *License Denial, Suspension, Modification, or Revocation*. OFAC authorizations to engage in a transaction (including the release of blocked funds) pursuant to a general or specific license may be withheld, denied, suspended, modified, or revoked in response to an apparent violation.

2. *Cease and Desist Order*. OFAC may order the Subject Person to cease and desist from conduct that is prohibited by any of the sanctions programs enforced by OFAC when OFAC has reason to believe that a Subject Person has engaged in such conduct and/or that such conduct is ongoing or may recur.

III. General Factors Affecting Administrative Action

As a general matter, OFAC will consider some or all of the following General Factors in determining the appropriate administrative action in response to an apparent violation of U.S. sanctions by a Subject Person, and, where a civil monetary penalty is imposed, in determining the appropriate amount of any such penalty:

A. *Willful or Reckless Violation of Law:* a Subject Person's willfulness or recklessness in violating, attempting to violate, conspiring to violate, or causing a violation of the law. Generally, to the extent the conduct at issue is the result of willful conduct or a deliberate intent to violate, attempt to violate, conspire to violate, or cause a violation of the law, the OFAC enforcement response will be stronger. Among the factors OFAC may consider in evaluating willfulness or recklessness are:

1. *Willfulness*. Was the conduct at issue the result of a decision to take action with the knowledge that such action would constitute a violation of U.S. law? Did the Subject Person know that the underlying conduct constituted, or likely constituted, a violation of U.S. law at the time of the conduct?

2. *Recklessness*. Did the Subject Person demonstrate reckless disregard for U.S. sanctions requirements or otherwise fail to exercise a minimal degree of caution or care in avoiding conduct that led to the apparent violation? Were there warning signs that should have alerted the Subject Person that an action or failure to act would lead to an apparent violation?

3. *Concealment*. Was there an effort by the Subject Person to hide or purposely obfuscate its conduct in order to mislead OFAC, Federal, State, or foreign regulators, or other parties involved in the conduct about an apparent violation?

4. *Pattern of Conduct*. Did the apparent violation constitute or result from a pattern or practice of conduct or was it relatively isolated and atypical in nature?

5. *Prior Notice*. Was the Subject Person on notice, or should it reasonably have been on notice, that the conduct at issue, or similar conduct, constituted a violation of U.S. law?

6. *Management Involvement*. In cases of entities, at what level within the organization did the willful or reckless conduct occur? Were supervisory or managerial level staff aware, or should they reasonably have been aware, of the willful or reckless conduct?

B. *Awareness of Conduct at Issue:* the Subject Person's awareness of the conduct giving rise to the apparent violation. Generally, the greater a Subject Person's actual knowledge of, or reason to know about, the conduct constituting an apparent violation, the stronger the OFAC enforcement response will be. In the case of a corporation, awareness will focus on supervisory or managerial level staff in the business unit at issue, as well as other senior officers and managers. Among the factors OFAC may consider in evaluating the Subject Person's awareness of the conduct at issue are:

1. *Actual Knowledge*. Did the Subject Person have actual knowledge that the conduct giving rise to an apparent violation took place? Was the conduct part of a business process, structure or arrangement that was designed or implemented with the intent to prevent or shield the Subject Person from having such actual knowledge, or was the conduct part of a business process, structure or arrangement implemented for other legitimate reasons that made it difficult or impossible for the Subject Person to have actual knowledge?

2. *Reason to Know*. If the Subject Person did not have actual knowledge that the conduct took place, did the Subject Person have reason to know, or should the Subject Person reasonably have known, based on all readily available information and with the exercise of reasonable due diligence, that the conduct would or might take place?

3. *Management Involvement*. In the case of an entity, was the conduct undertaken with the explicit or implicit knowledge of senior management, or was the conduct undertaken by personnel outside the knowledge of senior management? If the apparent violation was undertaken without the knowledge of senior management, was there oversight intended to detect and prevent violations, or did the lack of knowledge by senior management result from disregard for its responsibility to comply with applicable sanctions laws?

C. *Harm to Sanctions Program Objectives:* the actual or potential harm to sanctions program objectives caused by the conduct giving rise to the apparent violation. Among the factors OFAC may consider in evaluating the harm to sanctions program objectives are:

1. *Economic or Other Benefit to the Sanctioned Individual, Entity, or Country:* the economic or other benefit conferred or attempted to be conferred to sanctioned individuals, entities, or countries as a result of an apparent violation, including the number, size, and impact of the transactions constituting an apparent violation(s), the length of time over which they occurred, and the nature of the economic or other benefit conferred. OFAC may also consider the causal link between the Subject Person's conduct and the economic benefit conferred or attempted to be conferred.

2. *Implications for U.S. Policy:* the effect that the circumstances of the apparent violation had on the integrity of the U.S. sanctions program and the related policy objectives involved.

3. *License Eligibility:* whether the conduct constituting the apparent violation likely would have been licensed by OFAC under existing licensing policy.

4. *Humanitarian activity:* whether the conduct at issue was in support of a humanitarian activity.

D. *Individual Characteristics:* the particular circumstances and characteristics of a Subject Person. Among the factors OFAC may consider in evaluating individual characteristics are:

1. *Commercial Sophistication:* the commercial sophistication and experience of the Subject Person. Is the Subject Person an individual or an entity? If an individual, was the conduct constituting the apparent violation for personal or business reasons?

2. *Size of Operations and Financial Condition:* the size of a Subject Person's business operations and overall financial condition, where such information is available and relevant. Qualification of the Subject Person as a small business or organization for the purposes of the Small Business Regulatory Enforcement Fairness Act, as determined by reference to the applicable regulations of the Small Business Administration, may also be considered.

3. *Volume of Transactions:* the total volume of transactions undertaken by the Subject Person on an annual basis, with attention given to the apparent violations as compared with the total volume.

4. *Sanctions History:* the Subject Person's sanctions history, including OFAC's issuance of prior penalties, findings of violations or cautionary, warning or evaluative letters, or other administrative actions (including settlements). As a general matter, OFAC will only consider a Subject Person's sanctions history for the five years preceding the date of the transaction giving rise to the apparent violation.

E. *Compliance Program:* the existence, nature and adequacy of a Subject Person's risk-based OFAC compliance program at the time of the apparent violation, where relevant. In the case of an institution subject to regulation where OFAC has entered into a Memorandum of Understanding (MOU) with the Subject Person's regulator, OFAC will follow the procedures set forth in such MOU regarding consultation with the regulator with regard to the quality and effectiveness of the Subject Person's compliance program. Even in the absence of an MOU, OFAC may take into consideration the views of federal, state, or foreign regulators, where relevant. Further information about risk-based compliance programs for financial institutions is set forth in the annex hereto.

F. *Remedial Response:* the Subject Person's corrective action taken in response to the apparent violation. Among the factors OFAC may consider in evaluating the remedial response are:

1. The steps taken by the Subject Person upon learning of the apparent violation. Did the Subject Person immediately stop the conduct at issue?

2. In the case of an entity, the processes followed to resolve issues related to the apparent violation. Did the Subject Person discover necessary information to ascertain the causes and extent of the apparent violation, fully and expeditiously? Was senior management fully informed? If so, when?

3. In the case of an entity, whether the Subject Person adopted new and more effective internal controls and procedures to prevent a recurrence of the apparent violation. If the Subject Person did not have an OFAC compliance program in place at the time of the apparent violation, did it implement one upon discovery of the apparent violations? If it did have an OFAC compliance program, did it take appropriate steps to enhance the program to prevent the recurrence of similar violations? Did the entity provide the individual(s) responsible for the apparent violation with additional training, and/or take other appropriate action, to ensure that similar violations do not occur in the future?

4. Where applicable, whether the Subject Person undertook a thorough review to identify other possible violations.

G. *Cooperation with OFAC:* the nature and extent of the Subject Person's cooperation with OFAC. Among the factors OFAC may consider in evaluating cooperation with OFAC are:

1. Did the Subject Person voluntarily self-disclose the apparent violation to OFAC?

2. Did the Subject Person provide OFAC with all relevant information regarding an apparent violation (whether or not voluntarily self-disclosed)?

3. Did the Subject Person research and disclose to OFAC relevant information regarding any other apparent violations caused by the same course of conduct?

4. Was information provided voluntarily or in response to an administrative subpoena?

5. Did the Subject Person cooperate with, and promptly respond to, all requests for information?

6. Did the Subject Person enter into a statute of limitations tolling agreement, if requested by OFAC (particularly in situations where the apparent violations were not immediately notified to or discovered by OFAC, in particularly complex cases, and in cases in which the Subject Person has requested and received additional time to respond to a request for information from OFAC)? If so, the Subject Person's entering into a tolling agreement will be deemed a mitigating factor. NOTE: a Subject Person's refusal to enter into a tolling agreement will not be considered by OFAC as an aggravating factor in assessing a Subject Person's cooperation or otherwise under the Guidelines.

Where appropriate, OFAC will publicly note substantial cooperation provided by a Subject Person.

H. *Timing of apparent violation in relation to imposition of sanctions:* the timing of the apparent violation in relation to the adoption of the applicable prohibitions, particularly if the apparent violation took place immediately after relevant changes in the sanctions program regulations or the addition of a new name to OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List).

I. *Other enforcement action:* other enforcement actions taken by federal, state, or local agencies against the Subject Person for the apparent violation or similar apparent violations, including whether the settlement of alleged violations of OFAC regulations is part of a comprehensive settlement with other federal, state, or local agencies.

J. *Future Compliance/Deterrence Effect:* the impact administrative action may have on promoting future compliance with U.S. economic sanctions by the Subject Person and similar Subject Persons, particularly those in the same industry sector.

K. *Other relevant factors on a case-by-case basis:* such other factors that OFAC deems relevant on a case-by-case basis in determining the appropriate enforcement response and/or the amount of any civil monetary penalty. OFAC will consider the totality of the circumstances to ensure that its enforcement response is proportionate to the nature of the violation.

IV. CIVIL PENALTIES FOR FAILURE TO COMPLY WITH A REQUIREMENT TO FURNISH INFORMATION OR KEEP RECORDS

As a general matter, the following civil penalty amounts shall apply to a Subject Person's failure to comply with a requirement to furnish information or maintain records:

A. The failure to comply with a requirement to furnish information pursuant to 31 CFR 501.602 may result in a penalty in an amount up to $20,000, irrespective of whether any other violation is alleged. Where OFAC has reason to believe that the apparent violation(s) that is the subject of the requirement to furnish information involves a transaction(s) valued at greater than $500,000, a failure to comply with a requirement to furnish information may result in a penalty in an amount up to $50,000, irrespective of whether any other violation is alleged. A failure to comply with a requirement to furnish information may be considered a continuing violation, and the penalties described above may be imposed each month that a party has continued to fail to comply with the requirement to furnish information. OFAC may also seek to have a requirement to furnish information judicially enforced. Imposition of a civil monetary penalty for failure to comply with a requirement to furnish information does not preclude OFAC from seeking such judicial enforcement of the requirement to furnish information.

B. The late filing of a required report, whether set forth in regulations or in a specific license, may result in a civil monetary penalty in an amount up to $2,500, if filed within the first 30 days after the report is due, and a penalty in an amount up to $5,000 if filed more than 30 days after the report is due. If the report relates to blocked assets, the penalty may include an additional $1,000 for every 30 days that the report is overdue, up to five years.

C. The failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license may result in a penalty in an amount up to $50,000.

V. Civil Penalties

OFAC will review the facts and circumstances surrounding an apparent violation and apply the General Factors for Taking Administrative Action in Section III above in determining whether to initiate a civil penalty proceeding and in determining the amount of any civil monetary penalty. OFAC will give careful consideration to the appropriateness of issuing a cautionary letter or Finding of Violation in lieu of the imposition of a civil monetary penalty.

A. Civil Penalty Process

1. *Pre-Penalty Notice.* If OFAC has reason to believe that a sanctions violation has occurred and believes that a civil monetary penalty is appropriate, it will issue a Pre-Penalty Notice in accordance with the procedures set forth in the particular regulations governing the conduct giving rise to the apparent violation. The amount of the proposed penalty set forth in the Pre-Penalty Notice will reflect OFAC's preliminary assessment of the appropriate penalty amount, based on information then in OFAC's possession. The amount of the final penalty may change as OFAC learns additional relevant information. If, after issuance of a Pre-Penalty Notice, OFAC determines that a penalty in an amount that represents an increase of more than 10 percent from the proposed penalty set forth in the Pre-Penalty Notice is appropriate, or if OFAC intends to allege additional violations, it will issue a revised Pre-Penalty Notice setting forth the new proposed penalty amount and/or alleged violations.

a. In general, the Pre-Penalty Notice will set forth the following with respect to the specific violations alleged and the proposed penalties:

i. Description of the alleged violations, including the number of violations and their value, for which a penalty is being proposed;

ii. Identification of the regulatory or other provisions alleged to have been violated;

iii. Identification of the base category (defined below) according to which the proposed penalty amount was calculated and the General Factors that were most relevant to the determination of the proposed penalty amount;

iv. The maximum amount of the penalty to which the Subject Person could be subject under applicable law; and

v. The proposed penalty amount, determined in accordance with the provisions set forth in these Guidelines.

b. The Pre-Penalty Notice will also include information regarding how to respond to the Pre-Penalty Notice including:

i. A statement that the Subject Person may submit a written response to the Pre-Penalty Notice by a date certain addressing the alleged violation(s), the General Factors Affecting Administrative Action set forth in Section III of these Guidelines, and any other information or evidence that the Subject Person deems relevant to OFAC's consideration.

ii. A statement that a failure to respond to the Pre-Penalty Notice may result in the imposition of a civil monetary penalty.

2. *Response to Pre-Penalty Notice.* A Subject Person may submit a written response to the Pre-Penalty Notice in accordance with the procedures set forth in the particular regulations governing the conduct giving rise to the apparent violation. Generally, the response should either agree to the proposed penalty set forth in the Pre-Penalty Notice or set forth reasons why a penalty should not be imposed or, if imposed, why it should be a lesser amount than proposed, with particular attention paid to the General Factors Affecting Administrative Action set forth in Section III of these Guidelines. The response should include all documentary or other evidence available to the Subject Person that supports the arguments set forth in the response. OFAC will consider all relevant materials submitted.

3. *Penalty Notice.* If OFAC receives no response to a Pre-Penalty Notice within the time prescribed in the Pre-Penalty Notice, or if following the receipt of a response to a Pre-Penalty Notice and a review of the information and evidence contained therein OFAC concludes that a civil monetary penalty is warranted, a Penalty Notice generally will be issued in accordance with the procedures set forth in the particular regulations governing the conduct giving rise to the violation. A Penalty Notice constitutes a final agency determination that a violation has occurred. The penalty amount set forth in the Penalty Notice will take into account relevant additional information provided in response to a Pre-Penalty Notice. In the absence of a response to a Pre-Penalty Notice, the penalty amount set forth in the Penalty Notice will generally be the same as the proposed penalty set forth in the Pre-Penalty Notice.

4. *Referral to Financial Management Division*. The imposition of a civil monetary penalty pursuant to a Penalty Notice creates a debt due the U.S. Government. OFAC will advise Treasury's Financial Management Division upon the imposition of a penalty. The Financial Management Division may take follow-up action to collect the penalty assessed if it is not paid within the prescribed time period set forth in the Penalty Notice. In addition or instead, the matter may be referred to the U.S. Department of Justice for appropriate action to recover the penalty.

5. *Final Agency Action*. The issuance of a Penalty Notice constitutes final agency action with respect to the violation(s) for which the penalty is assessed.

B. Amount of Civil Penalty

1. *Egregious case*. In those cases in which a civil monetary penalty is deemed appropriate, OFAC will make a determination as to whether a case is deemed ''egregious'' for purposes of the base penalty calculation. This determination will be based on an analysis of the applicable General Factors. In making the egregiousness determination, OFAC generally will give substantial weight to General Factors A (''willful or reckless violation of law''), B (''awareness of conduct at issue''), C (''harm to sanctions program objectives'') and D (''individual characteristics''), with particular emphasis on General Factors A and B. A case will be considered an ''egregious case'' where the analysis of the applicable General Factors, with a focus on those General Factors identified above, indicates that the case represents a particularly serious violation of the law calling for a strong enforcement response. A determination that a case is ''egregious'' will be made by the Director or Deputy Director.

2. *Pre-Penalty Notice*. The penalty amount proposed in a Pre-Penalty Notice shall generally be calculated as follows, except that neither the base amount nor the proposed penalty will exceed the applicable statutory maximum amount:[6]

a. Base Category Calculation

i. In a non-egregious case, if the apparent violation is disclosed through a voluntary self-disclosure by the Subject Person, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be one-half of the transaction value, capped at a maximum base amount of $125,000 per violation (except in the case of transactions subject to the Trading With the Enemy Act, in which case the base amount of the proposed civil penalty will be capped at the lesser of $125,000 or one-half of the maximum statutory penalty under TWEA, which at the time of publication of these Guidelines equaled $32,500 per violation).

ii. In a non-egregious case, if the apparent violation comes to OFAC's attention by means other than a voluntary self-disclosure, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be the ''applicable schedule amount,'' as defined above (capped at a maximum base amount of $250,000 per violation, or, in the case of transactions subject to the Trading With the Enemy Act, capped at the lesser of $250,000 or the maximum statutory penalty under TWEA, which at the time of publication of these Guidelines equaled a maximum of $65,000 per violation).

iii. In an egregious case, if the apparent violation is disclosed through a voluntary self-disclosure by a Subject Person, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be one-half of the applicable statutory maximum penalty applicable to the violation.

iv. In an egregious case, if the apparent violation comes to OFAC's attention by means other than a voluntary self-disclosure, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be the applicable statutory maximum penalty amount applicable to the violation.

The following matrix represents the base amount of the proposed civil penalty for each category of violation:

[6] For apparent violations identified in the Cuba Penalty Schedule, 68 Fed. Reg. 4429 (Jan. 29, 2003), for which a civil monetary penalty has been deemed appropriate, the base penalty amount shall equal the amount set forth in the Schedule for such violation, except that the base penalty amount shall be reduced by 50% in cases of voluntary self-disclosure.

BASE PENALTY MATRIX

Voluntary Self-Disclosure	Egregious Case: NO	Egregious Case: YES
YES	(1) One-Half of Transaction Value (capped at $125,000 per violation/ $32,500 per TWEA violation)	(3) One-Half of Applicable Statutory Maximum
NO	(2) Applicable Schedule Amount (capped at $250,000 per violation/ $65,000 per TWEA violation)	(4) Applicable Statutory Maximum

Where the base penalty amount would otherwise exceed the statutory maximum civil penalty amount applicable to an apparent violation, the base penalty amount shall equal such applicable statutory maximum amount.

b. Adjustment for Applicable Relevant General Factors

The base amount of the proposed civil penalty may be adjusted to reflect applicable General Factors for Administrative Action set forth in Section III of these Guidelines. Each factor may be considered mitigating or aggravating, resulting in a lower or higher proposed penalty amount. As a general matter, in those cases where the following General Factors are present, OFAC will adjust the base proposed penalty amount in the following manner:

i. In cases involving substantial cooperation with OFAC but no voluntary self-disclosure as defined herein, including cases in which an apparent violation is reported to OFAC by a third party but the Subject Person provides substantial additional information regarding the apparent violation and/or other related violations, the base penalty amount generally will be reduced between 25 and 40 percent. Substantial cooperation in cases involving voluntary self-disclosure may also be considered as a further mitigating factor.

ii. In cases involving a Subject Person's first violation, the base penalty amount generally will be reduced up to 25 percent. An apparent violation generally will be considered a "first violation" if the Subject Person has not received a penalty notice or Finding of Violation from OFAC in the five years preceding the date of the transaction giving rise to the apparent violation. A group of substantially similar apparent violations addressed in a single Pre-Penalty Notice shall be considered as a single violation for purposes of this subsection. In those cases where a prior penalty notice or Finding of Violation within the preceding five years involved conduct of a substantially different nature

from the apparent violation at issue, OFAC may consider the apparent violation at issue a ''first violation.'' In determining the extent of any mitigation for a first violation, OFAC may consider any prior OFAC enforcement action taken with respect to the Subject Person, including any cautionary, warning or evaluative letters issued, or any civil monetary settlements entered into with OFAC.

In all cases, the proposed penalty amount will not exceed the applicable statutory maximum.

In cases involving a large number of apparent violations, where the transaction value of all apparent violations is either unknown or would require a disproportionate allocation of resources to determine, OFAC may estimate or extrapolate the transaction value of the total universe of apparent violations in determining the amount of any proposed civil monetary penalty.

3. *Penalty Notice.* The amount of the proposed civil penalty in the Pre-Penalty Notice will be the presumptive starting point for calculation of the civil penalty amount in the Penalty Notice. OFAC may adjust the penalty amount in the Penalty Notice based on:

a. Evidence presented by the Subject Person in response to the Pre-Penalty Notice, or otherwise received by OFAC with respect to the underlying violation(s); and/or

b. Any modification resulting from further review and reconsideration by OFAC of the proposed civil monetary penalty in light of the General Factors for Administrative Action set forth in Section III above.

In no event will the amount of the civil monetary penalty in the Penalty Notice exceed the proposed penalty set forth in the Pre-Penalty Notice by more than 10 percent, or include additional alleged violations, unless a revised Pre-Penalty Notice has first been sent to the Subject Person as set forth above. In the event that OFAC determines upon further review that no penalty is appropriate, it will so inform the Subject Person in a no-action letter, a cautionary letter, or a Finding of Violation.

C. Settlements

A settlement does not constitute a final agency determination that a violation has occurred.

1. *Settlement Process.* Settlement discussions may be initiated by OFAC, the Subject Person or the Subject Person's authorized representative. Settlements generally will be negotiated in accordance with the principles set forth in these Guidelines with respect to appropriate penalty amounts. OFAC may condition the entry into or continuation of settlement negotiations on the execution of a tolling agreement with respect to the statute of limitations.

2. *Settlement Prior to Issuance of Pre-Penalty Notice.* Where settlement discussions occur prior to the issuance of a Pre-Penalty Notice, the Subject Person may request in writing that OFAC withhold issuance of a Pre-Penalty Notice pending the conclusion of settlement discussions. OFAC will generally agree to such a request as long as settlement discussions are continuing in good faith and the statute of limitations is not at risk of expiring.

3. *Settlement Following Issuance of Pre-Penalty Notice.* If a matter is settled after a Pre-Penalty Notice has been issued, but before a final Penalty Notice is issued, OFAC will not make a final determination as to whether a sanctions violation has occurred. In the event no settlement is reached, the period specified for written response to the Pre-Penalty Notice remains in effect unless additional time is granted by OFAC.

4. *Settlements of Multiple Apparent Violations.* A settlement initiated for one apparent violation may also involve a comprehensive or global settlement of multiple apparent violations covered by other Pre-Penalty Notices, apparent violations for which a Pre-Penalty Notice has not yet been issued by OFAC, or previously unknown apparent violations reported to OFAC during the pendency of an investigation of an apparent violation.

ANNEX

The following matrix can be used by financial institutions to evaluate their compliance programs:

OFAC RISK MATRIX

Low	Moderate	High
Stable, well-known customer base in a localized environment	Customer base changing due to branching, merger, or acquisition in the domestic market.	A large, fluctuating client base in an international environment.
Few high-risk customers; these may include nonresident aliens, foreign customers (including accounts with U.S. powers of attorney), and foreign commercial customers.	A moderate number of high-risk customers	A large number of high-risk customers.
No overseas branches and no correspondent accounts with foreign banks.	Overseas branches or correspondent accounts with foreign banks.	Overseas branches or multiple correspondent accounts with foreign banks.
No electronic services (*e.g.,* e-banking) offered, or products available are purely informational or non-transactional.	The institution offers limited electronic (*e.g.,* e-banking) products and services.	The institution offers a wide array of electronic (*e.g.,* e-banking) products and services (*i.e.,* account transfers, e-bill payment, or accounts opened via the Internet).
Limited number of funds transfers for customers and non-customers, limited third-party transactions, and no international funds transfers.	A moderate number of funds transfers, mostly for customers. Possibly, a few international funds transfers from personal or business accounts.	A high number of customer and non-customer funds transfers, including international funds transfers.
No other types of international transactions, such as trade finance, cross-border ACH, and management of sovereign debt.	Limited other types of international transactions	A high number of other types of international transactions.
No history of OFAC actions. No evidence of apparent violation or circumstances that might lead to a violation.	A small number of recent actions (*i.e.,* actions within the last five years) by OFAC, including notice letters, or civil money penalties, with evidence that the institution addressed the issues and is not at risk of similar violations in the future.	Multiple recent actions by OFAC, where the institution has not addressed the issues, thus leading to an increased risk of the institution undertaking similar violations in the future.
Management has fully assessed the institution's level of risk based on its customer base and product lines. This understanding of risk and strong commitment to OFAC compliance is satisfactorily communicated throughout the organization.	Management exhibits a reasonable understanding of the key aspects of OFAC compliance and its commitment is generally clear and satisfactorily communicated throughout the organization, but it may lack a program appropriately tailored to risk.	Management does not understand, or has chosen to ignore, key aspects of OFAC compliance risk. The importance of compliance is not emphasized or communicated throughout the organization.
The board of directors, or board committee, has approved an OFAC compliance program that includes policies, procedures, controls, and information systems that are adequate, and consistent with the institution's OFAC risk profile.	The board has approved an OFAC compliance program that includes most of the appropriate policies, procedures, controls, and information systems necessary to ensure compliance, but some weaknesses are noted.	The board has not approved an OFAC compliance program, or policies, procedures, controls, and information systems are significantly deficient.
Staffing levels appear adequate to properly execute the OFAC compliance program.	Staffing levels appear generally adequate, but some deficiencies are noted.	Management has failed to provide appropriate staffing levels to handle workload.
Authority and accountability for OFAC compliance are clearly defined and enforced, including the designation of a qualified OFAC officer.	Authority and accountability are defined, but some refinements are needed. A qualified OFAC officer has been designated.	Authority and accountability for compliance have not been clearly established. No OFAC compliance officer, or an unqualified one, has been appointed. The role of the OFAC officer is unclear.
Training is appropriate and effective based on the institution's risk profile, covers applicable personnel, and provides necessary up-to-date information and resources to ensure compliance.	Training is conducted and management provides adequate resources given the risk profile of the organization; however, some areas are not covered within the training program.	Training is sporadic and does not cover important regulatory and risk areas or is nonexistent.
The institution employs strong quality control methods	The institution employs limited quality control methods	The institution does not employ quality control methods.

[74 FR 57601, Nov. 9, 2009]

PART 510—NORTH KOREA SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
510.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

510.201 Prohibited transactions.
510.202 Effect of transfers violating the provisions of this part.
510.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

Subpart C—General Definitions

510.301 Blocked account; blocked property.
510.302 Effective date.
510.303 Entity.
510.304 Interest.
510.305 Licenses; general and specific.
510.306 Person.
510.307 Property; property interest.
510.308 Transfer.
510.309 United States.
510.310 U.S. financial institution.
510.311 United States person; U.S. person.

Subpart D—Interpretations

510.401 [Reserved]
510.402 Effect of amendment.
510.403 Termination and acquisition of an interest in blocked property.
510.404 Transactions ordinarily incident to a licensed transaction authorized.
510.405 Setoffs prohibited.
510.406 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

510.501 General and specific licensing procedures.
510.502 [Reserved]
510.503 Exclusion from licenses.
510.504 Payments and transfers to blocked accounts in U.S. financial institutions.
510.505 Entries in certain accounts for normal service charges authorized.
510.506 Provision of certain legal services authorized.
510.507 Authorization of emergency medical services.

Subparts F–G [Reserved]

Subpart H—Procedures

510.801 Procedures.
510.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

510.901 Paperwork Reduction Act notice.
APPENDIX A TO PART 510—EXECUTIVE ORDER 13466
APPENDIX B TO PART 510—EXECUTIVE ORDER 13551
APPENDIX C TO PART 510—EXECUTIVE ORDER 13570

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13466, 73 FR 36787, June 27, 2008, 3 CFR, 2008 Comp., p. 195; E.O. 13551, 75 FR 53837, September 1, 2010; E.O. 13570, 76 FR 22291, April 20, 2011.

SOURCE: 75 FR 67913, Nov. 4, 2010, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§510.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

NOTE TO §510.101: This part has been published in abbreviated form for the purpose of providing immediate guidance to the public.

OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

Subpart B—Prohibitions

§ 510.201 Prohibited transactions.

(a) All transactions prohibited pursuant to Executive Order 13466 are also prohibited pursuant to this part.

NOTE TO § 510.201(a): The property and interests in property of North Korea or a North Korean national blocked pursuant to this paragraph are referred to throughout this part as ''property and interests in property blocked pursuant to § 510.201(a).''

(b) All transactions prohibited pursuant to Executive Order 13551 are also prohibited pursuant to this part.

NOTE 1 TO § 510.201(b): The names of persons listed in or designated pursuant to Executive Order 13551, whose property and interests in property therefore are blocked pursuant to paragraph (b) of this section, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[DPRK].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 510.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (b) of this section.

NOTE 2 TO § 510.201(b): The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (b) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–DPRK].''

(c) All transactions prohibited pursuant to Executive Order 13570 are also prohibited pursuant to this part.

NOTE TO § 510.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of the status of their property and interests in property as blocked pursuant to § 501.201(a) or of their status as persons whose property and interests in property are blocked pursuant to § 510.201(b).

[75 FR 67913, Nov. 4, 2010, as amended at 76 FR 35741, June 20, 2011; 76 FR 38535, June 30, 2011]

§ 510.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 510.201 is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interest.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 510.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13466, Executive Order 13551, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such

property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF §510.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property or interest in property blocked pursuant to §510.201.

§510.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to §510.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to §510.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to §510.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to North Korea or any North Korean national who has property or interests in property blocked pursuant to § 510.201(a) or any person whose property and interests in property are blocked pursuant to § 510.201(b), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

Subpart C—General Definitions

§ 510.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 510.201, and either blocked pursuant to § 510.201(a) or held in the name of a person whose property and interests in property are blocked pursuant to § 510.201(b), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

NOTE TO § 510.301: See § 510.406 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 510.201.

§ 510.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to property and interests in property blocked pursuant to E.O. 13466, June 26, 2008;

NOTE TO PARAGRAPH (a): Prior to June 26, 2008, all property and interests in property currently blocked pursuant to E.O. 13466 were blocked pursuant to 31 CFR part 500.

(b) With respect to a person listed in the Annex to E.O. 13551, 12:01 p.m. eastern daylight time, August 30, 2010;

(c) With respect to a person whose property and interests in property are otherwise blocked pursuant to E.O. 13551, the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked; or

(d) With respect to E.O. 13570, 12:01 a.m. eastern daylight time, April 19, 2011.

[75 FR 67913, Nov. 4, 2010, as amended at 76 FR 35741, June 20, 2011]

§ 510.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 510.304 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (e.g., ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 510.305 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 510.305: See § 501.801 of this chapter on licensing procedures.

§ 510.306 Person.

The term *person* means an individual or entity.

§ 510.307 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any

rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 510.308 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 510.309 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 510.310 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 510.311 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 510.401 [Reserved]

§ 510.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in this part, any provision in or appendix to this chapter, or any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control

does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 510.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 510.201, unless there exists in the property another interest that is blocked pursuant to § 510.201 or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 510.201(b), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 510.404 Transactions ordinarily incident to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 510.201(b); or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 510.405 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 510.201 if effected after the effective date.

§ 510.406 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 510.201(b) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 510.201(b), regardless of whether the entity itself is listed in the Annex or designated pursuant to Executive Order 13551.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 510.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[76 FR 35741, June 20, 2011]

§ 510.502 [Reserved]

§ 510.503 Exclusion from licenses.

The Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 510.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 510.201(b) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

NOTE TO § 510.504: See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 510.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 510.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, Internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 510.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 510.201(b) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 510.201(b), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 510.201 is prohibited unless licensed pursuant to this part.

§ 510.507 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 510.201(b) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subparts F–G [Reserved]

Subpart H—Procedures

§ 510.801 Procedures

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

[76 FR 35741, June 20, 2011]

§ 510.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13466 of June 26, 2008 (73 FR 36787, June 27, 2008), Executive Order 13551 of August 30, 2010 (75 FR 53837, September 1, 2010), Executive Order 13570 of April 18, 2011 (76 FR 22291, April 20, 2011), and any further Executive orders relating to the national emergency declared in Executive Order 13466 may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

[76 FR 35741, June 20, 2011]

Subpart I—Paperwork Reduction Act

§ 510.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

APPENDIX A TO PART 510—EXECUTIVE ORDER 13466

Executive Order 13466 of June 26, 2008

Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code, I, GEORGE W. BUSH, President of the United States of America, find that the current existence and risk of the proliferation of weapons-usable fissile material on the Korean Peninsula constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby declare a national emergency to deal with that threat. I further find that, as we deal with that threat through multilateral diplomacy, it is necessary to continue certain restrictions with respect to North Korea that would otherwise be lifted pursuant to a forthcoming proclamation that will terminate the exercise of authorities under the Trading With the Enemy Act (50 U.S.C. App. 1 *et seq.*) (TWEA) with respect to North Korea.

Accordingly, I hereby order:

Section 1. Except to the extent provided in statutes or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order, the following are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

All property and interests in property of North Korea or a North Korean national that, pursuant to the President's authorities under the TWEA, the exercise of which has been continued in accordance with section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), were blocked as of June 16, 2000, and remained blocked immediately prior to the date of this order.

Sec. 2. Except to the extent provided in statutes or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order, United States persons may not register a vessel in North Korea, obtain authorization for a vessel to fly the North Korean flag, or own, lease, operate, or insure any vessel flagged by North Korea.

Sec. 3. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate

any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 4. For the purposes of this order:

(a) The term ''person'' means an individual or entity;

(b) The term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) The term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 5. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 7. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

George W. Bush,
THE WHITE HOUSE,
June 26, 2008.

APPENDIX B TO PART 510—EXECUTIVE ORDER 13551

Executive Order 13551 of August 30, 2010

Blocking Property of Certain Persons With Respect to North Korea

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945 (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code; in view of United Nations Security Council Resolution (UNSCR) 1718 of October 14, 2006, and UNSCR 1874 of June 12, 2009; and to take additional steps with respect to the situation in North Korea.

I, BARACK OBAMA, President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13466 of June 26, 2008, finding that the continued actions and policies of the Government of North Korea, manifested most recently by its unprovoked attack that resulted in the sinking of the Republic of Korea Navy ship Cheonan and the deaths of 46 sailors in March 2010; its announced test of a nuclear device and its missile launches in 2009; its actions in violation of UNSCRs 1718 and 1874, including the procurement of luxury goods; and its illicit and deceptive activities in international markets through which it obtains financial and other support, including money laundering, the counterfeiting of goods and currency, bulk cash smuggling, and narcotics trafficking, destabilize the Korean peninsula and imperil U.S. Armed Forces, allies, and trading partners in the region, and thereby constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.

I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) The persons listed in the Annex to this order; and

(ii) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) To have, directly or indirectly, imported, exported, or reexported to, into, or from North Korea any arms or related materiel;

(B) To have, directly or indirectly, provided training, advice, or other services or assistance, or engaged in financial transactions, related to the manufacture, maintenance, or use of any arms or related materiel to be imported, exported, or reexported to, into, or from North Korea, or following their importation, exportation, or reexportation to, into, or from North Korea;

(C) To have, directly or indirectly, imported, exported, or reexported luxury goods to or into North Korea;

(D) To have, directly or indirectly, engaged in money laundering, the counterfeiting of

goods or currency, bulk cash smuggling, narcotics trafficking, or other illicit economic activity that involves or supports the Government of North Korea or any senior official thereof;

(E) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the activities described in subsections (a)(ii)(A)–(D) of this section or any person whose property and interests in property are blocked pursuant to this order;

(F) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order; or (G) to have attempted to engage in any of the activities described in subsections (a)(ii)(A)–(F) of this section.

(b) I hereby determine that, to the extent section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the types of articles specified in such section by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13466 and expanded in scope in this order, and I hereby prohibit such donations as provided by subsection (a) of this section.

(c) The prohibitions in subsection (a) of this section include, but are not limited to:

(i) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(ii) The receipt of any contribution or provision of funds, goods, or services from any such person.

(d) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. The provisions of Executive Order 13466 remain in effect, and this order does not affect any action taken pursuant to that order.

Sec. 4. For the purposes of this order:

(a) The term ''person'' means an individual or entity;

(b) The term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) The term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) The term ''North Korea'' includes the territory of the Democratic People's Republic of Korea and the Government of North Korea;

(e) The term ''Government of North Korea'' means the Government of the Democratic People's Republic of Korea, its agencies, instrumentalities, and controlled entities; and

(f) The term ''luxury goods'' includes those items listed in 15 CFR 746.4(b)(l) and Supplement No. 1 to part 746 and similar items.

Sec. 5. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13466 and expanded in scope in this order, there need be no prior notice of a listing or determination made pursuant to section 1(a) of this order.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine that circumstances no longer warrant the blocking of the property and interests in property of a person listed in the Annex to this order, and to take necessary action to give effect to that determination.

Sec. 8. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United

States, its departments, agencies, or entities, its officers, employees, agents, or any other person.

Sec. 9. This order is effective at 12:01 p.m., eastern daylight time on August 30, 2010.

Barack Obama,
THE WHITE HOUSE,
August 30, 2010.

ANNEX

Individual

1. KIM Yong Chol [born 1946 or 1947]

Entities

1. Green Pine Associated Corporation
2. Reconnaissance General Bureau
3. Office 39

APPENDIX C TO PART 510—EXECUTIVE ORDER 13570

EXECUTIVE ORDER 13570 OF APRIL 18, 2011

Prohibiting Certain Transactions With Respect to North Korea

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945 (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution (UNSCR) 1718 of October 14, 2006, and UNSCR 1874 of June 12, 2009,

I, BARACK OBAMA, President of the United States of America, in order to take additional steps to address the national emergency declared in Executive Order 13466 of June 26, 2008, and expanded in Executive Order 13551 of August 30, 2010, that will ensure implementation of the import restrictions contained in UNSCRs 1718 and 1874 and complement the import restrictions provided for in the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), hereby order:

SECTION 1. Except to the extent provided in statutes or in licenses, regulations, orders, or directives that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order, the importation into the United States, directly or indirectly, of any goods, services, or technology from North Korea is prohibited.

SEC. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

SEC. 3. The provisions of Executive Orders 13466 and 13551 remain in effect, and this order does not affect any action taken pursuant to those orders.

SEC. 4. For the purposes of this order:

(a) The term ''person'' means an individual or entity;

(b) The term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) The term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) The term ''North Korea'' includes the territory of the Democratic People's Republic of Korea and the Government of North Korea; and

(e) The term ''Government of North Korea'' means the Government of the Democratic People's Republic of Korea, its agencies, instrumentalities, and controlled entities.

SEC. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

SEC. 6. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 7. This order is effective at 12:01 a.m. eastern daylight time on April 19, 2011.

Barack Obama,

THE WHITE HOUSE,

April 18, 2011.

[76 FR 35741, June 20, 2011]

PART 515—CUBAN ASSETS CONTROL REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
515.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

515.201 Transactions involving designated foreign countries or their nationals; effective date.
515.202 Transactions with respect to securities registered or inscribed in the name of a designated national.
515.203 Effect of transfers violating the provisions of this part.
515.204 Importation of and dealings in certain merchandise.
515.205 Holding of certain types of blocked property in interest-bearing accounts.
515.206 Exempt transactions.
515.207 Entry of vessels engaged in trade with Cuba.
515.208 Restrictions on loans, credits and other financing.

Subpart C—General Definitions

515.301 Foreign country.
515.302 National.
515.303 Nationals of more than one foreign country.
515.305 Designated national.
515.306 Specially designated national.
515.307 Unblocked national.
515.308 Person.
515.309 Transactions.
515.310 Transfer.
515.311 Property; property interests.
515.312 Interest.
515.313 Property subject to the jurisdiction of the United States.
515.314 Banking institution.
515.316 License.
515.317 General license.
515.318 Specific license.
515.319 Blocked account.
515.320 Domestic bank.
515.321 United States; continental United States.
515.322 Authorized trade territory; member of the authorized trade territory.
515.323 Occupied area.
515.325 National securities exchange.
515.326 Custody of safe deposit boxes.
515.327 Blocked estate of a decedent.
515.329 Person subject to the jurisdiction of the United States.
515.330 Person within the United States.
515.331 Merchandise.
515.332 Information and informational materials.
515.333 Depository institution.
515.334 United States national.
515.335 Permanent resident alien.
515.336 Confiscated.
515.337 Prohibited officials of the Government of Cuba.
515.338 Prohibited members of the Cuban Communist Party.
515.339 Close relative.

Subpart D—Interpretations

515.401 Reference to amended sections.
515.402 Effect of amendment of sections of this part or of other orders, etc.
515.403 Termination and acquisition of the interest of a designated national.
515.404 Transactions between principal and agent.
515.405 Exportation of securities, currency, checks, drafts and promissory notes.
515.406 Drafts under irrevocable letters of credit; documentary drafts.
515.407 Administration of blocked estates of decedents.
515.408 Access to certain safe deposit boxes prohibited.
515.409 Certain payments to a designated foreign country and nationals through third countries.
515.410 Dealing abroad in Cuban origin commodities.
515.411—515.413 [Reserved]
515.415 Travel to Cuba; transportation of certain Cuban nationals.
515.416–515.419 [Reserved]
515.420 Travel to Cuba.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

515.501 General and specific licensing procedures.
515.502 Effect of subsequent license or authorization.
515.503 Exclusion from licenses and authorizations.
515.504 Certain judicial proceedings with respect to property of designated nationals.
515.505 Certain Cuban nationals unblocked; transactions of certain other Cuban nationals lawfully present in the United States; transactions with Cuban nationals who have taken up permanent residence outside of Cuba.
515.506–515.507 [Reserved]
515.508 Payments to blocked accounts in domestic banks.
515.509 Entries in certain accounts for normal service charges.
515.510 Payments to the United States, States and political subdivisions.
515.511 Transactions by certain business enterprises.
515.512 Provision of certain legal services authorized.

515.513 Purchase and sale of certain securities.
515.514 Payment of dividends and interest on and redemption and collection of securities.
515.515 Transfers of securities to blocked accounts in domestic banks.
515.516 Voting and soliciting of proxies on securities.
515.517 Access to safe deposit boxes under certain conditions.
515.518 [Reserved]
515.519 Limited payments from accounts of United States citizens abroad.
515.520 Payments from accounts of United States citizens in employ of United States in foreign countries and certain other persons.
515.521 U.S. assets of certain Cuban corporations.
515.522 U.S. assets of certain Cuban decedents.
515.523 Transactions incident to the administration of decedents' estates.
515.524 Payment from, and transactions in the administration of certain trusts and estates.
515.525 Certain transfers by operation of law.
515.526 Transactions involving blocked life insurance policies.
515.527 Certain transactions with respect to United States intellectual property.
515.528 Certain transactions with respect to blocked foreign intellectual property.
515.529 Powers of attorney.
515.530 Exportation of powers of attorney or instructions relating to certain types of transactions.
515.531 Payment of certain checks and drafts.
515.532 Completion of certain securities transactions.
515.533 Transactions incident to exportations from the United States and reexportations of 100% U.S.-origin items to Cuba; negotiation of executory contracts.
515.535 Exchange of certain securities.
515.536 Certain transactions with respect to merchandise affected by § 515.204.
515.540 [Reserved]
515.542 Mail and telecommunications-related transactions.
515.543 Proof of origin.
515.544 Gifts of Cuban origin goods.
515.545 Transactions related to information and informational materials.
515.546 Accounts of Cuban sole proprietorships.
515.547 Research samples.
515.548 Services rendered by Cuba to United States aircraft.
515.549 Bank accounts and other property of non-Cuban citizens who were in Cuba on or after July 8, 1963.
515.550 Certain vessel transactions authorized.
515.551 Joint bank accounts.
515.552 Proceeds of insurance policies.
515.553 Bank accounts of official representatives in Cuba of foreign governments.
515.554 Transfers of abandoned property under State laws.
515.555 Assets of Cuban firms wholly or substantially owned by U.S. citizens.
515.556 [Reserved]
515.557 Accounts of Cuban partnerships.
515.558 Bunkering of Cuban vessels and fueling of Cuban aircraft by American-owned or controlled foreign firms.
515.559 Certain transactions by U.S.-owned or controlled foreign firms with Cuba.
515.560 Travel-related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction.
515.561 Persons visiting close relatives in Cuba.
515.562 Officials of the U.S. government, foreign governments, and certain intergovernmental organizations traveling to, from, and within Cuba on official business.
515.563 Journalistic activities in Cuba.
515.564 Professional research and professional meetings in Cuba.
515.565 Educational activities.
515.566 Religious activities in Cuba.
515.567 Public performances, clinics, workshops, athletic and other competitions, and exhibitions.
515.568 [Reserved]
515.569 Foreign passengers' baggage.
515.570 Remittances.
515.571 Certain transactions incident to travel to, from, and within the United States by Cuban nationals.
515.572 Authorization of transactions incident to the provision of travel services, carrier services, and remittance forwarding services.
515.573 Transactions by news organizations.
515.574 Support for the Cuban people.
515.575 Humanitarian projects.
515.576 Activities of private foundations or research or educational institutes.
515.577 Authorized transactions necessary and ordinarily incident to publishing.
515.578 Exportation of certain services incident to Internet-based communications.

Subpart F—Reports

515.601 Records and reports.

Subpart G—Penalties

515.701 Penalties.

Subpart H—Procedures

515.801 Procedures.
515.802 Delegation by the Secretary of the Treasury.

515.803 Customs procedures; merchandise specified in § 515.204.

Subpart I—Miscellaneous Provisions

515.901 Paperwork Reduction Act notice.

AUTHORITY: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. App 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–114, 110 Stat. 785 (22 U.S.C. 6021–6091); Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

SOURCE: 28 FR 6974, July 9, 1963, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 515.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. No license or authorization contained in or issued pursuant to one of those parts, or any other provision of law, authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction prohibited by any law other than the Trading With the Enemy Act, 50 U.S.C. App. 5(b), as amended, the Foreign Assistance Act of 1961, 22 U.S.C. 2370, or any proclamation, order, regulation or license issued pursuant thereto.

[50 FR 27437, July 3, 1985, as amended at 62 FR 45106, Aug. 25, 1997]

Subpart B—Prohibitions

§ 515.201 Transactions involving designated foreign countries or their nationals; effective date.

(a) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if either such transactions are by, or on behalf of, or pursuant to the direction of a foreign country designated under this part, or any national thereof, or such transactions involve property in which a foreign country designated under this part, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All transfers of credit and all payments between, by, through, or to any banking institution or banking institutions wheresoever located, with respect to any property subject to the jurisdiction of the United States or by any person (including a banking institution) subject to the jurisdiction of the United States;

(2) All transactions in foreign exchange by any person within the United States; and

(3) The exportation or withdrawal from the United States of gold or silver coin or bullion, currency or securities, or the earmarking of any such property, by any person within the United States.

(b) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if such transactions involve property in which any foreign country designated under this part, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All dealings in, including, without limitation, transfers, withdrawals, or exportations of, any property or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States; and

(2) All transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States.

(c) Any transaction for the purpose or which has the effect of evading or avoiding any of the prohibitions set

forth in paragraph (a) or (b) of this section is hereby prohibited.

(d) For the purposes of this part, the term *foreign country designated under this part* and the term *designated foreign country* mean Cuba and the term *effective date* and the term *effective date of this section* mean with respect to Cuba, or any national thereof, 12:01 a.m., e.s.t., July 8, 1963.

(e) When a transaction results in the blocking of funds at a banking institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

[28 FR 6974, July 9, 1963, as amended at 62 FR 45106, Aug. 25, 1997]

§ 515.202 Transactions with respect to securities registered or inscribed in the name of a designated national.

Unless authorized by a license expressly referring to this section, the acquisition, transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on or otherwise dealing in any security (or evidence thereof) registered or inscribed in the name of any designated national is prohibited irrespective of the fact that at any time (either prior to, on, or subsequent to the ''effective date'') the registered or inscribed owner thereof may have, or appears to have, assigned, transferred or otherwise disposed of any such security.

§ 515.203 Effect of transfers violating the provisions of this part.

(a) Any transfer after the ''effective date'' which is in violation of any provision of this part or of any regulation, ruling, instruction, license, or other direction or authorization thereunder and involves any property in which a designated national has or has had an interest since such ''effective date'' is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before the ''effective date'' shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property in which a designated national has or has had an interest since the ''effective date'' unless the person with whom such property is held or maintained had written notice of the transfer or by any written evidence had recognized such transfer prior to such ''effective date.''

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Secretary of the Treasury before, during or after a transfer shall validate such transfer or render it enforceable to the same extent as it would be valid or enforceable but for the provisions of section 5(b) of the Trading With the Enemy Act, as amended, and this part and any ruling, order, regulation, direction or instruction issued hereunder.

(d) Transfers of property which otherwise would be null and void, or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void, or unenforceable pursuant to such provisions, as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to the provisions of this part and was not so licensed or authorized or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation or the withholding of material facts or was otherwise fraudulently obtained; and

(3) Promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license or

other direction or authorization thereunder, or

(ii) Such transfer was not licensed or authorized by the Secretary of the Treasury, or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation or the withholding of material facts or was otherwise fraudulently obtained;

the person with whom such property was held or maintained filed with the Treasury Department, Washington, D.C., a report in triplicate setting forth in full the circumstances relating to such transfer. The filing of a report in accordance with the provisions of this paragraph shall not be deemed to be compliance or evidence of compliance with paragraphs (d) (1) and (2) of this section.

(e) Unless licensed or authorized by § 515.504 or otherwise licensed or authorized pursuant to this chapter any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the ''effective date'' there existed the interest of a designated foreign country or national thereof.

(f) For the purpose of this section the term *property* includes gold, silver, bullion, currency, coin, credit, securities (as that term is defined in section 2(1) of the Securities Act of 1933, as amended), bills of exchange, notes, drafts, acceptances, checks, letters of credit, book credits, debts, claims, contracts, negotiable documents of title, mortgages, liens, annuities, insurance policies, options and futures in commodities, and evidences of any of the foregoing. The term *property* shall not, except to the extent indicated, be deemed to include chattels or real property.

[28 FR 6974, July 9, 1963, as amended at 28 FR 7941, Aug. 3, 1963]

§ 515.204 Importation of and dealings in certain merchandise.

(a) Except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, no person subject to the jurisdiction of the United States may purchase, transport, import, or otherwise deal in or engage in any transaction with respect to any merchandise outside the United States if such merchandise:

(1) Is of Cuban origin; or

(2) Is or has been located in or transported from or through Cuba; or

(3) Is made or derived in whole or in part of any article which is the growth, produce or manufacture of Cuba.

(b) [Reserved]

§ 515.205 Holding of certain types of blocked property in interest-bearing accounts.

(a) Except as provided by paragraphs (d), (e) and (f) of this section, or as authorized by the Secretary of the Treasury or his delegate by specific license, any person holding any property included in paragraph (h) of this section is prohibited from holding, withholding, using, transferring, engaging in any transactions involving, or exercising any right, power, or privilege with respect to any such property, unless it is held in an interest-bearing account in a domestic bank.

(b) Any person presently holding property subject to the provisions of paragraph (a) of this section which, as of the effective date of this section, is not being held in accordance with the provisions of that paragraph shall transfer such property to or hold such property or cause such property to be held in an interest-bearing account in any domestic bank within 30 days of the effective date of this section.

(c) Any person holding any checks or drafts subject to the provisions of § 515.201 is authorized and directed, wherever possible consistent with state law (except as otherwise specifically provided in paragraph (c)(3) of this section), to negotiate or present for collection or payment such instruments and credit the proceeds to interest-bearing accounts. Any transaction by any person incident to the negotiation, processing. presentment, collection or payment of such instruments and deposit of the proceeds into an interest-bearing account is hereby authorized: *Provided that:*

(1) The transaction does not represent, directly or indirectly, a transfer of the interest of a designated national to any other country or person;

(2) The proceeds are held in a blocked account indicating the designated national who is the payee or owner of the instrument; and,

(3) In the case of a blocked check or draft which has been purchased by the maker/drawer from the drawee bank (e.g., cashier's check, money order, or traveler's check) or which is drawn against a presently existing account, such bank, on presentment of the instrument in accordance with the provisions of this section, shall either:

(i) Pay the instrument (subject to paragraphs (c)(1) and (2) of this section) or

(ii) Credit a blocked account on its books with the amount payable on the instrument.

In either event, the blocked account shall be identified as resulting from the proceeds of a blocked check or draft, and the identification shall include a reference to the names of both the maker and payee of the instrument.

(d) Property subject to the provisions of paragraph (a) or (b) of this section, held by a person claiming a set-off against such property, is exempt from the provisions of paragraphs (a), (b) and (c) of this section to the extent of the set-off: *Provided however*, That interest shall be due from 30 days after the effective date of this section if it should ultimately be determined that the claim to a set-off is without merit.

(e) Property subject to the provisions of paragraphs (a) and (b) of this section, held in a customer's account by a registered broker/dealer in securities, may continue to be held for the customer by the broker/dealer provided interest is credited to the account on any balance not invested in securities in accordance with §515.513. The interest paid on such accounts by a broker/dealer who does not elect to hold such property for a customer's account in a domestic bank shall not be less than the maximum rate payable on the shortest time deposit available in any domestic bank in the jurisdiction in which the broker/dealer holds the account.

(f) Property subject to the provisions of paragraphs (a) and (b) of this section, held by a state agency charged with the custody of abandoned or unclaimed property under §515.554 may continue to be held by the agency provided interest is credited to the blocked account in which the property is held by the agency, or the property is held by the agency in a blocked account in a domestic bank. The interest credited to such accounts by an agency which does not elect to hold such property in a domestic bank shall not be less than the maximum rate payable on the shortest time deposit available in any domestic bank in the state.

(g) For purposes of this section, the term *interest-bearing account* means a blocked account earning interest at no less than the maximum rate payable on the shortest time deposit in the domestic bank where the account is held: *Provided however*, That such an account may include six-month Treasury bills or insured certificates, with a maturity not exceeding six-months, appropriate to the amounts involved.

(h) The following types of property are subject to paragraphs (a) and (b) of this section:

(1) Any currency, bank deposit and bank accounts subject to the provisions of §515.201;

(2) Any property subject to the provisions of §515.201 which consists, in whole or in part, of undisputed and either liquidated or matured debts, claims, obligations or other evidence of indebtedness, to the extent of any amount that is undisputed and liquidated or matured; and

(3) Any proceeds resulting from the payment of an obligation under paragraph (c) of this section.

(i) For purposes of this section, the term *domestic bank* includes any FSLIC-insured institution (as defined in 12 CFR 561.1).

(j) For the purposes of this section the term *person* includes the United States Government or any agency or instrumentality thereof, except where the agency or instrumentality submits to the Office of Foreign Assets Control an opinion of its General Counsel that either:

(1) It lacks statutory authority to comply with this section, or

(2) The requirements of paragraphs (a) and (b) of this section are inconsistent with the statutory program under which it operates.

[44 FR 11770, Mar. 2, 1979]

§ 515.206 Exempt transactions.

(a) *Information and informational materials.* (1) The importation from any country and the exportation to any country of information or informational materials as defined in § 515.332, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part except for payments owed to Cuba for telecommunications services between Cuba and the United States, which are subject to the provisions of § 515.542.

(2) This section does not authorize transactions related to information or informational materials not fully created and in existence at the date of the transaction, or to the substantive or artistic alteration or enhancement of information or informational materials, or to the provision of marketing and business consulting services by a person subject to the jurisdiction of the United States. Such prohibited transactions include, without limitation, payment of advances for information or informational materials not yet created and completed, provision of services to market, produce or coproduce, create or assist in the creation of information or informational materials, and payment of royalties to a designated national with respect to income received for enhancements or alterations made by persons subject to the jurisdiction of the United States to information or informational materials imported from a designated national.

(3) This section does not authorize transactions incident to the transmission of restricted technical data as defined in the Export Administration Regulations, 15 CFR parts 730–774, or to the exportation of goods for use in the transmission of any data. The exportation of such goods to designated foreign countries is prohibited, as provided in § 515.201 of this part and § 785.1 of the Export Administration Regulations.

(4) This section does not authorize transactions related to travel to Cuba when such travel is not otherwise authorized under § 515.545.

Example #1: A U.S. publisher ships 500 copies of a book to Cuba directly from Miami aboard a chartered aircraft, and receives payment by means of a letter of credit issued by a Cuban bank and confirmed by an American bank. These are permissible transactions under this section.

Example #2: A Cuban party exports a single master copy of a Cuban motion picture to a U.S. party and licenses the U.S. party to duplicate, distribute, show and exploit in the United States the Cuban film in any medium, including home video distribution, for five years, with the Cuban party receiving 40% of the net income. All transactions relating to the activities described in this example are authorized under this section or § 515.545.

Example #3: A U.S. recording company proposes to contract with a Cuban musician to create certain musical compositions, and to advance royalties of $10,000 to the musician. The music written in Cuba is to be recorded in a studio that the recording company owns in the Bahamas. These are all prohibited transactions. The U.S. party is prohibited under § 515.201 from contracting for the Cuban musician's services, from transferring $10,000 to Cuba to pay for those services, and from providing the Cuban with production services through the use of its studio in the Bahamas. No information or informational materials are in being at the time of these proposed transactions. However, the U.S. recording company may contract to purchase and import preexisting recordings by the Cuban musician, or to copy the recordings in the United States and pay negotiated royalties to Cuba under this section or § 515.545.

Example #4: A Cuban party enters into a subpublication agreement licensing a U.S. party to print and publish copies of a musicial composition and to sub-license rights of public performance, adaptation, and arrangement of the musical composition, with payment to be a percentage of income received. All transactions related to the activities described in this example are authorized under this section and § 515.545, except for adaptation, and arrangement, which constitute artistic enhancement of the Cuban composition. Payment to the Cuban party may not reflect income received as a result of these enhancements.

(b) *Donation of food.* The prohibitions contained in this part do not apply to transactions incident to the donation of food to nongovernmental organizations or individuals in Cuba.

[54 FR 5233, Feb. 2, 1989, as amended at 60 FR 39256, Aug. 2, 1995; 64 FR 25812, May 13, 1999]

§ 515.207 Entry of vessels engaged in trade with Cuba.

Except as specifically authorized by the Secretary of the Treasury (or any person, agency or instrumentality designated by him), by means of regulations, rulings, instructions, licenses or otherwise,

(a) No vessel that enters a port or place in Cuba to engage in the trade of goods or the purchase or provision of services, may enter a U.S. port for the purpose of loading or unloading freight for a period of 180 days from the date the vessel departed from a port or place in Cuba; and

(b) No vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has an interest may enter a U.S. port with such goods or passengers on board.

NOTE TO § 515.207: For the waiver of the prohibitions contained in this section for certain vessels engaged in licensed or exempt trade with Cuba, see § 515.550.

[58 FR 34710, June 29, 1993, as amended at 66 FR 36687, July 12, 2001]

§ 515.208 Restrictions on loans, credits and other financing.

No United States national, permanent resident alien, or United States agency may knowingly make a loan, extend credit or provide other financing for the purpose of financing transactions involving confiscated property the claim to which is owned by a United States national, except for financing by a United States national owning such a claim for a transaction permitted under United States law.

[61 FR 37386, July 18, 1996]

Subpart C—General Definitions

§ 515.301 Foreign country.

The term *foreign country* also includes, but not by way of limitation:

(a) The state and the government of any such territory on or after the ''effective date'' as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof,

(b) Any other government (including any political subdivision, agency, or instrumentality thereof) to the extent and only to the extent that such government exercises or claims to exercise control, authority, jurisdiction or sovereignty over territory which on the ''effective date'' constituted such foreign country,

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the ''effective date,'' acting or purporting to act directly or indirectly for the benefit or on behalf of any of the foregoing, and

(d) Any territory which on or since the ''effective date'' is controlled or occupied by the military, naval or police forces or other authority of such foreign country.

§ 515.302 National.

(a) The term national when used with respect to a country shall include:

(1) A subject or citizen of that country or any person who has been domiciled in or a permanent resident of that country at any time on or since the ''effective date,'' except persons who were permanent residents of or domiciled in that country in the service of the U.S. Government and persons whose transactions in that country were authorized by the Office of Foreign Assets Control.

(2) Any partnership, association, corporation, or other organization that, on or since the effective date:

(i) Was or has been organized under the laws of that country;

(ii) Had or has had its principal place of business in that country; or

(iii) Was or has been controlled by, or a substantial part of the stocks, share, bonds, debentures, notes, drafts, or other securities or obligations of which was or has been controlled by, directly or indirectly, that country and/or one or more nationals thereof.

(3) Any organization's office or other sub-unit that is located within that country.

(4) Any person to the extent that such person, on or since the ''effective date'' was or has been acting or purporting to act directly or indirectly for

the benefit or on behalf of any national of that country.

(5) Any other person who there is reasonable cause to believe is a ''national'' as defined in this section.

(b) Persons who travel in Cuba do not become nationals of Cuba solely because of such travel.

(c) The Secretary of the Treasury retains full power to determine that any person is or shall be deemed to be a ''national'' within the meaning of this section, and to specify the foreign country of which such person is or shall be deemed to be a national.

[28 FR 6974, July 9, 1963, as amended at 50 FR 27437, July 3, 1985; 64 FR 25812, May 13, 1999; 68 FR 14144, Mar. 24, 2003]

§ 515.303 Nationals of more than one foreign country.

(a) Any person who by virtue of any provision in this chapter is a national of more than one foreign country shall be deemed to be a national of each of such foreign countries.

(b) In any case in which a person is a national of two or more designated foreign countries, as defined in this chapter, a license or authorization with respect to nationals of one of such designated foreign countries shall not be deemed to apply to such person unless a license or authorization of equal or greater scope is outstanding with respect to nationals of each other designated foreign country of which such person is a national.

(c) In any case in which the combined interests of two or more designated foreign countries, as defined in this chapter, and/or nationals thereof are sufficient in the aggregate to constitute control or ownership of 25 per centum or more of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of a partnership, association, corporation or other organization, but such control or a substantial part of such stock, shares, bonds, debentures, notes, drafts, or other securities or obligations is not held by any one such foreign country and/or national thereof, such partnership, association, corporation or other organization shall be deemed to be a national of each of such foreign countries.

§ 515.305 Designated national.

For the purposes of this part, the term *designated national* shall mean Cuba and any national thereof including any person who is a specially designated national.

§ 515.306 Specially designated national.

(a) The term *specially designated national* shall mean:

(1) Any person who is determined by the Secretary of the Treasury to be a specially designated national,

(2) Any person who on or since the ''effective date'' has acted for or on behalf of the Government or authorities exercising control over a designated foreign country, or

(3) Any partnership, association, corporation or other organization which on or since the ''effective date'' has been owned or controlled directly or indirectly by the Government or authorities exercising control over a designated foreign country or by any specially designated national.

(b) [Reserved]

NOTE TO § 515.306: Please refer to the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') for a non-exhaustive listing of persons determined to fall within this definition, whose property and interests in property therefore are blocked pursuant to this part. The SDN List entries for such persons include the identifier ''[CUBA].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. Section 501.807 of this chapter sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or that of a vessel as blocked, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

[28 FR 6974, July 9, 1963, as amended at 61 FR 32938, June 26, 1996; 62 FR 45106, Aug. 25, 1997; 76 FR 38585, June 30, 2011]

§ 515.307 Unblocked national.

Any person licensed pursuant to § 515.505 licensed as an *unblocked national* shall, while so licensed, be regarded as a person within the United

States who is not a national of any designated foreign country: *Provided, however,* That the licensing of any person as an *unblocked national* shall not be deemed to suspend in any way the requirements of any section of this chapter relating to reports, or the production of books, documents, and records specified therein.

[28 FR 6974, July 9, 1963, as amended at 54 FR 5233, Feb. 2, 1989]

§515.308 Person.

The term *person* means an individual, partnership, association, corporation, or other organization.

§515.309 Transactions.

The phrase *transactions which involve property in which a designated foreign country, or any national thereof, has any interest of any nature whatsoever, direct or indirect,* includes, but not by way of limitation:

(a) Any payment or transfer to such designated foreign country or national thereof,

(b) Any export or withdrawal from the United States to such designated foreign country, and

(c) Any transfer of credit, or payment of an obligation, expressed in terms of the currency of such designated foreign country.

§515.310 Transfer.

The term *transfer* shall mean any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or preformed within the United States, the purpose, intent, or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and without limitation upon the foregoing shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or other fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition, or the exercise of any power of appointment, power of attorney, or other power.

§515.311 Property; property interests.

(a) Except as defined in §515.203(f) for the purposes of that section the terms *property* and *property interest* or *property interests* shall include, but not by way of limitation, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness obligations, notes, debentures, stocks, bonds, coupons, and other financial securities, bankers' acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, real estate and any interest therein, leaseholds, ground rents, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks, copyrights, contracts or licenses affecting or involving patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, contracts of any nature whatsoever, services, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

(b) As used in §515.208, the term *property* means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.

[28 FR 6974, July 9, 1963, as amended at 50 FR 27437, July 3, 1985; 56 FR 49847, Oct. 2, 1991; 61 FR 37386, July 18, 1996]

§ 515.312 Interest.

The term *interest* when used with respect to property shall mean an interest of any nature whatsoever, direct or indirect.

§ 515.313 Property subject to the jurisdiction of the United States.

(a) The phrase *property subject to the jurisdiction of the United States* includes, without limitation, securities, whether registered or bearer, issued by:

(1) The United States or any State, district, territory, possession, county, municipality, or any other subdivision or agency or instrumentality of any thereof; or

(2) Any person with the United States whether the certificate which evidences such property or interest is physically located within or outside the United States.

(b) The phrase *property subject to the jurisdiction of the United States* also includes, without limitation, securities, whether registered or bearer, by whomsoever issued, if the instrument evidencing such property or interest is physically located within the United States.

§ 515.314 Banking institution.

The term *banking institution* shall include any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchases and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or any broker; and, each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate ''banking institution.''

§ 515.316 License.

Except as otherwise specified, the term *license* shall mean any license or authorization contained in or issued pursuant to this part.

§ 515.317 General license.

A general license is any license or authorization the terms of which are set forth in this part.

§ 515.318 Specific license.

A specific license is any license or authorization issued pursuant to this part but not set forth in this part.

[28 FR 6974, July 9, 1963; 28 FR 7427, July 20, 1963]

§ 515.319 Blocked account.

The term *blocked account* shall mean an account in which any designated national has an interest, with respect to which account payments, transfers or withdrawals or other dealings may not be made or effected except pursuant to an authorization or license authorizing such action. The term *blocked account* shall not be deemed to include accounts of unblocked nationals.

[28 FR 6974, July 9, 1963; 28 FR 7427, July 20, 1963]

§ 515.320 Domestic bank.

The term *domestic bank* shall mean any branch or office within the United States of any of the following which is not a national of a designated foreign country; any bank or trust company incorporated under the banking laws of the United States or any State, territory, or district of the United States, or any private bank or banker subject to supervision and examination under the banking laws of the United States or of any State, territory or district of the United States. The Secretary of the Treasury may also authorize any other banking institution to be treated as a ''domestic bank'' for the purpose of this definition or for the purpose of any or all sections of this part.

§ 515.321 United States; continental United States.

The term *United States* means the United States and all areas under the jurisdiction or authority thereof, including the Trust Territory of the Pacific Islands. The term *continental United States* means the States of the United States and the District of Columbia.

[49 FR 27144, July 2, 1984]

§ 515.322 Authorized trade territory; member of the authorized trade territory.

(a) The term *authorized trade territory* includes all countries, including any

colony, territory, possession, or protectorate, except those countries subject to sanctions pursuant to this chapter. The term does not include the United States.

(b) The term *member of the authorized trade territory* shall mean any of the foreign countries or political subdivisions comprising the authorized trade territory.

[43 FR 51762, Nov. 7, 1978, as amended at 60 FR 54195, Oct. 20, 1995]

§ 515.323 Occupied area.

The term *occupied area* shall mean any territory occupied by a designated foreign country which was not occupied by such country prior to the ''effective date'' of this part.

§ 515.325 National securities exchange.

The term *national securities exchange* shall mean an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (48 Stat. 885, 15 U.S.C. 78f).

§ 515.326 Custody of safe deposit boxes.

Safe deposit boxes shall be deemed to be in the *custody* not only of all persons having access thereto but also of the lessors of such boxes whether or not such lessors have access to such boxes. The foregoing shall not in any way be regarded as a limitation upon the meaning of the term *custody*.

§ 515.327 Blocked estate of a decedent.

The term *blocked estate of a decedent* shall mean any decedent's estate in which a designated national has an interest. A person shall be deemed to have an interest in a decedent's estate if he:

(a) Was the decedent;

(b) Is a personal representative; or

(c) Is a creditor, heir, legatee, devisee, distributee, or beneficiary.

§ 515.329 Person subject to the jurisdiction of the United States.

The term *person subject to the jurisdiction of the United States* includes:

(a) Any individual, wherever located, who is a citizen or resident of the United States;

(b) Any person within the United States as defined in § 515.330;

(c) Any corporation, partnership, association, or other organization organized under the laws of the United States or of any State, territory, possession, or district of the United States; and

(d) Any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by persons specified in paragraphs (a) or (c) of this section.]

[50 FR 27437, July 3, 1985, as amended at 68 FR 14145, Mar. 24, 2003]

§ 515.330 Person within the United States.

(a) The term *person within the United States*, includes:

(1) Any person, wheresoever located, who is a resident of the United States;

(2) Any person actually within the United States;

(3) Any corporation, partnership, association, or other organization organized under the laws of the United States or of any State, territory, possession, or district of the United States; and

(4) Any corporation, partnership, association, or other organization, wherever organized or doing business, which is owned or controlled by any person or persons specified in paragraphs (a)(1) or (a)(3) of this section.

(b) [Reserved]

[28 FR 6974, July 9, 1963, as amended at 68 FR 14145, Mar. 24, 2003]

§ 515.331 Merchandise.

The term *merchandise* means all goods, wares and chattels of every description without limitation of any kind.

§ 515.332 Information and informational materials.

(a) For purposes of this part, the term *information and informational materials* means:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, news wire feeds, and other information and informational articles.

(2) To be considered informational materials, artworks must be classified under Chapter subheading 9701, 9702, or

9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information and informational materials* does not include items:

(1) That would be controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1993) (the ''EAA''), or section 6 of the EAA to the extent that such controls promote nonproliferation of antiterrorism policies of the United States, including ''software'' that is not ''publicly available'' as these terms are defined in 15 CFR parts 779 and 799.1 (1994); or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

[60 FR 39256, Aug. 2, 1995]

§ 515.333 Depository institution.

The term *depository institution* means any of the following:

(a) An insured bank as defined in section 3 of the Federal Deposit Insurance Act;

(b) An insured institution as defined in section 408(a) of the National Housing Act;

(c) An insured credit union as defined in section 101 of the Federal Credit Union Act; or

(d) Any other institution that is carrying on banking activities pursuant to a charter from a Federal or state banking authority.

[57 FR 53997, Nov. 16, 1992]

§ 515.334 United States national.

As used in § 515.208, the term *United States national* means:

(a) Any United States citizen; or

(b) Any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

[61 FR 37386, July 18, 1996]

§ 515.335 Permanent resident alien.

As used in § 515.208, the term *permanent resident alien* means an alien lawfully admitted for permanent residence into the United States.

[61 FR 37386, July 18, 1996]

§ 515.336 Confiscated.

As used in § 515.208, the term *confiscated* refers to:

(a) The nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959:

(1) Without the property having been returned or adequate and effective compensation provided; or

(2) Without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(b) The repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959:

(1) A debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(2) A debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(3) A debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

[61 FR 37386, July 18, 1996]

§ 515.337 Prohibited officials of the Government of Cuba.

For purposes of this part, the term *prohibited officials of the Government of Cuba* means Ministers and Vice-ministers, members of the Council of State and the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors, and deputy editors of Cuban

state-run media organizations and programs, including newspapers, television, and radio; and members and employees of the Supreme Court (Tribuno Supremo Nacional).

[74 FR 46003, Sept. 8, 2009]

§ 515.338 Prohibited members of the Cuban Communist Party.

For purposes of this part, the term *prohibited members of the Cuban Communist Party* means members of the Politburo, the Central Committee, Department Heads of the Central Committee, employees of the Central Committee, and secretaries and first secretaries of the provincial Party central committees.

[74 FR 46003, Sept. 8, 2009]

§ 515.339 Close relative.

(a) For purposes of this part, the term *close relative* used with respect to any person means any individual related to that person by blood, marriage, or adoption who is no more than three generations removed from that person or from a common ancestor with that person.

(b) *Example.* Your mother's first cousin is your close relative for purposes of this part, because you are both no more than three generations removed from your great-grandparents, who are the ancestors you have in common. Similarly, your husband's great-grandson is your close relative for purposes of this part, because he is no more than three generations removed from your husband. Your daughter's father-in-law is not your close relative for purposes of this part, because you have no common ancestor.

[74 FR 46003, Sept. 8, 2009]

Subpart D—Interpretations

§ 515.401 Reference to amended sections.

Reference to any section of this part or to any regulation, ruling, order, instruction, direction or license issued pursuant to this part shall be deemed to refer to the same as currently amended unless otherwise so specified.

§ 515.402 Effect of amendment of sections of this part or of other orders, etc.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Secretary of the Treasury pursuant to section 3(a) or 5(b) of the Trading With the Enemy Act, as amended, or pursuant to Proclamation 3447, shall not unless otherwise specifically provided be deemed to affect any act done or omitted to be done, or any suit or proceeding had or commenced in any civil or criminal case, prior to such amendment, modification, or revocation, and all penalties, forfeitures, and liabilities under any such section, order, regulation, ruling, instruction or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 515.403 Termination and acquisition of the interest of a designated national.

(a) Except as provided in § 515.525, whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a designated national, such property shall no longer be deemed to be property in which a designated national has or has had an interest unless there exists in such property an interest of a designated national, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization contained in or issued pursuant to this part, if property (including any property interest) is transferred to a designated national such property shall be deemed to be property in which there exists the interest of a designated national.

§ 515.404 Transactions between principal and agent.

A transaction between any person within the United States and any principal, agent, home office, branch, or correspondent, outside the United States of such person is a transaction

prohibited by § 515.201 to the same extent as if the parties to the transaction were in no way affiliated or associated with each other.

§ 515.405 Exportation of securities, currency, checks, drafts and promissory notes.

Section 515.201 prohibits the exportation of securities, currency, checks, drafts and promissory notes to a designated foreign country.

§ 515.406 Drafts under irrevocable letters of credit; documentary drafts.

Section 515.201 prohibits the presentation, acceptance or payment of:

(a) Drafts or other orders for payment drawn under irrevocable letters of credit issued in favor or on behalf of any designated national;

(b) Drafts or other orders for payment, in which any designated national has on or since the ''effective date'' had any interest, drawn under any irrevocable letter of credit; and

(c) Documentary drafts in which any designated national has on or since the ''effective date'' had any interest.

§ 515.407 Administration of blocked estates of decedents.

Section 515.201 prohibits all transactions incident to the administration of the blocked estate of a decedent, including the appointment and qualification of personal representatives, the collection and liquidation of assets, the payment of claims, and distribution to beneficiaries. Attention is directed to § 515.523 which authorizes certain transactions in connection with the administration of blocked estates of decedents, and § 515.522 which authorizes the unblocking by specific license of estate assets to certain heirs under certain circumstances.

[28 FR 6974, July 9, 1963, as amended at 54 FR 5234, Feb. 2, 1989; 64 FR 25812, May 13, 1999]

§ 515.408 Access to certain safe deposit boxes prohibited.

Section 515.201 prohibits access to any safe deposit box within the United States in the custody of any designated national or containing any property in which any designated national has any interest or which there is reasonable cause to believe contains property in which any such designated national has any interest. Attention is directed to § 515.517 which authorizes access to such safe deposit boxes under certain conditions.

§ 515.409 Certain payments to a designated foreign country and nationals through third countries.

Section 515.201 prohibits any request or authorization made by or on behalf of a bank or other person within the United States to a bank or other person outside of the United States as a result of which request or authorization such latter bank or person makes a payment or transfer of credit either directly or indirectly to a designated national.

§ 515.410 Dealing abroad in Cuban origin commodities.

Section 515.204 prohibits, unless licensed, the importation of commodities of Cuban origin. It also prohibits, unless licensed, persons subject to the jurisdiction of the United States from purchasing, transporting or otherwise dealing in commodities of Cuban origin which are outside the United States.

[39 FR 25317, July 10, 1974]

§§ 515.411—515.413 [Reserved]

§ 515.415 Travel to Cuba; transportation of certain Cuban nationals.

(a) The following transactions are prohibited by § 515.201 when in connection with the transportation of any Cuban national, except a Cuban national holding an unexpired immigrant or non-immigrant visa or a returning resident of the United States, from Cuba to the United States, unless otherwise licensed:

(1) Transactions incident to travel to, from, or within Cuba;

(2) The transportation to Cuba of a vessel or aircraft;

(3) The transportation into the United States of any vessel or aircraft which has been in Cuba since the effective date, regardless of registry;

(4) The provision of any services to a Cuban national, regardless of whether any consideration for such services is furnished by the Cuban national;

(5) The transportation or importation of baggage or other property of a Cuban national;

(6) The transfer of funds or other property to any person where such transfer involves the provision of services to a Cuban national or the transportation or importation of, or any transactions involving, property in which Cuba or any Cuban national has any interest, including baggage or other such property;

(7) Any other transaction such as payment of port fees and charges in Cuba and payment for fuel, meals, lodging; and

(8) The receipt or acceptance of any gratuity, grant, or support in the form of meals, lodging, fuel, payments of travel or maintenance expenses, or otherwise, in connection with travel to or from Cuba or travel or maintenance within Cuba.

(b) Transactions incident to the travel to the United States of Cuban nationals traveling without a visa issued by the Department of State are not authorized under the provisions of § 515.571.

(c) Transactions described in paragraph (a) of this section are not ''transactions ordinarily incident to travel to and from Cuba'' as set forth in § 515.560(c).

[45 FR 32671, May 19, 1980, as amended at 64 FR 25812, May 13, 1999]

§§ 515.416–515.419 [Reserved]

§ 515.420 Travel to Cuba.

The prohibition on dealing in property in which Cuba or a Cuban national has an interest set forth in § 515.201(b)(1) includes a prohibition on the receipt of goods or services in Cuba, even if provided free-of-charge by the Government of Cuba or a national of Cuba or paid for by a third-country national who is not subject to U.S. jurisdiction. The prohibition set forth in § 515.201(b)(1) also prohibits payment for air travel to Cuba on a third-country carrier unless the travel is pursuant to an OFAC general or specific license.

[69 FR 33771, June 16, 2004]

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 515.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[68 FR 53657, Sept. 11, 2003]

§ 515.502 Effect of subsequent license or authorization.

(a) No license or other authorization contained in this part or otherwise issued by or under the direction of the Secretary of the Treasury pursuant to section 3(a) or 5(b) of the Trading With the Enemy Act, as amended, or section 620(a), Pub. L. 87–195, or Proclamation 3447, shall be deemed to authorize or validate any transaction effected prior to the issuance thereof, unless such license or other authorization specifically so provides.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Treasury Department and specifically refers to this part. No regulation, ruling, instruction or license referring to this part shall be deemed to authorize any transaction prohibited by part 500 of this chapter unless the regulation, ruling, instruction or license specifically refers to part 500.

§ 515.503 Exclusion from licenses and authorizations.

The Secretary of the Treasury reserves the right to exclude from the operation of any license or from the privileges therein conferred or to restrict the applicability thereof with respect to particular persons, transactions or property or classes thereof. Such action shall be binding upon all persons receiving actual notice or constructive notice thereof.

§ 515.504 Certain judicial proceedings with respect to property of designated nationals.

(a) Subject to the limitations of paragraphs (b), (c) and (d) of this section judicial proceedings are authorized with respect to property in which on or since the ''effective date'' there has existed the interest of a designated national.

(b) A judicial proceeding is authorized by this section only if it is based upon a cause of action which accrued prior to the ''effective date''.

(c) This section does not authorize or license:

(1) The entry of any judgment or of any decree or order of similar or analogous effect upon any judgment book, minute book, journal or otherwise, or the docketing of any judgment in any docket book, or the filing of any judgment roll or the taking of any other similar or analogous action.

(2) Any payment or delivery out of a blocked account based upon a judicial proceeding nor does it authorize the enforcement or carrying out of any judgment or decree or order of similar or analogous effect with regard to any property in which a designated national has an interest.

(d) If a judicial proceeding relates to property in which there exists the interest of any designated national other than a person who would not have been a designated national except for his relationship to an occupied area, such proceeding is authorized only if it is based upon a claim in which no person other than any of the following has had an interest since the ''effective date'':

(1) A citizen of the United States;

(2) A corporation organized under the laws of the United States or any State, territory or possession thereof, or the District of Columbia;

(3) A natural person who is and has been since the ''effective date'' a resident of the United States and who has not been a specially designated national;

(4) A legal representative (whether or not appointed by a court of the United States) or successor in interest by inheritance, device, bequest, or operation of law, who falls within any of the categories specified in paragraphs (a) (1), (2), and (3) of this section but only to the same extent that their principals or predecessors would be qualified by such paragraphs.

§ 515.505 Certain Cuban nationals unblocked; transactions of certain other Cuban nationals lawfully present in the United States; transactions with Cuban nationals who have taken up permanent residence outside of Cuba.

(a) *General license unblocking certain persons*. The following persons are licensed as unblocked nationals, as that term is defined in § 515.307 of this part:

(1) Any individual who:

(i) Has taken up residence in the United States;

(ii) Is a United States citizen, a permanent resident alien of the United States, or has applied to become a permanent resident alien of the United States and has an adjustment of status application pending; and

(iii) Is not a specially designated national; and

(2) Any entity that otherwise would be a national of Cuba solely because of the interest therein of an individual licensed in paragraph (a)(1) of this section as an unblocked national.

NOTE TO PARAGRAPH (a): An individual unblocked pursuant to this paragraph does not become blocked again merely by leaving the United States. An individual unblocked national remains unblocked unless and until the individual thereafter becomes domiciled in or a permanent resident of Cuba, meets any of the criteria in § 515.302(a)(2) through (5), or is a ''specially designated national'' of Cuba, as that term is defined in § 515.306 of this part.

(b) *Specific licenses unblocking certain individuals who have taken up permanent residence outside of Cuba*. Individual nationals of Cuba who have taken up permanent residence outside of Cuba may apply to the Office of Foreign Assets Control to be specifically licensed as unblocked nationals. Applications for specific licenses under this paragraph should include copies of at least two documents indicating permanent residence issued by the government authorities of the new country of permanent residence, such as a passport, voter registration card, permanent resident alien card, or national identity card. In cases where two of such

documents are not available, other information will be considered, such as evidence that the individual has been resident for the past two years without interruption in a single country outside of Cuba or evidence that the individual does not intend to, or would not be welcome to, return to Cuba.

(c) *General license authorizing certain transactions of individuals who are lawfully present in the United States in a non-visitor status.* An individual national of Cuba who is lawfully present in the United States in a non-visitor status is authorized to engage in all transactions available to an unblocked national, as that term is defined in §515.307 of this part, except that all property in which the individual has an interest that was blocked pursuant to this part prior to the date on which the individual became lawfully present in the United States in a non-visitor status shall remain blocked. Such an individual is further authorized to withdraw a total amount not to exceed $250 in any one calendar month from any blocked accounts held in the individual's name. For the purposes of this section, the term ''non-visitor status'' does not apply to an individual who is present in the United States on a nonimmigrant visa valid only for a specified period of time.

(d) *General license authorizing certain transactions with individuals who have taken up permanent residence outside of Cuba.* Persons subject to U.S. jurisdiction are authorized to engage in any transaction with an individual national of Cuba who has taken up permanent residence outside of Cuba as if the individual national of Cuba were an unblocked national, as defined in §515.307 of this part, except that all property in which the individual national of Cuba has an interest that was blocked pursuant to this part prior to the later of the date on which the individual took up permanent residence outside of Cuba or January 28, 2011 shall remain blocked. In determining whether an individual national of Cuba has taken up permanent residence outside of Cuba, persons subject to U.S. jurisdiction must obtain from the individual copies of at least two documents indicating permanent residence issued by the government authorities of the new country of permanent residence, such as a passport, voter registration card, permanent resident alien card, or national identity card.

(e) The licensing of any person pursuant to this section shall not suspend the requirements of any section of this chapter relating to the maintenance or production of records.

(f) The following examples illustrate the application of this section:

(1) Example 1: A national of Cuba with a blocked U.S. bank account receives a U.S immigration visa. Upon arrival in the United States, she is issued a permanent resident alien card and thereby is licensed as an unblocked national pursuant to paragraph (a) of this section. She can apply immediately to OFAC for a specific license to have her bank account unblocked.

(2) Example 2: A national of Cuba with a blocked U.S. bank account arrives in the United States without a valid visa but is allowed by the U.S. Government to remain in the United States in a non-visitor status. One year later, he applies for and receives permanent resident alien status. From the date he was permitted to remain in the United States in a non-visitor status until the date he applies for permanent resident alien status, he qualifies for the general license contained in paragraph (c) of this section. During this time he can engage in all transactions as if he is an unblocked national, with the exception that he cannot gain access to his blocked bank account other than to withdraw $250 each month. Beginning at the point in time when he applies for permanent resident alien status, he is licensed as an unblocked national pursuant to paragraph (a) of this section. At this time, he can apply to OFAC for a specific license to have his blocked bank account unblocked.

(3) Example 3: A national of Cuba with a blocked U.S. bank account arrives in the United States on a temporary visa valid for six months. After her visa expires, she remains in the United States for an additional six months and then applies to become a permanent resident alien. She has an adjustment of status application pending until she receives permanent resident alien status one year later. From her arrival in the United States until her application for permanent resident alien status, she does not qualify for any of the authorizations contained in this section. Instead, she is authorized by §515.571 only to engage in transactions ordinarily incident to her travel and maintenance in the United States and to withdraw $250 each month from her blocked account to cover her living expenses. Beginning with her application to become a permanent resident alien, she is licensed as an unblocked national pursuant to paragraph (a) of this section. At

this time, she can apply to OFAC for a specific license to have her bank account unblocked.

(4) Example 4: An individual national of Cuba who has taken up permanent residence outside of Cuba wishes to open a bank account at a branch of a U.S. bank in Spain and then withdraw a portion of her previously blocked funds held by the same U.S. bank's New York branch. The individual provides the Spanish branch with a copy of her third-country passport and voter registration card demonstrating her permanent residence status in the third country. The Spanish branch may open an account for the individual and provide her with banking services. The New York branch may also handle any transactions related to this new account processed through the United States but may not unblock her funds that had been blocked prior to the later of the date on which the individual took up permanent residence outside of Cuba or January 28, 2011. Those funds remain blocked unless and until the individual is licensed as an unblocked national pursuant to paragraph (a) or (b) of this section or the funds are otherwise unblocked by a separate Office of Foreign Assets Control authorization.

NOTE TO § 515.505: See § 515.571 for the authorization of certain limited transactions incident to travel to, from, and within the United States by Cuban nationals who enter the United States on a non-immigrant visa or other non-immigrant travel authorization issued by the State Department.

[68 FR 14145, Mar. 24, 2003, as amended at 74 FR 46004, Sept. 8, 2009; 76 FR 5074, Jan. 28, 2011]

§§ 515.506–515.507 [Reserved]

§ 515.508 Payments to blocked accounts in domestic banks.

(a) Any payment or transfer of credit to a blocked account in a domestic bank in the name of any designated national is hereby authorized providing such payment or transfer shall not be made from any blocked account if such payment or transfer represents, directly or indirectly, a transfer of the interest of a designated national to any other country or person.

(b) This section does not authorize:

(1) Any payment or transfer to any blocked account held in a name other than that of the designated national who is the ultimate beneficiary of such payment or transfer; or

(2) Any foreign exchange transaction including, but not by way of limitation, any transfer of credit, or payment of an obligation, expressed in terms of the currency of any foreign country.

(c) This section does not authorize any payment or transfer of credit comprising an integral part of a transaction which cannot be effected without the subsequent issuance of a further license.

(d) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a subaccount thereof, or the income derived from such securities to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

(e) This section does not authorize any payment or transfer from a blocked account in a domestic bank to a blocked account held under any name or designation which differs from the name or designation of the blocked account from which the payment or transfer is made.

NOTE TO § 515.508: Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers.

[32 FR 10846, July 25, 1967, as amended at 58 FR 47645, Sept. 10, 1993; 62 FR 45106, Aug. 25, 1997]

§ 515.509 Entries in certain accounts for normal service charges.

(a) Any banking institution within the United States is hereby authorized to:

(1) Debit any blocked account with such banking institution (or with another office within the United States of such banking institution) in payment or reimbursement for normal service charges owed to such banking institution by the owner of such blocked account.

(2) Make book entries against any foreign currency account maintained by it with a banking institution in a designated foreign country for the purpose of responding to debits to such account for normal service charges in connection therewith.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to

correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, account carrying charges, notary and protest fees, and charges for reference books, photostats, credit reports, transcripts of statements, registered mail insurance, stationery and supplies, check books, and other similar items.

§515.510 Payments to the United States, States and political subdivisions.

(a) The payment from any blocked account to the United States or any agency or instrumentality thereof or to any State, territory, district, county, municipality or other political subdivision in the United States, of customs duties, taxes, and fees payable thereto by the owner of such blocked account is hereby authorized.

(b) This section also authorizes transactions incident to the payment of customs duties, taxes, and fees from blocked accounts, such as the levying of assessments, the creation and enforcement of liens, and the sale of blocked property in satisfaction of liens for customs duties, taxes, and fees.

§515.511 Transactions by certain business enterprises.

(a) Except as provided in paragraphs (b), (c) and (d) of this section any partnership, association, corporation or other organization which on the ''effective date'' was actually engaged in a commercial, banking or financial business within the United States and which is a national of a designated foreign country, is hereby authorized to engage in all transactions ordinarily incidental to the normal conduct of its business activities within the United States.

(b) This section does not authorize any transaction which would require a license if such organization were not a national of a designated foreign country.

(c) This section does not authorize any transaction by a specially designated national.

(d) Any organization engaging in business pursuant to this section shall not engage in any transaction, pursuant to this section or any other license or authorization contained in this part, which, directly or indirectly, substantially diminishes or imperils the assets of such organization or otherwise prejudicially affects the financial position of such organization.

(e) No dealings with regard to any account shall be evidence that any person having an interest therein is actually engaged in commercial, banking or financial business within the United States.

§515.512 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of Cuba or a Cuban national is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to Cuba or a Cuban national, not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter

or affect property in which Cuba or a Cuban national has had an interest at any time on or since 12:01 a.m., e.s.t., July 8, 1963, is prohibited except to the extent otherwise provided by law or unless otherwise authorized by or pursuant to this part.

[68 FR 14146, Mar. 24, 2003]

§ 515.513 Purchase and sale of certain securities.

(a) The bona fide purchase and sale of securities on a national securities exchange by banking institutions within the United States for the account, and pursuant to the authorization, of nationals of a designated foreign country and the making and receipt of payments, transfers of credit, and transfers of such securities which are necessary incidents of any such purchase or sale are hereby authorized provided the following terms and conditions are complied with:

(1) In the case of the purchase of securities, the securities purchased shall be held in an account in a banking institution within the United States in the name of the national whose account was debited to purchase such securities; and

(2) In the case of the sale of securities, the proceeds of the sale shall be credited to an account in the name of the national for whose account the sale was made and in the banking institution within the United States which held the securities for such national.

(b) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a subaccount thereof, to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

(c) Securities issued or guaranteed by the Government of the United States or any State, territory, district, county, municipality, or other political subdivision thereof (including agencies and instrumentalities of the foregoing) need not be purchased or sold on a national securities exchange, but purchases or sales of such securities shall be made at market value and pursuant to all other terms and conditions prescribed in this section.

§ 515.514 Payment of dividends and interest on and redemption and collection of securities.

(a) The payment to, and receipt by, a banking institution within the United States of funds or other property representing dividends or interest on securities held by such banking institution in a blocked account is hereby authorized provided the funds or other property are credited to or deposited in a blocked account in such banking institution in the name of the national for whose account the securities were held. Notwithstanding § 515.202, this paragraph authorizes the foregoing transactions although such securities are registered or inscribed in the name of any designated national and although the national in whose name the securities are registered or inscribed may not be the owner of such blocked account.

(b) The payment to, and receipt by, a banking institution within the United States of funds payable in respect of securities (including coupons) presented by such banking institution to the proper paying agents within the United States for redemption or collection for the account and pursuant to the authorization of nationals of a designated country is hereby authorized provided the proceeds of the redemption or collection are credited to a blocked account in such banking institution in the name of the national for whose account the redemption or collection was made.

(c) The performance of such other acts, and the effecting of such other transactions, as may be necessarily incident to any of the foregoing, are also hereby authorized.

(d) This section does not authorize the crediting of the proceeds of the redemption or collection of securities (including coupons) held in a blocked account or a subaccount thereof, or the income derived from such securities to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

(e) This section does not authorize any issuer or other obligor, with respect to a security, who is a designated national, to make any payment, transfer or withdrawal.

§ 515.515 Transfers of securities to blocked accounts in domestic banks.

(a) Transactions ordinarily incident to the transfer of securities from a blocked account in the name of any person to a blocked account in the same name in a domestic bank are hereby authorized provided such securities shall not be transferred from any blocked account if such transfer represents, directly or indirectly, a transfer of the interest of a designated national to any other country or person.

(b) This section does not authorize the transfer of securities held in a blocked account or subaccount thereof to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

[32 FR 10847, July 25, 1967]

§ 515.516 Voting and soliciting of proxies on securities.

Notwithstanding § 515.202, the voting and the soliciting of proxies or other authorizations is authorized with respect to the voting of securities issued by a corporation organized under the laws of the United States or of any State, territory, or district thereof, in which a designated national has any interest.

§ 515.517 Access to safe deposit boxes under certain conditions.

(a) Access to any safe deposit box leased to a designated national or containing property in which any designated national has an interest, and the deposit therein or removal therefrom of any property is hereby authorized, provided the following terms and conditions are complied with:

(1) Access shall be permitted only in the presence of an authorized representative of the lessor of such box; and

(2) In the event that any property in which any designated national has any interest is to be removed from such box, access shall be permitted only in the presence of an authorized representative of a banking institution within the United States, which may be the lessor of such box, which shall receive such property into its custody immediately upon removal from such box and which shall hold the same in a blocked account under an appropriate designation indicating the interest therein of designated nationals.

(b) The terms and conditions set forth in paragraph (a) of this section shall not apply to access granted to a representative of the Office of Alien Property pursuant to any rule, regulation or order of such Office.

§ 515.518 [Reserved]

§ 515.519 Limited payments from accounts of United States citizens abroad.

(a) Payments and transfers of credit from blocked accounts for expenditures within the United States or the authorized trade territory of any citizens of the United States who are within any foreign country are hereby authorized provided the following terms and conditions are complied with:

(1) Such payments and transfers shall be made only from blocked accounts in the name, or in which the beneficial interest is held by, such citizen or his family; and

(2) The total of all such payments and transfers made under this section shall not exceed $1,000 in any one calendar month for any such citizen or his family.

(b) This section does not authorize any remittance to a designated foreign country or, any payment, transfer, or withdrawal which could not be effected without a license by a person within the United States who is not a national of a designated foreign country.

[28 FR 6974, July 9, 1963, as amended at 49 FR 27144, July 2, 1984]

§ 515.520 Payments from accounts of United States citizens in employ of United States in foreign countries and certain other persons.

(a) Banking institutions within the United States are hereby authorized to make all payments, transfers and withdrawals from accounts in the name of citizens of the United States while such citizens are within any foreign country in the course of their employment by the Government of the United States.

(b) Banking institutions within the United States are also hereby authorized to make all payments, transfers and withdrawals from accounts in the name of members of the armed forces of the United States and of citizens of the United States accompanying such armed forces in the course of their employment by any organization acting on behalf of the Government of the United States while such persons are within any foreign country.

(c) This section is deemed to apply to the accounts of members of the armed forces of the United States and of citizens of the United States accompanying such armed forces in the course of their employment by the Government of the United States or by any organization acting on its behalf even though they are captured or reported missing.

§ 515.521 U.S. assets of certain Cuban corporations.

(a) Specific licenses may be issued unblocking the net pro rata shares of individuals who are permanent residents of the United States or the authorized trade territory, and who are not specially designated nationals, in U.S.-located assets of corporations formed under the laws of Cuba, after deducting the total debt due creditors for claims that accrued prior to the effective date, in cases where all of the following conditions are met:

(1) The assets were owned by, or accrued to, the corporation before the effective date of the regulations;

(2) The corporation did not carry on substantial business in Cuba under the management or control of the applicant(s) after the effective date;

(3) In cases where the blocked assets purportedly have been nationalized by Cuba, compensation has not been paid to the applicant(s).

(b) Applications for specific licenses under this section must include all of the following information:

(1) A detailed description of the corporation, its by-laws, activities, distribution of shares, and its current status;

(2) Proof of the permanent residence of the applicant(s) in the United States or the authorized trade territory;

(3) A list of all officers, directors and shareholders of the corporation, giving the citizenship and the residence of each person as of the date of the application;

(4) A detailed description of all of the assets of the corporation, wherever located, including a statement of all known encumbrances or claims against them; and

(5) Detailed information regarding the status of all debts and other obligations of the corporation, specifying the citizenship and residence of each creditor on the effective date and on the date of the application.

[50 FR 33720, Aug. 21, 1985. Redesignated at 64 FR 25813, May 13, 1999]

§ 515.522 U.S. assets of certain Cuban decedents.

(a) Specific licenses may be issued unblocking the net pro rata shares of certain heirs of designated nationals in U.S.-located estate assets, after deducting the total debt due creditors for claims that accrued prior to the effective date, in cases where all of the following conditions are met:

(1) The applicant is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and

(2) No interest on the part of a designated national not licensed as an unblocked national pursuant to § 515.505 exists in that portion of the assets to which the applicant is entitled.

(b) Applications for specific licenses under this section must include all of the following information:

(1) Proof of permanent residence in the United States or the authorized trade territory, to be established by the submission of documentation issued by relevant government authorities that must include at least two of the following documents: (i) passport; (ii) voter registration card; (iii) permanent resident alien card; or (iv) national identity card. Other documents tending to show residency, such as income tax returns, may also be submitted in support of government documentation, but will not suffice in and of themselves;

(2) Proof of death of the designated national to be established by a death certificate;

(3) Proof of heirship, to be established by a copy of the decedent's duly executed will certified by a probate court, a court decree determining the heirs, or, failing the availability of such documents, copies of certificates establishing the relationship of the heir to the deceased, e.g., birth or marriage certificates;

(4) A description of the assets involved, including interest due on blocked funds since April 1, 1979, the name and address of the institution in which the assets are held, the account or safe deposit box number, the name in which the assets are held and a statement of all known encumbrances or claims against them; and

(c) Any document provided pursuant to this section that is not written in the English language must be accompanied by a translation into English, as well as a certification by the translator that he is not an interested party to the proceeding, is qualified to make the translation, and has made an accurate translation of the document in question.

[54 FR 5235, Feb. 2, 1989. Redesignated at 64 FR 25813, May 13, 1999]

§515.523 Transactions incident to the administration of decedents' estates.

(a) The following transactions are authorized in connection with the administration of the assets in the United States of any blocked estate of a decedent:

(1) The appointment and qualification of a personal representative;

(2) The collection and preservation of such assets by such personal representative and the payment of all costs, fees and charges in connection therewith; and

(3) The payment by such personal representative of funeral expenses and expenses of the last illness.

(4) Any transfer of title pursuant to a valid testamentary disposition.

This paragraph does not authorize any unblocking or distribution of estate assets to a designated national.

(b) In addition to the authorization contained in paragraph (a) of this section, all other transactions incident to the administration of assets situated in the United States of any blocked estate of a decedent are authorized if:

(1) The decedent was not a national of a designated foreign country at the time of his death;

(2) The decedent was a citizen of the United States and a national of a designated foreign country at the time of his death solely by reason of his presence in a designated foreign country as a result of his employment by, or service with the United States Government; or

(3) The assets are unblocked under a specific license issued pursuant to §515.522.

(c) Any property or interest therein distributed pursuant to this section to a designated national shall be regarded for the purpose of this chapter as property in which such national has an interest and shall accordingly be subject to all the pertinent sections of this chapter. Any payment or distribution of any funds, securities or other choses in action to a designated national shall be made by deposit in a blocked account in a domestic bank or with a public officer, agency, or instrumentality designated by a court having jurisdiction of the estate. Any such deposit shall be made in one of the following ways:

(1) In the name of the national who is the ultimate beneficiary thereof;

(2) In the name of a person who is not a national of a designated foreign country in trust for the national who is the ultimate beneficiary; or

(3) Under some other designation which clearly shows the interest therein of such national.

(d) Any distribution of property authorized pursuant to this section may be made to a trustee of any testamentary trust or to the guardian of an estate of a minor or of an incompetent.

(e) This section does not authorize:

(1) Any designated national to act as personal representative or co-representative of any estate;

(2) Any designated national to represent, directly or indirectly, any person who has an interest in an estate;

(3) Any designated national to take distribution of any property as the trustee of any testamentary trust or as the guardian of an estate of a minor or of an incompetent; or

(4) Any transaction which could not be effected if no designated national had any interest in such estate.

(f) Any payment or distribution authorized by this section may be deposited in a blocked account in a domestic bank or with a public officer, agency, or instrumentality designated by the court having jurisdiction of the estate in one of the ways prescribed in paragraph (c) (1), (2) or (3) of this section, but this section does not authorize any other transaction directly or indirectly at the request, or upon the instructions of any designated national.

[28 FR 6974, July 9, 1963, as amended at 54 FR 5234, Feb. 2, 1989; 64 FR 25813, May 13, 1999]

§ 515.524 Payment from, and transactions in the administration of certain trusts and estates.

(a) Any bank or trust company incorporated under the laws of the United States, or of any State, territory, possession, or district of the United States, or any private bank subject to supervision and examination under the banking laws of any State of the United States, acting as trustee of a trust created by gift, donation or bequest and administered in the United States, or as legal representative of an estate of an infant or incompetent administered in the United States, in which trust or estate one or more persons who are designated nationals have an interest, beneficial or otherwise, or are co-trustees or co-representatives, is hereby authorized to engage in the following transactions:

(1) Payments of distributive shares of principal or income to all persons legally entitled thereto upon the condition prescribed in paragraph (b) of this section.

(2) Other transactions arising in the administration of such trust or estate which might be engaged in if no national of a designated foreign country were a beneficiary, co-trustee or co-representative of such trust or estate upon the condition prescribed in paragraph (b) of this section.

(b) Any payment or distribution of any funds, securities or other choses in action to a national of a designated foreign country under this section shall be made by deposit in a blocked account in a domestic bank in the name of the national who is the ultimate beneficiary thereof.

(c) Any payment or distribution into a blocked account in a domestic bank in the name of any such national of a designated foreign country who is the ultimate beneficiary of and legally entitled to any such payment or distribution is authorized by this section, but this section does not authorize such trustee or legal representative to engage in any other transaction at the request, or upon the instructions, of any beneficiary, co-trustee or co-representative of such trust or estate or other person who is a national of any designated foreign country.

(d) The application of this section to trusts is limited to trusts established by gift, donation, or bequest from individuals or entities to benefit specific heirs, charitable causes, and similar beneficiaries. This section does not apply to trusts established for business or commercial purposes, such as sinking funds established by an issuer of securities in order to secure payment of interest or principal due on such securities.

[28 FR 6974, July 9, 1963, as amended at 49 FR 27144, July 2, 1984; 54 FR 5234, Feb. 2, 1989]

§ 515.525 Certain transfers by operation of law.

(a) The following are hereby authorized:

(1) Any transfer of any dower, curtesy, community property, or other interest of any nature whatsoever, provided that such transfer arises solely as a consequence of the existence or change of marital status;

(2) Any transfer to any person by intestate succession;

(3) Any transfer to any person as administrator, executor, or other fiduciary by reason of any testamentary disposition; and

(4) Any transfer to any person as administrator, executor, or fiduciary by reason of judicial appointment or approval in connection with any testamentary disposition or intestate succession.

(b) Except to the extent authorized by § 515.522, § 515.523 or by any other license or authorization contained in or issued pursuant to this part no transfer to any person by intestate succession

and no transfer to any person as administrator, executor, or other fiduciary by reason of any testamentary disposition, and no transfer to any person as administrator, executor, or fiduciary by reason of judicial appointment or approval in connection with any testamentary disposition or intestate succession shall be deemed to terminate the interest of the decedent in the property transferred if the decedent was a designated national.

[28 FR 6974, July 9, 1963, as amended at 54 FR 5234, Feb. 2, 1989; 64 FR 25813, May 13, 1999]

§515.526 Transactions involving blocked life insurance policies.

(a) The following transactions are hereby authorized:

(1) The payment of premiums and interest on policy loans with respect to any blocked life insurance policy;

(2) The issuance, servicing or transfer of any blocked life insurance policy in which the only blocked interest is that of one or more of the following:

(i) A member of the armed forces of the United States or a person accompanying such forces (including personnel of the American Red Cross, and similar organizations);

(ii) An officer or employee of the United States; or

(iii) A citizen of the United States resident in a designated foreign country; and

(3) The issuance, servicing or transfer of any blocked life insurance policy in which the only blocked interest (other than that of a person specified in paragraph (a)(2) of this section) is that of a beneficiary.

(b) Paragraph (a) of this section does not authorize:

(1) Any payment to the insurer from any blocked account except a blocked account of the insured or beneficiary, or

(2) Any payment by the insurer to a national of a designated foreign country unless payment is made by deposit in a blocked account in a domestic bank in the name of the national who is the ultimate beneficiary thereof.

(c) The application, in accordance with the provisions of the policy or the established practice of the insurer of the dividends, cash surrender value, or loan value, of any blocked life insurance policy is also hereby authorized for the purpose of:

(1) Paying premiums;

(2) Paying policy loans and interest thereon;

(3) Establishing paid-up insurance; or

(4) Accumulating such dividends or values to the credit of the policy on the books of the insurer.

(d) As used in this section:

(1) The term *blocked life insurance policy* shall mean any life insurance policy or annuity contract, or contract supplementary thereto, in which there is a blocked interest.

(2) Any interest of a national of a designated foreign country shall be deemed to be a ''blocked interest.''

(3) The term *servicing* shall mean the following transactions with respect to any blocked life insurance policy:

(i) The payment of premiums, the payment of loan interest, and the repayment of policy loans;

(ii) The effecting by a life insurance company or other insurer of loans to an insured;

(iii) The effecting on behalf of an insured or surrenders, conversions, modifications, and reinstatements; and

(iv) The exercise or election by an insured of nonforfeiture options, optional modes of settlement, optional disposition of dividends, and other policy options and privileges not involving payment by the insurer.

(4) The term *transfer* shall mean the change of beneficiary, or the assignment or pledge of the interest of an insured in any blocked life insurance policy subsequent to the issuance thereof.

(e) This section does not authorize any transaction with respect to any blocked life insurance policy issued by a life insurance company or other insurer which is a national of a designated foreign country or which is not doing business or effecting insurance in the United States.

§515.527 Certain transactions with respect to United States intellectual property.

(a)(1) Transactions related to the registration and renewal in the United States Patent and Trademark Office or the United States Copyright Office of patents, trademarks, and copyrights in which the Government of Cuba or a

Cuban national has an interest are authorized.

(2) No transaction or payment is authorized or approved pursuant to paragraph (a)(1) of this section with respect to a mark, trade name, or commercial name that is the same as or substantially similar to a mark, trade name, or commercial name that was used in connection with a business or assets that were confiscated, as that term is defined in § 515.336, unless the original owner of the mark, trade name, or commercial name, or the bona fide successor-in-interest has expressly consented.

(b) This section authorizes the payment from blocked accounts or otherwise of fees currently due to the United States Government in connection with any transaction authorized in paragraph (a) of this section.

(c) This section further authorizes the payment from blocked accounts or otherwise of the reasonable and customary fees and charges currently due to attorneys or representatives within the United States in connection with the transactions authorized in paragraph (a) of this section.

[60 FR 54196, Oct. 20, 1995, as amended at 64 FR 25813, May 13, 1999]

§ 515.528 Certain transactions with respect to blocked foreign intellectual property.

(a) The following transactions by any person who is not a designated national are hereby authorized:

(1) The filing and prosecution of any application for a blocked foreign patent, trademark or copyright, or for the renewal thereof;

(2) The receipt of any blocked foreign patent, trademark or copyright;

(3) The filing and prosecution of opposition or infringement proceedings with respect to any blocked foreign patent, trademark, or copyright, and the prosecution of a defense to any such proceedings;

(4) The payment of fees currently due to the government of any foreign country, either directly or through an attorney or representative, in connection with any of the transactions authorized by paragraphs (a) (1), (2), and (3) of this section or for the maintenance of any blocked foreign patent, trademark or copyright; and

(5) The payment of reasonable and customary fees currently due to attorneys or representatives in any foreign country incurred in connection with any of the transactions authorized by paragraphs (a) (1), (2), (3), or (4) of this section.

(b) Payments effected pursuant to the terms of paragraphs (a) (4) and (5) of this section may not be made from any blocked account.

(c) As used in this section the term *blocked foreign patent, trademark, or copyright* shall mean any patent, petty patent, design patent, trademark or copyright issued by any foreign country in which a designated foreign country or national thereof has an interest, including any patent, petty patent, design patent, trademark, or copyright issued by a designated foreign country.

[28 FR 6974, July 9, 1963, as amended at 60 FR 54196, Oct. 20, 1995]

§ 515.529 Powers of attorney.

(a) No power of attorney, whether granted before or after the ''effective date'' shall be invalid by reason of any of the provisions of this part with respect to any transaction licensed by or pursuant to the provisions of this part.

(b) This section does not authorize any transaction pursuant to a power of attorney if such transaction is prohibited by § 515.201 and is not otherwise licensed or authorized by or pursuant to this part.

(c) This section does not authorize the creation of any power of attorney in favor of any person outside of the United States or the exportation from the United States of any power of attorney.

§ 515.530 Exportation of powers of attorney or instructions relating to certain types of transactions.

(a) The exportation to any foreign country of powers of attorney or other instruments executed or issued by any person within the United States who is not a national of a designated foreign country, which are limited to authorizations or instructions to effect transactions incident to the following, are hereby authorized upon the condition

prescribed in paragraph (b) of this section:

(1) The representation of the interest of such person in a decedent's estate which is being administered in a designated foreign country and the collection of the distributive share of such person in such estate;

(2) The maintenance, preservation, supervision or management of any property located in a designated foreign country in which such person has an interest; and

(3) The conveyance, transfer, release, sale or other disposition of any property specified in paragraph (a)(1) of this section or any real estate or tangible personal property if the value thereof does not exceed the sum of $5,000 or its equivalent in foreign currency.

(b) No instrument which authorizes the conveyance, transfer, release, sale or other disposition of any property may be exported under this section unless it contains an express stipulation that such authority may not be exercised if the value of such property exceeds the sum of $5,000 or the equivalent thereof in foreign currency.

(c) As used in this section, the term *tangible personal property* shall not include cash, bullion, deposits, credits, securities, patents, trademarks, or copyrights.

§ 515.531 Payment of certain checks and drafts.

(a) Any banking institution within the United States is hereby authorized to make payments from blocked accounts with such banking institution:

(1) Of checks and drafts drawn or issued prior to the ''effective date'' provided:

(i) The amount involved in any one payment, acceptance, or debit does not exceed $500; or

(ii) The check or draft was within the United States in process of collection by a domestic bank on or prior to the ''effective date.''

(2) [Reserved]

(b) This section does not authorize any payment to a designated foreign country or any designated national thereof except payments into a blocked account in a domestic bank, unless such designated national is otherwise licensed to receive such payment.

(c) The authorization contained in this section shall expire at the close of business on August 8, 1963.

§ 515.532 Completion of certain securities transactions.

(a) Banking institutions within the United States are hereby authorized to complete, on or before July 12, 1963 purchases and sales made prior to the ''effective date'' of securities purchased or sold for the account of a designated foreign country or any designated national thereof provided the following terms and conditions are complied with, respectively:

(1) The proceeds of such sale are credited to a blocked account in a banking institution in the name of the person for whose account the sale was made; and

(2) The securities so purchased are held in a blocked account in a banking institution in the name of the person for whose account the purchase was made.

(b) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a subaccount thereof, to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

§ 515.533 Transactions incident to exportations from the United States and reexportations of 100% U.S.-origin items to Cuba; negotiation of executory contracts.

(a) All transactions ordinarily incident to the exportation of items from the United States, or the reexportation of 100% U.S.-origin items from a third country, to any person within Cuba are authorized, provided that:

(1) The exportation or reexportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–0420) (see the Export Administration Regulations, 15 CFR 730–774); and

(2) Only the following payment and financing terms may be used:

(i)(A) *Payment of cash in advance.* Except as provided in paragraph (a)(2)(i)(B) of this section, for the purposes of this section, the term ''payment of cash in advance'' means that payment is received by the seller or the seller's agent prior to shipment of the goods from the port at which they are loaded;

(B) *Payment of cash in advance during Fiscal Year 2010.* For sales of agricultural items delivered to Cuba between October 1, 2009, and September 30, 2010, or delivered pursuant to a contract entered into between October 1, 2009, and September 30, 2010, and shipped within twelve months from the signing of the contract, the term ''payment of cash in advance'' shall mean payment before the transfer of title to, and control of, the exported items to the Cuban purchaser;

NOTE TO § 515.533(a)(2)(i)(B): The payment rule set forth in this paragraph is required by Section 619 of the Omnibus Appropriations Act, 2010 (Pub. L. 111–117).

(ii) For authorized sales of agricultural items, financing by a banking institution located in a third country provided the banking institution is not a designated national, U.S. citizen, U.S. permanent resident alien, or an entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches). Such financing may be confirmed or advised by a U.S. banking institution; or

(iii) For all other authorized sales, financing by a banking institution located in a third country provided the banking institution is not a designated national or a person subject to the jurisdiction of the United States. Such financing may be confirmed or advised by a U.S. banking institution.

NOTE TO PARAGRAPH (a): The transactions authorized by this paragraph include, but are not limited to, all transactions that are directly incident to the shipping of specific exports or reexports (e.g., insurance and transportation of the exports to Cuba). Transactions that are not tied to specific exports or reexports, such as transactions involving future (non-specific) shipments, must be separately licensed by OFAC. For the waiver of the prohibitions on entry into U.S. ports contained in § 515.207 for vessels transporting shipments of items between the United States and Cuba pursuant to this section, see § 515.550.

(b) Persons subject to the jurisdiction of the United States are authorized to engage in all transactions ordinarily incident to negotiation of and entry into executory contracts for the sale of items that may be exported from the United States to Cuba or 100% U.S.-origin items that may be reexported from a third country to Cuba consistent with the export licensing policy of the Department of Commerce, provided that performance of such executory contracts is expressly made contingent on the prior authorization by the Department of Commerce.

NOTE TO PARAGRAPH (b): This paragraph does not authorize transactions related to travel to, from, or within Cuba. See paragraphs (e) and (f) for general licenses, and paragraph (g) for a statement of specific licensing policy, with respect to such transactions.

(c) This section does not authorize:

(1) The financing of any transactions from any blocked account.

(2) Any transaction involving, directly or indirectly, property in which any designated national, other than a person located in the country to which the exportation or reexportation is consigned, has an interest or has had an interest since the effective date set forth in § 515.201 of this part.

(d) In addition to those transactions authorized pursuant to paragraph (a) of this section, all transactions ordinarily incident to the processing of payments received for items exported from the United States to any person within Cuba are authorized, provided that:

(1) The exportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401–2420) (see the Export Administration Regulations, 15 CFR 730–774);

(2) The items are shipped from the port at which they are loaded on or before March 24, 2005; and

(3) Payment is received by a U.S. banking institution on or before March 24, 2005, and prior to the transfer of title to, and control of, the exported items to the Cuban purchaser.

(e) *General license for travel-related transactions incident to sales of agricultural commodities, medicine, or medical devices.* The travel-related transactions set forth in §515.560(c) and additional transactions that are directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of agricultural commodities, medicine, or medical devices that appear consistent with the export or re-export licensing policy of the Department of Commerce are authorized, provided that:

(1) The traveler is regularly employed by a producer or distributor of the agricultural commodities, medicine, or medical devices or by an entity duly appointed to represent such a producer or distributor;

(2) The traveler's schedule of activities does not include free time, travel, or recreation in excess of that consistent with a full work schedule; and

(3) The traveler submits to OFAC at least 14 days in advance of each departure to Cuba a written report identifying both the traveler and the producer or distributor and describing the purpose and scope of such travel. Within 14 days of return from Cuba, the traveler shall submit a written report describing the business activities conducted, the persons with whom the traveler met in the course of such activities, and the expenses incurred. Such reports must be captioned ''Section 515.533(e) Report'' and faxed to 202/622–1657 or mailed to the Office of Foreign Assets Control, *Attn:* Licensing Division, 1500 Pennsylvania Avenue, NW., Annex–2nd Floor, Washington, DC 20220. If more than one traveler is traveling on the same trip for or on behalf of the same producer or distributor, one combined pre-trip and one combined post-trip report may be filed covering all such travelers.

(f) *General license for travel-related transactions incident to sales of telecommunications-related items.* The travel-related transactions set forth in §515.560(c) and additional transactions that are directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of telecommunications-related items that have been authorized for commercial export or re-export to Cuba by the Department of Commerce are authorized, provided that:

(1) The traveler is regularly employed by a telecommunications services provider that is a person subject to U.S. jurisdiction or by an entity duly appointed to represent such a provider;

(2) The traveler's schedule of activities does not include free time, travel, or recreation in excess of that consistent with a full work schedule; and

(3) The traveler submits to OFAC at least 14 days in advance of each departure to Cuba a written report identifying both the traveler and the telecommunications services provider that is a person subject to U.S. jurisdiction and describing the purpose and scope of such travel. Within 14 days of return from Cuba, the traveler shall submit a written report describing the business activities conducted, the persons with whom the traveler met in the course of such activities, and the expenses incurred. Such reports must be captioned ''Section 515.533(f) Report'' and faxed to 202/622–1657 or mailed to the Office of Foreign Assets Control, *Attn:* Licensing Division, 1500 Pennsylvania Avenue, NW., Annex–2nd Floor, Washington, DC 20220. If more than one traveler is traveling on the same trip for or on behalf of the same telecommunications services provider that is a person subject to U.S. jurisdiction, one combined pre-trip and one combined post-trip report may be filed covering all such travelers.

(g) *Specific licenses for travel-related transactions incident to exports.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in §515.560(c) and additional transactions that are directly incident to the marketing, sales negotiation, accompanied delivery, or servicing in Cuba of exports that appear consistent with the export or re-export licensing policy of the Department of Commerce and are not authorized by the general licenses in paragraphs (e) and (f) of this section.

[68 FR 14146, Mar. 24, 2003, as amended at 70 FR 9225, Feb. 25, 2005; 74 FR 46004, Sept. 8, 2009; 75 FR 10997, Mar. 10, 2010]

§ 515.535 Exchange of certain securities.

(a) Subject to the limitations and conditions of paragraph (b) of this section and notwithstanding § 515.202, any banking institution within the United States is authorized to engage in the following transactions with respect to securities listed on a national securities exchange, including the withdrawal of such securities from blocked accounts:

(1) Exchange of certificates necessitated by reason of changes in corporate name, par value or capitalization,

(2) Exchanges of temporary for permanent certificates,

(3) Exchanges or deposits under plans of reorganization,

(4) Exchanges under refunding plans, or

(5) Exchanges pursuant to conversion privileges accruing to securities held.

(b) This section does not authorize the following transactions:

(1) Any exchange of securities unless the new securities and other proceeds, if any, received are deposited in the blocked account in which the original securities were held immediately prior to the exchange.

(2) Any exchange of securities registered in the name of any designated national, unless the new securities received are registered in the same name in which the securities exchanged were registered prior to the exchange.

(3) Any exchange of securities issued by a person engaged in the business of offering, buying, selling, or otherwise dealing, or trading in securities, or evidences thereof, issued by another person.

(4) Any transaction with respect to any security by an issuer or other obligor who is a designated national.

§ 515.536 Certain transactions with respect to merchandise affected by § 515.204.

(a) With respect to merchandise the importation of which is prohibited by § 515.204, all Customs transactions are authorized except the following:

(1) Entry for consumption (including any appraisement entry, any entry of goods imported in the mails, regardless of value, and any other informal entries);

(2) Entry for immediate exportation;

(3) Entry for transportation and exportation;

(4) Withdrawal from warehouse;

(5) Transfer or withdrawal from a foreign-trade zone; or

(6) Manipulation or manufacture in a warehouse or in a foreign-trade zone.

(b) Paragraph (a) of this section is intended solely to allow certain restricted disposition of merchandise which is imported without proper authorization. Paragraph (a) of this section does not authorize the purchase or importation of any merchandise.

(c) The purchase outside the United States for importation into the United States of nickel-bearing materials presumptively subject to § 515.204 and the importation of such merchandise into the United States (including transactions listed in paragraph (a) of this section) are authorized if there is presented to the collector of customs in connection with such importation the original of an appropriate certificate of origin as defined in paragraph (d) of this section and provided that the merchandise was shipped to the United States directly, or on a through bill of lading, from the country issuing the appropriate certificate of origin.

(d) A certificate of origin is appropriate for the purposes of this section only if

(1) It is a certificate of origin the availability of which for Cuban Assets Control purposes has been announced in the FEDERAL REGISTER by the Office of Foreign Assets Control; and

(2) It bears a statement by the issuing agency referring to the Cuban Assets Control Regulations or stating that the certificate has been issued under procedures agreed upon with the U.S. Government.

[30 FR 15371, Dec. 14, 1965, as amended at 47 FR 4254, Jan. 29, 1982; 50 FR 5753, Feb. 12, 1985; 54 FR 5234, Feb. 2, 1989]

§ 515.540 [Reserved]

§ 515.542 Mail and telecommunications-related transactions.

(a) All transactions of common carriers incident to the receipt or transmission of mail between the United States and Cuba are authorized.

(b) All transactions, including but not limited to payments, incident to the provision of telecommunications services between the United States and Cuba, the provision of satellite radio or satellite television services to Cuba, or the entry into and performance under roaming service agreements with telecommunications services providers in Cuba, by a telecommunications services provider that is a person subject to U.S. jurisdiction are authorized. This paragraph does not authorize any transactions addressed in paragraphs (c), (d), (f) or (g) of this section, nor does it authorize the entry into or performance of a contract with or for the benefit of any particular individual in Cuba.

(c) All persons subject to U.S. jurisdiction are authorized to enter into, and make payments under, contracts with non-Cuban telecommunications services providers, or particular individuals in Cuba, for telecommunications services provided to particular individuals in Cuba, provided that such individuals in Cuba are not prohibited officials of the Government of Cuba, as defined in § 515.337 of this part, or prohibited members of the Cuban Communist Party, as defined in § 515.338 of this part. The authorization in this paragraph includes, but is not limited to, payment for activation, installation, usage (monthly, pre-paid, intermittent, or other), roaming, maintenance, and termination fees.

(d)(1) *General license for telecommunications facilities linking the United States and Cuba.* Transactions incident to the establishment of facilities to provide telecommunications services linking the United States and Cuba, including but not limited to fiber-optic cable and satellite facilities, are authorized.

(2) *Specific licenses for telecommunications facilities linking third countries and Cuba.* Specific licenses may be issued on a case-by-case basis authorizing transactions incident to the establishment of facilities to provide telecommunications services linking third countries and Cuba, including but not limited to fiber-optic cable and satellite facilities, provided that such facilities are necessary to provide efficient and adequate telecommunications services between the United States and Cuba.

(e) Any entity subject to U.S. jurisdiction relying on paragraph (b), (c), (d)(1), or (d)(2) of this section shall notify OFAC in writing within 30 days after commencing or ceasing to offer such services, as applicable, and shall furnish by January 15 and July 15 of each year semiannual reports providing the total amount of all payments made to Cuba or a third country related to any of the services authorized by this section during the prior six months. These notifications and reports must be captioned ''Section 515.542 Notification'' or ''Section 515.542 Report'' and faxed to 202/622–6931 or mailed to the Office of Foreign Assets Control, *Attn:* Policy Division, 1500 Pennsylvania Avenue, NW., Annex–4th Floor, Washington, DC 20220.

(f) For the purposes of this section, the term *telecommunications services* includes but is not limited to telephone, telegraph, and similar services and the transmission of satellite radio and satellite television broadcasts and news wire feeds.

(g) Nothing in this section authorizes the exportation or re-exportation of any items to Cuba. For the rules related to authorization of exports and re-exports to Cuba, see §§ 515.533 and 515.559 of this part.

(h) For an authorization of travel-related transactions that are directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of telecommunications-related items that have been authorized for commercial export to Cuba by the U.S. Department of Commerce, see § 515.533(f) of this part. For an authorization of travel-related transactions that are directly incident to participation in professional meetings for the commercial marketing of, sales negotiation for, or performance under contracts for the provision of the telecommunications services, or the establishment of facilities

to provide telecommunications services, authorized by paragraphs (b), (c), or (d)(1) of this section, see paragraph (a)(3) of § 515.564 of this part. Nothing in this § 515.542 authorizes transactions related to travel to, from, or within Cuba.

[74 FR 46005, Sept. 8, 2009]

§ 515.543 Proof of origin.

Specific licenses for importation of goods of Cuban origin are generally not issued unless the applicant submits satisfactory documentary proof of the location of the goods outside Cuba prior to July 8, 1963 and of the absence of any Cuban interest in the goods at all times on or since that date. Since the type of document which would constitute satisfactory proof varies depending upon the facts of the particular case, it is not possible to state in advance the type of documents required. However, it has been found that affidavits, statements, invoices, and other documents prepared by manufacturers, processors, sellers or shippers cannot be relied on and are therefore not by themselves accepted by the Office of Foreign Assets Control as satisfactory proof of origin. Independent corroborating documentary evidence, such as insurance documents, bills of lading, etc., may be accepted as satisfactory proof.

[39 FR 25317, July 10, 1974]

§ 515.544 Gifts of Cuban origin goods.

(a) Except as stated in paragraph (b) of this section, specific licenses are not issued for the importation of Cuban-origin goods sent as gifts to persons in the United States or acquired abroad as gifts by persons entering the United States. However, licenses are issued upon request for the return of such goods to the donors in countries other than Cuba.

(b) Specific licenses are issued for the importation directly from Cuba:

(1) Of goods which are claimed by the importer to have been sent as a bona fide gift or

(2) Of goods which are imported by a person entering the U.S., which are claimed to have been acquired in Cuba as a bona fide gift, subject to the conditions that:

(i) The goods are of small value, and

(ii) There is no reason to believe that there is, or has been since July 8, 1963, any direct or indirect financial or commercial benefit to Cuba or nationals thereof from the importation.

[39 FR 25317, July 10, 1974; 39 FR 28434, Aug. 7, 1974, as amended at 49 FR 27144, July 2, 1984]

§ 515.545 Transactions related to information and informational materials.

(a) Transactions relating to the dissemination of informational materials are authorized, including remittance of royalties paid for informational materials that are reproduced, translated, subtitled, or dubbed. This section does not authorize the remittance of royalties or other payments relating to works not yet in being, or for marketing and business consulting services, or artistic or other substantive alteration or enhancements to informational materials, as provided in § 515.206(a)(3).

(b) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) for purposes related to the exportation, importation, or transmission of information or informational materials as defined in § 515.332.

NOTE TO § 515.545. With respect to transactions necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals and newspapers, see § 515.577.

[54 FR 5234, Feb. 2, 1989, as amended at 60 FR 39257, Aug. 2, 1995; 64 FR 25813, May 13, 1999; 69 FR 75469, Dec. 17, 2004; 74 FR 46006, Sept. 8, 2009]

§ 515.546 Accounts of Cuban sole proprietorships.

Specific licenses are issued unblocking sole proprietorships established under the laws of Cuba if the proprietor has emigrated from Cuba and established residence in the United States or a country in the authorized trade territory.

[39 FR 25319, July 10, 1974. Redesignated at 64 FR 25813, May 13, 1999]

§ 515.547 Research samples.

Specific licenses are issued for importation of Cuban-origin commodities for

bona-fide research purposes in sample quantities only.

[39 FR 25318, July 10, 1974]

§ 515.548 Services rendered by Cuba to United States aircraft.

Specific licenses are issued for payment to Cuba of charges for services rendered by Cuba in connection with overflights of Cuba or emergency landings in Cuba, of private, commercial or government-owned United States aircraft.

[39 FR 25318, July 10, 1974, as amended at 49 FR 27144, July 2, 1984]

§ 515.549 Bank accounts and other property of non-Cuban citizens who were in Cuba on or after July 8, 1963.

(a) *Citizens of foreign countries.* Specific licenses are issued unblocking the accounts and other property of non-Cuban citizens who have left Cuba, provided that they submit evidence satisfactorily demonstrating that they have established residence in a foreign country in the authorized trade territory.

(b) *Decedents who died in Cuba on or after July 8, 1963.* Specific licenses are issued authorizing the administration of the estates of non-Cuban decedents who died in Cuba, provided that any distribution to a blocked national of Cuba is made by deposit in a blocked account in a domestic bank in the name of the blocked national.

[39 FR 25318, July 10, 1974]

§ 515.550 Certain vessel transactions authorized.

Unless a vessel has otherwise engaged in transactions that would prohibit entry pursuant to § 515.207, § 515.207 shall not apply to a vessel that is:

(a) Engaging in trade with Cuba authorized by licenses issued pursuant to § 515.533 or § 515.559; or

(b) Engaging in trade with Cuba that is exempt from the prohibitions of this part (see § 515.206).

[64 FR 25813, May 13, 1999]

§ 515.551 Joint bank accounts.

(a) Specific licenses are issued unblocking a portion of or all of a joint bank account blocked by reason of the fact that one or more of the persons in whose names the account is held is a blocked national, where a non-blocked applicant claims beneficial ownership, as follows:

(1) *Joint bank account, without survivorship provisions.* Specific licenses are issued unblocking only that amount with respect to which the applicant is able to prove beneficial ownership by documentary evidence independent of his assertions of interest.

(2) *Joint bank account, with survivorship provisions.* Specific licenses are issued unblocking an amount equivalent to that portion of the total amount to which the applicant would be entitled if the total were divided evenly among the persons in whose names the account is held (e.g. 50 percent where there are two names; 33⅓ percent where there are three names). Such licenses generally are issued on the basis of applicant's assertions of beneficial ownership interest without the requirement of independent evidence.

(3) *Joint bank account in the names of a husband and wife, with survivorship provision.* Specific licenses are issued unblocking portions of such accounts blocked by reason of the residence of one spouse in Cuba in favor of the non-blocked spouse under the policy stated in paragraph (a)(2) of this section. However, if 50 percent of the account has been unblocked under that policy, and the spouse who is the blocked Cuban national subsequently dies, the surviving spouse may be entitled to a license unblocking the remainder of the assets under § 515.522.

(b) [Reserved]

[39 FR 25318, July 10, 1974, as amended at 49 FR 27145, July 2, 1984; 54 FR 5234, Feb. 2, 1989; 64 FR 25813, May 13, 1999]

§ 515.552 Proceeds of insurance policies.

(a) Specific licenses are issued authorizing payment of the proceeds of blocked life insurance policies issued on the life of a Cuban national who died in Cuba after July 8, 1963, to certain beneficiaries licensed as unblocked nationals pursuant to § 515.505, as follows:

(1) The applicant is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and

(2) No interest on the part of a designated national not licensed as an unblocked national exists in that portion of the funds to which the applicant is entitled.

(b) Applications for specific licenses under this section must include all of the following information:

(1) Proof of permanent residence in the United States or the authorized trade territory, to be established by the submission of documentation issued by relevant government authorities that must include at least two of the following documents:

(i) Passport;

(ii) Voter registration card;

(iii) Permanent resident alien card; or

(iv) National identity card.

Other documents tending to show residency, such as income tax returns, may also be submitted in support of government documentation, but will not suffice in and of themselves;

(2) Proof of entitlement under the insurance policy to be established by a copy of the policy and an affidavit from an appropriate officer of a recognized insurance company acknowledging the legitimacy of the beneficiary's claim and the amount of the payment; and

(c) Any document provided pursuant to this section that is not written in the English language must be accompanied by a translation into English, as well as a certification by the translator that he is not an interested party to the proceeding, is qualified to make the translation, and has made an accurate translation of the document in question.

[54 FR 5234, Feb. 2, 1989]

§ 515.553 Bank accounts of official representatives in Cuba of foreign governments.

Specific licenses are issued authorizing payments from accounts of official representatives in Cuba of foreign governments for transactions which are not inconsistent with the purposes of any of the regulations in this chapter.

[39 FR 25319, July 10, 1974]

§ 515.554 Transfers of abandoned property under State laws.

(a) Except as stated in paragraphs (b) and (c) of this section, specific licenses are not issued authorizing the transfer of blocked property to State agencies under State laws governing abandoned property.

(b) Specific licenses are issued authorizing the transfer of blocked property, pursuant to the laws of the State governing abandoned property, to the appropriate State agency: *Provided*, That the State's laws are custodial in nature, i.e., there is no permanent transfer of beneficial interest to the State. Licenses require the property to be held by the State in accounts which are identified as blocked under the regulations. A separate index of these blocked assets is required to be maintained by the State agency. The requirements of this section for identification and separate indexing of blocked assets apply to all blocked assets held by State agencies and any licenses issued prior to the effective date of this section hereby are amended by the incorporation of such requirements.

(c) To be eligible for a specific license under this section, the state agency must demonstrate that it has the statutory authority under appropriate state law to comply with the requirements of § 515.205. Such a showing shall include an opinion of the State Attorney General that such statutory authority exists.

[44 FR 11771, Mar. 2, 1979]

§ 515.555 Assets of Cuban firms wholly or substantially owned by U.S. citizens.

(a) Specific licenses are issued to applicants requesting the unblocking of their stock in Cuban corporations if:

(1) The corporation was wholly or substantially owned by United States citizens on July 8, 1963;

(2) The assets are in the United States and either;

(3) The applicant is a stockholder who was a United States citizen on

July 8, 1963 and owned the stock interests on that date; or,

(4) The applicant is a non-blocked person who acquired such stock interest after July 8, 1963 from a person specified in paragraph (a)(3) of this section.

(b) The issuance of licenses is conditioned on the applicant's furnishing the following information:

(1) Detailed information as to the status of all debts and other obligations of the Cuban corporation, specifying the citizenship and residence of each creditor as of July 8, 1963, and as of the date of filing of the application;

(2) Current status of the Cuban corporation, e.g., liquidated, nationalized, inoperative, etc.;

(3) A detailed description of all the corporation's assets, wherever located;

(4) A list of all officers, directors, and stockholders giving the citizenship and the residence of each such person as of July 8, 1963; and,

(5) Satisfactory proof that such stock was owned by U.S. citizens as of July 8, 1963. Such proof may consist of sworn statements by the persons in question attesting to their citizenship. The Office of Foreign Assets Control reserves the right to require additional proof of citizenship.

[39 FR 25319, July 10, 1974]

§ 515.556 [Reserved]

§ 515.557 Accounts of Cuban partnerships.

Specific licenses are issued unblocking partnerships established under the laws of Cuba as follows:

(a) Where all of the general partners and limited partners, if any, have emigrated from Cuba and have established residence in the United States or in a country in the authorized trade territory, specific licenses are issued unblocking the assets of the partnership after deducting the total debt due creditors wherever located.

(b) Where one or more partners, whether general or limited, is still in Cuba (or elsewhere but still blocked), specific licenses are issued unblocking only the net pro-rata shares of those partners who are resident in the United States or in a country in the authorized trade territory after deducting the total debt due creditors wherever located.

(c) The issuance of licenses is conditioned on the applicant's furnishing the following information:

(1) Detailed information as to the status of all debts and other obligations of the blocked partnership, specifying the citizenship and residence of each creditor as of July 8, 1963, and as of the date of the application;

(2) Current status of the Cuban partnership, e.g., liquidated, nationalized, inoperative, etc.;

(3) A detailed description of all the partnership's assets, wherever located; and,

(4) A list of all partners, indicating whether they are general, limited, etc. and giving their citizenship and residence as of July 8, 1963, and as of the date of filing of the application.

[39 FR 25319, July 10, 1974]

§ 515.558 Bunkering of Cuban vessels and fueling of Cuban aircraft by American-owned or controlled foreign firms.

Foreign firms owned or controlled by United States persons are authorized to engage in transactions ordinarily incident to the bunkering of vessels and to the fueling of aircraft owned or controlled by, or chartered to, Cuba or nationals thereof.

(50 U.S.C. App. 5(b); 22 U.S.C. 2370(a); E. O. 9193, 3 CFR 1943 Cum. Supp.; Treas. Dept. Order No. 128, 32 FR 3472)

[42 FR 58518, Nov. 10, 1977; 43 FR 19852, May 9, 1978. Redesignated at 64 FR 25813, May 13, 1999]

§ 515.559 Certain transactions by U.S.-owned or controlled foreign firms with Cuba.

(a) Effective October 23, 1992, no specific licenses will be issued pursuant to paragraph (b) of this section for transactions between U.S.-owned or controlled firms in third countries and Cuba for the exportation to Cuba of commodities produced in the authorized trade zone or for the importation of goods of Cuban origin into countries in the authorized trade zone, unless, in addition to meeting all requirements of paragraph (b), one or more of the following conditions are satisfied:

(1) The contract underlying the proposed transaction was entered into prior to October 23, 1992;

(2) The transaction is for the exportation of medicine or medical supplies from a third country to Cuba, which shall not be restricted:

(i) Except to the extent such restrictions would be permitted under section 5(m) of the Export Administration Act of 1979 or section 203(b)(2) of the International Emergency Economic Powers Act if the exportation were subject to these provisions;

(ii) Except in a case in which there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;

(iii) Except in a case in which there is a reasonable likelihood that the item to be exported will be reexported; or

(iv) Except in a case in which the item to be exported could be used in the production of any biotechnological product; and

(v) Except in a case where it is determined that the United States Government is unable to verify, by on-site inspection or other means, that the item to be exported will be used for the purpose for which it was intended and only for the use and benefit of the Cuban people, but this exception shall not apply to donations for humanitarian purposes to a nongovernmental organization in Cuba.

(3) The transaction is for the exportation of telecommunications equipment from a third country, when the equipment is determined to be necessary for efficient and adequate telecommunications service between the United States and Cuba.

(b) Specific licenses will be issued in appropriate cases for certain categories of transactions between U.S.-owned or controlled firms in third countries and Cuba, where local law requires, or policy in the third country favors, trade with Cuba. The categories include:

(1) Exportation to Cuba of commodities produced in the authorized trade territory, provided:

(i) The commodities to be exported are non-strategic;

(ii) United States-origin technical data (other than maintenance, repair and operations data) will not be transferred;

(iii) If any U.S.-origin parts and components are included therein, such inclusion has been authorized by the Department of Commerce;

(iv) If any U.S.-origin spares are to be reexported to Cuba in connection with a licensed transaction, such reexport has been authorized by the Department of Commerce;

(v) No U.S. dollar accounts are involved; and

(vi) Any financing or other extension of credit by a U.S.-owned or controlled firm is granted on normal short-term conditions which are appropriate for the commodity to be exported.

(2) Travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to marketing, sales negotiation, accompanied delivery, or servicing of exports that are consistent with the licensing policy under this section.

(3) Importation of goods of Cuban origin into countries in the authorized trade territory.

NOTE TO PARAGRAPH (b): On October 23, 1992, sections 1705 and 1706 of the Cuban Democracy Act of 1992, Pub. L. 102–484 (Oct. 23, 1992) (codified at 22 U.S.C. 6004 and 6005, respectively), prohibited OFAC from issuing licenses for any transaction described in this paragraph other than those transactions currently set forth in paragraph (a).

(c) The term *strategic goods* means any item, regardless of origin, of a type included in the Commodity Control List of the U.S. Department of Commerce (15 CFR part 399) and identified by the code letter ''A'' following the Export Control Commodity Numbers, or of a type the unauthorized exportation of which from the United States is prohibited by regulations issued under the Arms Export Control Act of 1976, 22 U.S.C. 2778, or under the Atomic Energy Act of 1954, 42 U.S.C. 2011, et seq., or successor acts restricting the export of strategic goods.

NOTE TO § 515.559: For reexportation of U.S.-origin goods, wares, or merchandise by U.S.-owned or controlled foreign firms, see § 515.533. Transactions by U.S.-owned or controlled foreign firms directly incident to the exportation of information or informational materials or the donation of food to nongovernmental entities or individuals in Cuba are exempt from the prohibitions of this

part. See § 515.206. For the waiver of the prohibitions contained in § 515.207 with respect to vessels transporting shipments of goods, wares, or merchandise pursuant to this section, see § 515.550.

[40 FR 47108, Oct. 8, 1975, as amended at 42 FR 1472, Jan. 7, 1977; 42 FR 16621, Mar. 29, 1977; 50 FR 27438, July 3, 1985; 53 FR 47527, Nov. 23, 1988; 58 FR 34710, June 29, 1993; 64 FR 25814, May 13, 1999; 66 FR 36687, July 12, 2001; 68 FR 14146, Mar. 24, 2003]

§ 515.560 Travel-related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction.

(a) The travel-related transactions listed in paragraph (c) of this section may be authorized either by a general license or on a case-by-case basis by a specific license for travel related to the following activities (see the referenced sections for the applicable general and specific licensing criteria):

(1) Family visits (general and specific licenses) (see § 515.561);

(2) Official business of the U.S. government, foreign governments, and certain intergovernmental organizations (general license) (see § 515.562);

(3) Journalistic activity (general and specific licenses) (see § 515.563);

(4) Professional research and professional meetings (general and specific licenses) (see § 515.564);

(5) Educational activities (general and specific licenses) (*see* § 515.565);

(6) Religious activities (general and specific licenses) (*see* § 515.566);

(7) Public performances, clinics, workshops, athletic and other competitions, and exhibitions (specific licenses) (*see* § 515.567);

(8) Support for the Cuban people (specific licenses) (see § 515.574);

(9) Humanitarian projects (specific licenses) (see § 515.575);

(10) Activities of private foundations or research or educational institutes (specific licenses) (see § 515.576);

(11) Exportation, importation, or transmission of information or informational materials (specific licenses) (see § 515.545); and

(12) Certain export transactions that may be considered for authorization under existing Department of Commerce regulations and guidelines with respect to Cuba or engaged in by U.S.-owned or -controlled foreign firms (general and specific licenses) (see §§ 515.533 and 515.559).

(b) Effective October 28, 2000, no specific licenses will be issued authorizing the travel-related transactions in paragraph (c) of this section in connection with activities other than those referenced in paragraph (a) of this section.

(c) Persons generally or specifically licensed under this part to engage in transactions in connection with travel to, from, and within Cuba may engage in the following transactions:

(1) *Transportation to and from Cuba.* All transportation-related transactions ordinarily incident to travel to and from (not within) Cuba are authorized.

(2) *Living expenses in Cuba.* All transactions ordinarily incident to travel anywhere within Cuba, including payment of living expenses and the acquisition in Cuba of goods for personal consumption there, are authorized, provided that, unless otherwise authorized, the total for such expenses does not exceed the ''maximum per diem rate'' for Havana, Cuba, in effect during the period that the travel takes place. The maximum per diem rate is published in the Department of State's ''Maximum Travel per Diem Allowances for Foreign Areas,'' a supplement to section 925, Department of State Standardized Regulations (Government Civilians, Foreign Areas), which is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371945, Pittsburgh, PA 1520–7954, and on the Department of State's Office of Allowances Web site (*http://aoprals.state.gov*).

(3) *Importation of Cuban merchandise prohibited.* Nothing in this section authorizes the importation into the United States of any merchandise purchased or otherwise acquired in Cuba, including but not limited to any importation of such merchandise as accompanied baggage. The importation of Cuban-origin information and informational materials is exempt from the prohibitions of this part, as described in § 515.206.

(4) *Carrying remittances to Cuba.* The carrying to Cuba of any remittances that the licensed traveler is authorized to remit pursuant to § 515.570 is authorized, provided that:

(i) The total of all remittances authorized by § 515.570(a) through (d) does not exceed $3,000; and

(ii) No emigration remittances authorized by § 515.570(e) are carried to Cuba unless a U.S. immigration visa has been issued for each payee and the licensed traveler can produce the visa recipients' full names, dates of birth, visa numbers, and visa dates of issuance.

NOTE TO PARAGRAPH (c)(4): This paragraph does not authorize a traveler to carry remittances on behalf of other remitters.

(5) *Processing certain financial instruments.* All transactions incident to the processing and payment of checks, drafts, travelers' checks, and similar instruments negotiated in Cuba by any person authorized pursuant to this part to engage in financial transactions in Cuba. For purposes of this section, the authorized transactions may be conducted using currency, which is defined as money, cash, drafts, notes, travelers' checks, negotiable instruments, or scrip having a specified or readily determinable face value or worth, but which does not include gold or other precious metals in any form.

(d) A blocked Cuban national permanently resident outside the United States who is departing the United States may carry currency, as that term is defined in paragraph (c)(5) of this section, as follows:

(1) The amount of any currency brought into the United States by the Cuban national and registered with U.S. Customs and Border Protection upon entry;

(2) Up to $3,000 in funds received as remittances by the Cuban national during his or her stay in the United States; and

(3) Compensation earned by a Cuban national from a U.S. academic institution up to any amount that can be substantiated through payment receipts from such institution as authorized pursuant to § 515.565(a)(5).

(e) The following transactions by persons generally or specifically licensed to engage in travel-related transactions to, from, and within Cuba are prohibited by § 515.201 unless specifically authorized:

(1) All transactions by persons subject to U.S. jurisdiction related to the utilization of charge cards, including but not limited to debit or credit cards, for expenditures in Cuba.

(2) All transactions related to the processing and payment by persons subject to U.S. jurisdiction, such as charge card issuers or intermediary banks, of charge card instruments (e.g., vouchers, drafts, or sales receipts) for expenditures in Cuba. The issuer of a charge card, or a foreign charge card firm owned or controlled by persons subject to U.S. jurisdiction, is not authorized to deal with a Cuban enterprise, a Cuban national, or a third-country person, such as a franchisee, in connection with the extension of charge card services to any person in Cuba.

(f) Nothing in this section authorizes transactions in connection with tourist travel to Cuba.

[64 FR 25814, May 13, 1999, as amended at 66 FR 36688, July 12, 2001; 68 FR 14146, Mar. 24, 2003; 69 FR 33771 and 33773, June 16, 2004; 74 FR 46006, Sept. 8, 2009; 76 FR 5074, Jan. 28, 2011]

§ 515.561 Persons visiting close relatives in Cuba.

(a) *General license.* (1) Persons subject to the jurisdiction of the United States and persons traveling with them who share a common dwelling as a family with them are authorized to engage in the travel-related transactions set forth in § 515.560(c) and additional transactions directly incident to visiting a close relative, as defined in § 515.339 of this part, who is a national of Cuba, as defined in § 515.302 of this part.

(2) Persons subject to the jurisdiction of the United States and persons traveling with them who share a common dwelling as a family with them are authorized to engage in the travel-related transactions set forth in § 515.560(c) and additional transactions directly incident to visiting a close relative, as defined in § 515.339 of this part, who is a U.S. Government employee assigned to the U.S. Interests Section in Havana.

(b) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing persons subject to the jurisdiction of the United States and persons traveling with them who share a common dwelling as a family with

them to engage in the travel-related transactions set forth in § 515.560(c) and additional transactions directly incident to visiting a close relative, as defined in § 515.339 of this part, who is neither a national of Cuba, as defined in § 515.302 of this part, nor a U.S. Government employee assigned to the U.S. Interests Section in Havana.

[74 FR 46006, Sept. 8, 2009]

§ 515.562 Officials of the U.S. government, foreign governments, and certain intergovernmental organizations traveling to, from, and within Cuba on official business.

The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to activities in their official capacities by persons who are officials of the United States Government, any foreign government, or any intergovernmental organization of which the United States is a member and who are traveling on the official business of their government or international organization are authorized.

[64 FR 25815, May 13, 1999]

§ 515.563 Journalistic activities in Cuba.

(a) *General license*. The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to journalistic activities in Cuba by persons regularly employed as journalists by a news reporting organization or by persons regularly employed as supporting broadcast or technical personnel are authorized.

NOTE TO PARAGRAPH (a): See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. The exportation of equipment and other items to be used in journalistic activities may require separate licensing by the Department of Commerce.

(b) *Specific licenses*. (1) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to journalistic activities in Cuba for a free-lance journalistic project upon submission of an adequate written application including the following documentation:

(i) A detailed itinerary and a detailed description of the proposed journalistic activities; and

(ii) A resume or similar document showing a record of journalism.

(2) To qualify for a specific license pursuant to this section, the itinerary in Cuba for a free-lance journalistic project must demonstrate that the journalistic activities constitute a full work schedule that could not be accomplished in a shorter period of time.

(3) Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips to Cuba over an extended period of time by applicants demonstrating a significant record of journalism.

[64 FR 25815, May 13, 1999, as amended at 76 FR 5075, Jan. 28, 2011]

§ 515.564 Professional research and professional meetings in Cuba.

(a) *General license*—(1) *Professional research*. The travel-related transactions set forth in § 515.560(c) and such additional transactions that are directly incident to professional research by full-time professionals who travel to Cuba to conduct professional research in their professional areas are authorized, provided that:

(i) The research is of a noncommercial, academic nature;

(ii) The research comprises a full work schedule in Cuba;

(iii) The research has a substantial likelihood of public dissemination; and

(iv) The research does not fall within the categories of activities described in paragraph (c), (d), or (e) of this section.

NOTE TO PARAGRAPH (a)(1): This general license does not authorize as professional research any travel-related transactions incident to attendance at professional meetings or conferences. Such transactions must either qualify under the general license set forth in paragraph (a)(2) of this section or be the subject of a request for a specific license under paragraph (b) of this section.

(2) *Professional meetings organized by an international professional organization*. The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to travel to Cuba by full-time professionals to attend professional meetings or conferences in Cuba organized

by an international professional organization, institution, or association that regularly sponsors meetings or conferences in other countries are authorized, provided that:

(i) The international professional organization, institution, or association is not headquartered in the United States unless that organization, institution, or association has been specifically licensed to sponsor the meeting in Cuba;

(ii) The purpose of the meeting or conference is not the promotion of tourism in Cuba or other commercial activities involving Cuba that are inconsistent with this part; and

(iii) The meeting or conference is not intended primarily for the purpose of fostering production of any biotechnological products.

(3) *Professional meetings for commercial telecommunications transactions.* The travel-related transactions set forth in § 515.560(c) and additional transactions directly incident to participation in professional meetings for the commercial marketing of, sales negotiation for, or performance under contracts for the provision of the telecommunications services, or the establishment of facilities to provide telecommunications services, authorized by paragraphs (b), (c), or (d)(1) of § 515.542 of this part by a telecommunications services provider that is a person subject to U.S. jurisdiction are authorized, provided that:

(i) The traveler is regularly employed by a telecommunications services provider that is a person subject to U.S. jurisdiction or by an entity duly appointed to represent such a provider; and

(ii) The traveler's schedule of activities does not include free time, travel, or recreation in excess of that consistent with a full work schedule.

NOTE TO PARAGRAPH (a): See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of equipment and other items, including the transfer of technology or software to foreign persons (''deemed exportation'') and items not eligible for Department of Commerce GFT or BAG License Exceptions, 15 CFR 740.12 and 740.14, may require separate authorization by the Department of Commerce.

(b) *Specific licensing.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to professional research and professional meetings that do not qualify for the general license in paragraph (a) of this section. Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips to Cuba over an extended period of time by applicants demonstrating a significant record of research. Specific licenses will not be issued for travel-related transactions for purposes of attendance at meetings or conferences in Cuba organized by the Cuban government where such meetings or conferences could be intended primarily for the purpose of fostering the production of any biotechnological products.

(c) Categories of activities that do not qualify for the general license in paragraph (a) of this section and for which the specific licenses described in paragraph (b) of this section will not be issued include recreational travel; tourist travel; travel in pursuit of a hobby; research for personal satisfaction only; and any travel for an authorized professional research purpose if the schedule of activities includes free time, travel, or recreation in excess of that consistent with a full work schedule of professional research or attendance at professional meetings or conferences.

(d) An entire group does not qualify for the general license in paragraph (a) of this section and will not be issued a specific license under paragraph (b) of this section merely because some members of the group could qualify individually for such licenses.

Example 1 to paragraph (d): A musicologist travels to Cuba to do research on Cuban music pursuant to the general license for professional researchers set forth in paragraph (a) of this section. Others who are simply interested in music but who do not research music as part of their careers may not engage in travel-related transactions with the musicologist in reliance on this general license. For example, an art historian who plays in the same band with the musicologist would not qualify as a professional researcher of Cuban music for purposes of this general license.

Example 2 to paragraph (d): A specific license issued pursuant to paragraph (b) of this section authorizing travel-related transactions by a fish biologist who travels to Cuba to engage in professional research does not authorize transactions by other persons who might travel with the fish biologist but whose principal purpose in travel is to engage in recreational or trophy fishing. The fact that such persons may engage in certain activities with or under the direction of the professional fish biologist, such as measuring or recording facts about their catch, does not bring these individuals' activities within the scope of professional research and similar activities.

(e) A person will not qualify as engaging in professional research merely because that person is a professional who plans to travel to Cuba.

Example 1 to paragraph (e): A professor of history interested in traveling to Cuba for the principal purpose of learning or practicing Spanish or attending general purpose lectures devoted to Cuban culture and contemporary life does not qualify for the general license in paragraph (a) of this section or for a specific license issued pursuant to paragraph (b) of this section.

Example 2 to paragraph (e): A professional photographer who wishes to take photographs in Cuba that will become the basis for creating post cards, paintings, and other secondary products or that merely document the photographer's travel does not qualify for the general license in paragraph (a) of this section or for a specific license issued pursuant to paragraph (b) of this section.

[64 FR 25815, May 13, 1999, as amended at 69 FR 33772, June 16, 2004; 74 FR 46006, Sept. 8, 2009]

§515.565 Educational activities.

(a) *General license.* Accredited U.S. graduate and undergraduate degree-granting academic institutions, including faculty, staff, and students of such institutions, are authorized to engage in the travel-related transactions set forth in §515.560(c) and such additional transactions that are directly incident to:

(1) Participation in a structured educational program in Cuba as part of a course offered for credit by the sponsoring U.S. academic institution. An individual traveling to engage in such transactions must carry a letter on official letterhead, signed by a designated representative of the sponsoring U.S. academic institution, stating that the Cuba-related travel is part of a structured educational program of the sponsoring U.S. academic institution, and stating that the individual is a member of the faculty or staff of that institution or is a student currently enrolled in a graduate or undergraduate degree program at an accredited U.S. academic institution and that the study in Cuba will be accepted for credit toward that degree;

(2) Noncommercial academic research in Cuba specifically related to Cuba and for the purpose of obtaining a graduate degree. A student traveling to engage in such transactions must carry a letter on official letterhead, signed by a designated representative of the sponsoring U.S. academic institution, stating that the individual is a student currently enrolled in a graduate degree program at an accredited U.S. academic institution, and stating that the research in Cuba will be accepted for credit toward that degree;

(3) Participation in a formal course of study at a Cuban academic institution, provided the formal course of study in Cuba will be accepted for credit toward the student's graduate or undergraduate degree. An individual traveling to engage in such transactions must carry a letter on official letterhead, signed by a designated representative of the sponsoring U.S. academic institution, stating that the individual is a student currently enrolled in a graduate or undergraduate degree program at an accredited U.S. academic institution and that the study in Cuba will be accepted for credit toward that degree;

(4) Teaching at a Cuban academic institution by an individual regularly employed in a teaching capacity at the sponsoring U.S. academic institution, provided the teaching activities are related to an academic program at the Cuban institution and provided that the duration of the teaching will be no shorter than 10 weeks. An individual traveling to engage in such transactions must carry a letter on official letterhead, signed by a designated representative of the sponsoring U.S. academic institution, stating that the individual is regularly employed in a teaching capacity at that institution;

(5) Sponsorship, including the payment of a stipend or salary, of a Cuban

scholar to teach or engage in other scholarly activity at the sponsoring U.S. academic institution (in addition to those transactions authorized by the general license contained in § 515.571). Such earnings may be remitted to Cuba as provided in § 515.570 or carried on the person of the Cuban scholar returning to Cuba as provided in § 515.560(d)(3); or

(6) The organization of, and preparation for, activities described in paragraphs (a)(1) through (a)(5) of this section by members of the faculty and staff of the sponsoring U.S. academic institution. An individual engaging in such transactions must carry a letter on official letterhead, signed by a designated representative of the sponsoring U.S. academic institution, stating that the individual is a member of the faculty or staff of that institution, and is traveling to engage in the transactions authorized by this paragraph on behalf of that institution.

NOTE 1 TO PARAGRAPH (a): U.S. academic institutions and individual travelers must retain records related to the travel transactions authorized pursuant to this paragraph. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of equipment and other items, including the transfer of technology or software to foreign persons (''deemed exportation''), may require separate authorization from the Department of Commerce.

NOTE 2 TO PARAGRAPH (a): This paragraph authorizes all members of the faculty and staff (including but not limited to adjunct faculty and part-time staff) of the sponsoring U.S. academic institution to participate in the activities described in this paragraph. A student currently enrolled in a graduate or undergraduate degree program at any accredited U.S. academic institution is authorized pursuant to this paragraph to participate in the academic activities in Cuba described above through any sponsoring U.S. academic institution, not only through the institution at which the student is pursuing a degree.

(b) *Specific licenses*. Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions directly incident to:

(1) An individual's educational activities of the types described in paragraphs (a)(2) through (a)(4) of this section but not authorized by the general license contained in paragraph (a) of this section;

(2) Educational exchanges not involving academic study pursuant to a degree program when those exchanges take place under the auspices of an organization that sponsors and organizes such programs to promote people-to-people contact; or

(3) Sponsorship or co-sponsorship by an accredited U.S. graduate or undergraduate degree-granting academic institution of academic seminars, conferences, and workshops related to Cuba or global issues involving Cuba and attendance at such events by faculty, staff, and students of the licensed institution.

(c) Transactions related to activities that are primarily tourist-oriented, including self-directed educational activities that are intended only for personal enrichment, will not be authorized pursuant to this section.

(d) For the purposes of this section, the term *designated representative of the sponsoring U.S. academic institution* means a person designated by the relevant dean or the academic vice-president, provost, or president of the institution as the official responsible for overseeing the institution's Cuba travel program.

NOTE TO § 515.565: Accredited U.S. academic institutions engaging in activities authorized pursuant to this section are permitted to open and maintain accounts at Cuban financial institutions for the purpose of accessing funds in Cuba for transactions authorized pursuant to this section.

[76 FR 5075, Jan. 28, 2011]

§ 515.566 Religious activities in Cuba.

(a) *General license*. Religious organizations located in the United States, including members and staff of such organizations, are authorized to engage in the travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to religious activities in Cuba under the auspices of the organization. Travel-related transactions pursuant to this authorization must be for the purpose of engaging, while in Cuba, in a full-time program of religious activities. Financial and material donations to Cuba or Cuban nationals are not authorized by this paragraph (a). All individuals who

engage in transactions in which Cuba or Cuban nationals have an interest (including travel-related transactions) pursuant to this paragraph (a) must carry with them a letter on official letterhead, signed by a designated representative of the U.S. religious organization, confirming that they are members or staff of the organization and are traveling to Cuba to engage in religious activities under the auspices of the organization.

NOTE TO PARAGRAPH (a): U.S. religious organizations and individual travelers must retain records related to the travel transactions authorized pursuant to this paragraph. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Financial donations require separate authorization under § 515.570. See § 515.533 for an authorization of the exportation of items from the United States to Cuba. Exportation of items to be used in Cuba may require separate licensing by the Department of Commerce.

(b) *Specific licenses*. Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to religious activities not authorized by the general license contained in paragraph (a) of this section. The application for the specific license must set forth examples of religious activities to be undertaken in Cuba. Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips over an extended period of time to engage in a full-time program of religious activities in Cuba.

(c) For the purposes of this section, the term *designated representative of the U.S. religious organization* means a person designated as the official responsible for overseeing the organization's Cuba travel program.

NOTE TO § 515.566: Religious organizations engaging in activities authorized pursuant to this section are permitted to open and maintain accounts at Cuban financial institutions for the purpose of accessing funds in Cuba for transactions authorized pursuant to this section.

[76 FR 5076, Jan. 28, 2011]

§ 515.567 Public performances, clinics, workshops, athletic and other competitions, and exhibitions.

(a) *Amateur and semi-professional international sports federation competitions*. Specific licenses, including for multiple trips to Cuba over an extended period of time, may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to athletic competition by amateur or semi-professional athletes or athletic teams wishing to travel to participate in athletic competition in Cuba, provided that:

(1) The athletic competition in Cuba is held under the auspices of the international sports federation for the relevant sport;

(2) The U.S. participants in the athletic competition are selected by the U.S. federation for the relevant sport; and

(3) The competition is open for attendance, and in relevant situations participation, by the Cuban public.

(b) *Public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions*. Specific licenses, including for multiple trips to Cuba over an extended period of time, may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to participation in a public performance, clinic, workshop, athletic competition not covered by paragraph (a) of this section, non-athletic competition, or exhibition in Cuba by participants in such activities, provided that:

(1) The event is open for attendance, and in relevant situations participation, by the Cuban public;

(2) All U.S. profits from the event after costs are donated to an independent nongovernmental organization in Cuba or a U.S.-based charity, with the objective, to the extent possible, of promoting people-to-people contacts or otherwise benefiting the Cuban people; and

(3) Any clinics or workshops in Cuba must be organized and run, at least in part, by the licensee.

(c) Specific licenses will not be issued pursuant to this section authorizing any debit to a blocked account.

NOTE TO § 515.567: See § 515.571 for the authorization of certain transactions related to the activities of nationals of Cuba traveling in the United States.

[69 FR 33772, June 16, 2004, as amended at 76 FR 5076, Jan. 28, 2011]]

§ 515.568 [Reserved]

§ 515.569 Foreign passengers' baggage.

The importation of Cuban-origin goods, otherwise prohibited by this part, brought into the United States as baggage by any person arriving in the United States other than a citizen or resident of the United States is hereby authorized, notwithstanding the provisions of § 515.803, provided that such goods are not in commercial quantities and are not imported for resale. This authorization does not apply to the importation of Cuban-origin alcohol or tobacco products.

[64 FR 25818, May 13, 1999]

§ 515.570 Remittances.

(a) *Family remittances authorized.* Persons subject to the jurisdiction of the United States who are 18 years of age or older are authorized to make remittances to nationals of Cuba who are close relatives, as defined in § 515.339 of this part, of the remitter, provided that:

(1) The remittances are not made from a blocked source. Certain remittances from blocked accounts are authorized pursuant to paragraph (f) of this section;

(2) The recipient is not a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part; and

(3) The remittances are not made for emigration-related purposes. Remittances for emigration-related purposes are addressed by paragraph (e) of this section.

(b) *Periodic $500 remittances authorized.* Persons subject to the jurisdiction of the United States are authorized to make remittances to Cuban nationals, including, but not limited to, remittances to support the development of private businesses, provided that:

(1) The remitter's total remittances pursuant to paragraph (b) of this section to any one Cuban national do not exceed $500 in any consecutive three-month period;

(2) The remittances are not made from a blocked source;

(3) The recipient is not a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part;

(4) The remittances are not made for emigration-related purposes. Remittances for emigration-related purposes are addressed by paragraph (e) of this section; and

(5) The remitter, if an individual, is 18 years of age or older.

(c) *Remittances to religious organizations in Cuba authorized.* Persons subject to the jurisdiction of the United States are authorized to make remittances to religious organizations in Cuba in support of religious activities, provided that the remittances are not made from a blocked source and that the remitter, if an individual, is 18 years of age or older.

(d) *Remittances to students in Cuba pursuant to an educational license authorized.* Persons subject to the jurisdiction of the United States who are 18 years of age or older are authorized to make remittances to close relatives, as defined in § 515.339 of this part, who are students in Cuba pursuant to the general license authorizing certain educational activities in § 515.565(a) of this part or a specific license issued pursuant to § 515.565(b) of this part, provided that the remittances are not made from a blocked source and are for the purpose of funding transactions authorized by the general license in § 515.565(a) of this part or the specific license issued pursuant to § 515.565(b) of this part under which the student is traveling.

(e) *Two one-time $1,000 emigration-related remittances authorized.* Persons subject to the jurisdiction of the United States are authorized to remit the following amounts:

(1) Up to $1,000 per payee on a one-time basis to Cuban nationals for the

purpose of covering the payees' preliminary expenses associated with emigrating from Cuba to the United States. These remittances may be sent before the payees have received valid visas issued by the State Department or other approved U.S. immigration documents, but may not be carried by a licensed traveler to Cuba until the payees have received valid visas issued by the State Department or other approved U.S. immigration documents. See §515.560(c)(4) of this part for the rules regarding the carrying of authorized remittances to Cuba. These remittances may not be made from a blocked source unless authorized pursuant to paragraph (f) of this section.

(2) Up to an additional $1,000 per payee on a one-time basis to Cuban nationals for the purpose of enabling the payees to emigrate from Cuba to the United States, including for the purchase of airline tickets and payment of exit or third-country visa fees or other travel-related fees. These remittances may be sent only once the payees have received valid visas issued by the State Department or other approved U.S. immigration documents. A remitter must be able to provide the visa recipients' full names, dates of birth, visa numbers, and visa dates of issuance. See §515.560(c)(4) of this part for the rules regarding the carrying of authorized remittances to Cuba. These remittances may not be made from a blocked source unless authorized pursuant to paragraph (f) of this section.

(f) *Certain remittances from blocked sources authorized*. Provided the recipient is not a prohibited official of the Government of Cuba, as defined in §515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in §515.338 of this part, certain remittances from blocked sources are authorized as follows:

(1) Funds deposited in a blocked account in a banking institution in the United States held in the name of, or in which the beneficial interest is held by, a national of Cuba as a result of a valid testamentary disposition, intestate succession, or payment from a life insurance policy or annuity contract triggered by the death of the policy or contract holder may be remitted:

(i) To that national of Cuba, provided that s/he is a close relative, as defined in §515.339 of this part, of the decedent;

(ii) To that national of Cuba as emigration-related remittances in the amounts and consistent with the criteria set forth in paragraph (e) of this section.

(2) Up to $300 in any consecutive three-month period may be remitted from any blocked account in a banking institution in the United States to a Cuban national in a third country who is an individual in whose name, or for whose beneficial interest, the account is held.

(g) *Specific licenses*. Specific licenses may be issued on a case-by-case basis authorizing the following:

(1) Remittances by persons subject to U.S. jurisdiction to independent non-governmental entities in Cuba, including but not limited to pro-democracy groups and civil society groups, and to members of such groups or organizations, or to individuals or independent non-governmental entities to support the development of private businesses, including small farms;

(2) Remittances from a blocked account to a Cuban national in excess of the amount specified in paragraph (f)(2) of this section; or

(3) Remittances by persons subject to U.S. jurisdiction to a person in Cuba, directly or indirectly, for transactions to facilitate non-immigrant travel by an individual in Cuba to the United States under circumstances where humanitarian need is demonstrated, including but not limited to illness or other medical emergency.

NOTE TO §515.570: For the rules relating to the carrying of remittances to Cuba, see §515.560(c)(4) of this part. Persons subject to U.S. jurisdiction are prohibited from engaging in the collection or forwarding of remittances to Cuba unless authorized pursuant to §515.572. For a list of authorized U.S. remittance service providers other than depository institutions, see the ''List of Authorized Providers of Air, Travel and Remittance Forwarding Services to Cuba'' available from OFAC's Web site (*http://www.treasury.gov/ofac*).

[76 FR 5076, Jan. 28, 2011]

§ 515.571 Certain transactions incident to travel to, from, and within the United States by Cuban nationals.

(a) Except as provided in paragraph (c) of this section, the following transactions by or on behalf of a Cuban national who enters the United States on a non-immigrant visa or other non-immigrant travel authorization issued by the State Department are authorized:

(1) All transactions ordinarily incident to travel between the United States and Cuba, including the importation into the United States of accompanied baggage for personal use;

(2) All transactions ordinarily incident to travel and maintenance within the United States, including the payment of living expenses and the acquisition of goods for personal consumption in the United States;

(3) All transactions on behalf of aircraft or vessels incident to non-scheduled flights or voyages between the United States and Cuba, provided that the carrier used has a carrier service provider license issued pursuant to § 515.572. This paragraph does not authorize the carriage of any merchandise into the United States except accompanied baggage; and

(4) Normal banking transactions involving foreign currency drafts, travelers' checks, or other instruments negotiated incident to travel in the United States by any person under the authority of this section.

(5) All transactions ordinarily incident to the activities for which a visa or other travel authorization was issued.

(i) This paragraph (a)(5) does not authorize receipt of compensation in excess of amounts covering living expenses and the acquisition of goods for personal consumption. See § 515.565(a)(5) of this part for an authorization of payments to certain Cuban scholars of stipends or salaries that exceed this limit.

(ii) Examples of transactions authorized by this paragraph (a)(5) include: the payment of tuition to a U.S. educational institution by a national of Cuba issued a student visa; the payment of compensation covering only living expenses and the purchase of goods for personal consumption to a national of Cuba issued a performance-related visa; and the rental of a stage by a Cuban group issued a performance visa.

(b) Payments and transfers of credit in the United States from blocked accounts in domestic banking institutions held in the name of a Cuban national who enters the United States on a visa or other travel authorization issued by the State Department to or upon the order of such Cuban national are authorized provided that:

(1) Such payments and transfers of credit are made only for the living, traveling, and similar personal expenses in the United States of such Cuban national or his or her family;

(2) The total of all such payments and transfers of credit made under this section from the accounts of such Cuban national do not exceed $250 in any one calendar month; and

(3) No payment or transfer is made from a blocked account in which a specially designated national has an interest.

(c) This section does not authorize any transfer of property to Cuba, or, except as otherwise authorized in paragraph (b) of this section, any debit to a blocked account.

NOTE TO § 515.571: For the authorization of certain transactions by Cuban nationals who become U.S. citizens, apply for or receive U.S. permanent resident alien status, or are lawfully present in the United States in a non-visitor status, see § 515.505 of this part.

[64 FR 25819, May 13, 1999, as amended at 68 FR 14148, Mar. 24, 2003; 69 FR 33773, June 16, 2004; 76 FR 5077, Jan. 28, 2011]

§ 515.572 Authorization of transactions incident to the provision of travel services, carrier services, and remittance forwarding services.

(a)(1) *Authorization of travel service provider*. The following persons wishing to provide services in connection with travel to Cuba are ''travel service providers'' for purposes of this part: Travel agents, ticket agents, commercial and noncommercial organizations that arrange travel to Cuba; tour operators; persons arranging through transportation to Cuba; persons chartering an aircraft or vessel on behalf of others in Cuba; and persons arranging hotel accommodations, ground transportation,

local tours, and similar travel activities on behalf of others in Cuba. Travel service providers must obtain authorization from the Office of Foreign Assets Control before providing services with respect to travel to Cuba. The list stated above should not be considered exhaustive, as other persons may be ''travel service providers'' within the meaning of this part. Opinions may be obtained from the Office of Foreign Assets Control concerning the applicability of this licensing requirement in individual cases.

(2) *Authorization of carrier service provider*. Persons subject to U.S. jurisdiction wishing to provide carrier services by aircraft or vessels incidental to their non-scheduled flights or voyages to, from, or within Cuba are ''carrier service providers'' for purposes of this part. Carrier service providers must obtain authorization from the Office of Foreign Assets Control before providing services with respect to non-scheduled flights or voyages to, from, or within Cuba. Carriage to or from Cuba of any merchandise, cargo or gifts, other than those permitted to individual travelers as accompanied baggage, must also be authorized by licenses issued by the U.S. Department of Commerce.

(3) *Authorization of remittance forwarders*. Persons subject to U.S. jurisdiction, including persons that provide payment forwarding services and noncommercial organizations acting on behalf of donors, that wish to provide services in connection with the collection or forwarding of remittances authorized pursuant to this part must obtain specific authorization from OFAC. Depository institutions, as defined in §515.333, are hereby authorized to provide these services without obtaining specific authorization from OFAC. However, all licensed remittance forwarders, including depository institutions, that forward remittances authorized pursuant to this part are required to collect from persons who use their services information showing compliance with the relevant remittance provisions of this part. Depository institutions are permitted to set up testing arrangements and exchange authenticator keys with Cuban financial institutions to forward remittances authorized by or pursuant to §515.570, but may not open or use direct correspondent accounts of their own with Cuban financial institutions.

NOTE TO PARAGRAPH (a)(3): A suggested form for the collection of information showing compliance with the remittance provisions in §515.570 is available from OFAC's Web site (*www.treas.gov/ofac*).

(b) *Terms and conditions of authorization to engage in service transactions*. Authorization to engage in service transactions will be issued only upon the applicant's written affirmation and subsequent demonstration that it does not participate in discriminatory practices of the Cuban government against certain residents and citizens of the United States. Examples of such practices include, but are not limited to, charging discriminatory rates for air travel or requiring payment for services, such as hotel accommodations and meals, not desired, planned to be utilized, or actually utilized, based on such characteristics as race, color, religion, sex, citizenship, place of birth, or national origin. Authorization, whether a grant of provisional authorization or a license issued pursuant to this part, does not permit a travel or carrier service provider to provide services in connection with any individual's transactions incident to travel which are prohibited by this part.

(c) *Initial applications for licenses*. The initial application for a license shall contain:

(1) The applicant organization's name, address, telephone number, and the name of an official of the applicant organization responsible for its licensed services;

(2) The state of applicant's organization, if a juridical entity, the address of its principal place of business and all branch offices, the identity and ownership percentages of all shareholders or partners, and the identity and position of all principal officers and directors;

(3) Copies of any bylaws, articles of incorporation, partnership agreements, management agreements, or other documents pertaining to the organization, ownership, control, or management of the applicant; and

(4)(i) In the case of applications for authorization to serve as travel or carrier service providers, a report on the

forms and other procedures used to establish that each customer is in full compliance with U.S. law implementing the Cuban embargo and either qualifies for one of the general licenses contained in this part authorizing travel-related transactions in connection with travel to Cuba or has received a specific license from the Office of Foreign Assets Control issued pursuant to this part. In the case of a customer traveling pursuant to a general license, the applicant must demonstrate that it requires each customer to attest, in a signed statement, to his or her qualification for the particular general license claimed. The statement must provide facts supporting the customer's belief that he or she qualifies for the general license claimed. In the case of a customer traveling under a specific license, the applicant must demonstrate that it requires the customer to furnish it with a copy of the license. The copy of the signed statement or the specific license must be maintained on file with the applicant.

(ii) In the case of applications for authorization as remittance forwarders, a report on the forms, account books, and other recordkeeping procedures used to determine whether each customer has violated the terms of any authorization for remittances contained in or issued pursuant to this part, or sent remittances to persons ineligible to receive them under § 515.570; and the method by which remittances are sent to Cuba and the procedures used by the applicant to ensure that the remittances are received by the persons intended.

(d) *Required reports and recordkeeping.* (1) Each specific license or grant of provisional authority shall require that the service provider furnish annual reports to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, during the term of the license. The required content of such reports and their due dates shall be provided to the service provider in a letter authorizing the provider to commence services. Each such report will cover only the one-year period immediately preceding the date of the report.

(2) While the names and addresses of individual travelers or remitters, the number and amount of each remittance, and the name and address of each recipient, as applicable, need not be submitted with annual reports, this information must be retained on file with all other information required by § 515.601 of this chapter. These records must be furnished to the Office of Foreign Assets Control on demand pursuant to § 515.602 of this chapter.

(3) *Presentation of passenger lists.* Tour operators, persons operating an aircraft or vessel, or persons chartering an aircraft or vessel on behalf of others, for travel to, from, and within Cuba must furnish the U.S. Customs Service on demand a list of passengers on each flight or voyage to, from, and within Cuba.

(e) *Procedures governing the grant of provisional authority, denial, suspension, or revocation of authority to engage in service transactions*—(1) *Grant of provisional authority.* Following submission of a complete application as described in paragraph (c) of this section, the submission of any additional relevant information, and a preliminary evaluation by the Office of Foreign Assets Control, the applicant will be notified in writing that provisional authority has been granted to provide the services contemplated in the application. This provisional authority to provide services will remain in effect pending a final decision to grant or deny the license.

(2) *Denial of license*—(i) *Notice of denial.* If the Director, Office of Foreign Assets Control, determines that the application for a license to engage in service transactions related to travel to Cuba, carrier service transactions related to travel to Cuba, or transactions related to remittance forwarding should be denied for any reason, notice of denial shall be given to the applicant. The notice of denial shall state the reasons for the denial.

(ii) *Grounds for denial.* The causes sufficient to justify denial of an application for a license may include, but need not be limited to:

(A) Any cause which would justify suspension or revocation of the authority of a service provider pursuant to paragraph (e)(3) of this section;

(B) Failure to file a full and complete application;

(C) Any willful misstatement of pertinent facts in the application;

(D) Evidence indicating that the applicant participates in discriminatory practices of the Cuban Government against certain residents and citizens of the United States as described in paragraph (b) of this section; or

(E) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of such conduct.

(3) *Suspension or revocation of a license or provisional authorization.* A license or provisional authorization issued pursuant to this section may be suspended for a specific period of time, or revoked, for the following reasons:

(i) The service provider has willfully made or caused to be made in any application for any license, request for a ruling or opinion, or report be filed with the Office of Foreign Assets Control, any statement that was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any application, request for ruling or opinion, or report any material fact that was required;

(ii) The service provider has failed to file timely reports or comply with the recordkeeping requirements of his license or provisional authorization.

(iii) The service provider has been convicted, at any time after filing an application for a license under this section, of any felony or misdemeanor that:

(A) Involved the importation, exportation, or transfer of property in violation of any law or regulation administered by the Office of Foreign Assets Control;

(B) Arose directly out of the conduct of the business covered by the license; or

(C) Involved larceny, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, misappropriation of funds, or a violation of the Customs laws, export or import control laws, or banking laws.

(iv) The service provider has violated any provision of law enforced by the Office of Foreign Assets Control or the rules or regulations issued under any such provision;

(v) The service provider has counseled, commanded, induced, procured, or knowingly aided or abetted the violation by any other person of any provision of any law or regulation referred to above;

(vi) The service provider has, in the course of the business covered by the license, with felonious intent, in any manner willfully and knowingly deceived, defrauded, misled, threatened, or coerced any client or prospective client; or

(vii) The service provider has committed any other act or omission that demonstrates unfitness to conduct the business covered by the license.

[57 FR 53999, Nov. 16, 1992, as amended at 59 FR 31142, June 17, 1994; 59 FR 44886, Aug. 30, 1994; 63 FR 27349, May 18, 1998. Redesignated and amended at 64 FR 25813, 25819, May 13, 1999; 68 FR 14148, Mar. 24, 2003; 69 FR 33773, June, 16, 2004; 74 FR 46007, Sept. 8, 2009]

§515.573 Transactions by news organizations.

(a) Specific licenses may be issued authorizing all transactions necessary for the establishment and operation of news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public. Transactions that may be authorized include, but are not limited to, those incident to the following:

(1) Leasing office space and securing related goods and services;

(2) Hiring Cuban nationals to serve as support staff;

(3) Purchasing Cuban-origin goods for use in the operation of the office; and

(4) Paying fees related to the operation of the office in Cuba.

(b) Specific licenses may be issued authorizing transactions necessary for the establishment and operation of news bureaus in the United States by Cuban organizations whose primary purpose is the gathering and dissemination of news to the general public.

(c) Specific licenses may be issued authorizing transactions related to hiring Cuban nationals to provide reporting services or other services related to the gathering and dissemination of news.

(d) NOTE: The number assigned to a specific license issued pursuant to this section should be referenced in all import documents, and in all funds transfers and other banking transactions through banks organized or located in the United States, in connection with the licensed transaction to avoid the blocking of goods imported from Cuba and the interruption of the financial transactions with Cuba.

[60 FR 54197, Oct. 20, 1995. Redesignated at 64 FR 25813, May 13, 1999]

§ 515.574 Support for the Cuban People.

(a) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are intended to provide support for the Cuban people including, but not limited to, the following:

(1) Activities of recognized human rights organizations,

(2) Activities of independent organizations designed to promote a rapid, peaceful transition to democracy, and

(3) Activities of individuals and nongovernmental organizations that promote independent activity intended to strengthen civil society in Cuba.

(b) Licenses will be issued pursuant to this section once the applicant shows that the proposed transactions are consistent with the purposes of this section and provides an explanation that no significant accumulation of funds or financial benefit will accrue to the government of Cuba.

[68 FR 14148, Mar. 24, 2003]

§ 515.575 Humanitarian projects.

Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to certain humanitarian projects in or related to Cuba not otherwise covered by this part that are designed to directly benefit the Cuban people. Such projects may include, but are not limited to: medical and health-related projects; construction projects intended to benefit legitimately independent civil society groups; environmental projects; projects involving formal or non-formal educational training, within Cuba or off-island, on topics including civil education, journalism, advocacy and organizing, adult literacy, and vocational skills; community-based grassroots projects; projects suitable to the development of small scale private enterprise; projects that are related to agricultural and rural development that promote independent activity; and projects to meet basic human needs. Specific licenses may be issued authorizing transactions for multiple visits for the same project over an extended period of time by applicants demonstrating a significant record of overseas humanitarian projects.

[68 FR 14148, Mar. 24, 2003]

§ 515.576 Activities of private foundations or research or educational institutes.

Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to activities by private foundations or research or educational institutes that have an established interest in international relations to collect information related to Cuba for noncommercial purposes, not otherwise covered by the general license for professional research contained in § 515.564 or more properly issued under § 515.575, relating to humanitarian projects. Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips to Cuba for the same project over an extended period of time.

[64 FR 25820, May 13, 1999]

§ 515.577 Authorized transactions necessary and ordinarily incident to publishing.

(a) To the extent that such activities are not exempt from this part, and subject to the restrictions set forth in paragraphs (b) through (d) of this section, persons subject to the jurisdiction of the United States are authorized to engage in all transactions necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals, and newspapers in paper or electronic format (collectively, ''written publications''). This

section does not apply if the parties to the transactions described in this paragraph include the Government of Cuba. For the purposes of this section, the term ''Government of Cuba'' includes the state and the Government of Cuba, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Cuba; prohibited officials of the Government of Cuba, as defined in §515.337 of this part; prohibited members of the Cuban Communist Party, as defined in §515.338 of this part; employees of the Ministry of Justice; and any person acting or purporting to act directly or indirectly on behalf of any of the foregoing with respect to the transactions described in this paragraph. For the purposes of this section, the term ''Government of Cuba'' does not include any academic and research institutions and their personnel. Pursuant to this section, the following activities are authorized, provided that persons subject to the jurisdiction of the United States ensure that they are not engaging, without separate authorization, in the activities identified in paragraphs (b) through (d) of this section:

(1) Commissioning and making advance payments for identifiable written publications not yet in existence, to the extent consistent with industry practice;

(2) Collaborating on the creation and enhancement of written publications;

(3)(i) Augmenting written publications through the addition of items such as photographs, artwork, translation, explanatory text, and, for a written publication in electronic format, the addition of embedded software necessary for reading, browsing, navigating, or searching the written publication;

(ii) Exporting embedded software necessary for reading, browsing, navigating, or searching a written publication in electronic format, provided that, to the extent a license is required under the Export Administration Regulations, 15 CFR parts 730 through 774 (the ''EAR''), the exportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the EAR;

(4) Substantive editing of written publications;

(5) Payment of royalties for written publications;

(6) Creating or undertaking a marketing campaign to promote a written publication; and

(7) Other transactions necessary and ordinarily incident to the publishing and marketing of written publications as described in this paragraph (a).

(b) This section does not authorize transactions involving the provision of goods or services not necessary and ordinarily incident to the publishing and marketing of written publications as described in paragraph (a) of this section. For example, this section does not authorize persons subject to the jurisdiction of the United States:

(1) To provide or receive individualized or customized services (including, but not limited to, accounting, legal, design, or consulting services), other than those necessary and ordinarily incident to the publishing and marketing of written publications, even though such individualized or customized services are delivered through the use of information and informational materials;

(2) To create or undertake for any person a marketing campaign with respect to any service or product other than a written publication, or to create or undertake a marketing campaign of any kind for the benefit of the Government of Cuba;

(3) To engage in the exportation or importation of goods to or from Cuba other than the exportation of embedded software described in paragraph (a)(3)(ii) of this section;

(4) To operate a publishing house, sales outlet, or other office in Cuba; or

(5) To engage in transactions related to travel to, from, or within Cuba.

NOTE TO PARAGRAPH (b): The importation from Cuba and the exportation to Cuba of information or informational materials, as defined in §515.332, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part. See §515.206(a).

(c) This section does not authorize persons subject to the jurisdiction of the United States to engage the services of publishing houses or translators

in Cuba unless such activity is primarily for the dissemination of written publications in Cuba.

(d) This section does not authorize:

(1) Transactions for the development, production, or design of software;

(2) Transactions for the development, production, design, or marketing of technology specifically controlled by the International Traffic in Arms Regulations, 22 CFR parts 120 through 130 (the ''ITAR''), the EAR, or the Department of Energy Regulations set forth at 10 CFR part 810.

(3) The exportation of information or technology subject to the authorization requirements of 10 CFR part 810, or Restricted Data as defined in section 11 y. of the Atomic Energy Act of 1954, as amended, or of other information, data, or technology the release of which is controlled under the Atomic Energy Act and regulations therein;

(4) The exportation of any item (including information) subject to the EAR where a U.S. person knows or has reason to know that the item will be used, directly or indirectly, with respect to certain nuclear, missile, chemical, or biological weapons or nuclear-maritime end-uses as set forth in part 744 of the EAR. In addition, U.S. persons are precluded from exporting any item subject to the EAR to certain restricted end-users, as set forth in part 744 of the EAR, as well as certain persons whose export privileges have been denied pursuant to parts 764 or 766 of the EAR, without authorization from the Department of Commerce; or

(5) The exportation of information subject to licensing requirements under the ITAR, or exchanges of information that are subject to regulation by other government agencies.

(e) Pursuant to § 515.564, specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such additional transactions that are directly incident to attendance of professional meetings that are necessary and ordinarily incident to the publishing and marketing of written publications.

[72 FR 50048, Aug. 30, 2007, as amended at 76 FR 5077, Jan. 28, 2011]

§ 515.578 Exportation of certain services incident to Internet-based communications.

(a) Except as provided in paragraph (b) of this section, the exportation from the United States or by persons subject to U.S. jurisdiction to persons in Cuba of services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, is authorized, provided that such services are publicly available at no cost to the user.

(b) This section does not authorize:

(1) The direct or indirect exportation of services with knowledge or reason to know that such services are intended for a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part.

(2) The direct or indirect exportation of Internet connectivity services or telecommunications transmission facilities (such as satellite links or dedicated lines).

NOTE TO § 515.578(b)(2): For general licenses related to the provision of telecommunications services between the United States and Cuba and contracts for telecommunications services provided to particular individuals in Cuba, see § 515.542(b) and § 515.542(c), respectively, of this part. For a general license and a statement of specific licensing policy related to the establishment of telecommunications facilities linking the United States or third countries and Cuba, see § 515.542(d) of this part.

(3) The direct or indirect exportation of web-hosting services that are for purposes other than personal communications (e.g., web-hosting services for commercial endeavors) or of domain name registration services.

(4) The direct or indirect exportation of any items to Cuba.

NOTE TO § 515.578(b)(4): For the rules related to transactions ordinarily incident to the exportation or reexportation of items, including software, to Cuba, see §§ 515.533 and 515.559 of this part.

(c) Specific licenses may be issued on a case-by-case basis for the exportation

of other services incident to the sharing of information over the Internet.

[75 FR 10999, Mar. 10, 2010]

Subpart F—Reports

§515.601 Records and reports.

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

[62 FR 45106, Aug. 25, 1997]

Subpart G—Penalties

SOURCE: 63 FR 10331, Mar. 3, 1998, unless otherwise noted.

§515.701 Penalties.

For provisions relating to penalties, see part 501, subpart D, of this chapter.

[68 FR 53657, Sept. 11, 2003]

Subpart H—Procedures

§515.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

[62 FR 45106, Aug. 25, 1997, as amended at 68 FR 53657, Sept. 11, 2003]

§515.802 Delegation by the Secretary of the Treasury.

Any action under §515.201 which the Secretary of the Treasury is authorized to take pursuant to Proclamation 3447 or the Trading With the Enemy Act may be taken by the Director, Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

[28 FR 6974, July 9, 1963. Redesignated at 62 FR 45106, Aug. 25, 1997]

§515.803 Customs procedures; merchandise specified in §515.204.

(a) With respect to merchandise specified in §515.204 (including nickel-bearing materials presumptively subject thereto) whether or not such merchandise has been imported into the United States, collectors of customs shall not accept or allow any:

(1) Entry for consumption (including any appraisement entry, any entry of goods imported in the mails, regardless of value, and any other informal entries);

(2) Entry for immediate exportation;

(3) Entry for transportation and exportation;

(4) Withdrawal from warehouse;

(5) Transfer or withdrawal from a foreign-trade zone; or

(6) Manipulation or manufacture in a warehouse or in a foreign-trade zone, unless either:

(i) The merchandise was imported prior to 12:01 a.m., February 7, 1962, or

(ii) A specific license pursuant to this part is presented, or

(iii) Instructions from the Office of Foreign Assets Control, authorizing the transaction are received, or

(iv) The original of an appropriate certificate of origin as defined in §515.536(d) is presented.

(b) Whenever a specific license is presented to a collector of customs in accordance with this section, one additional legible copy of the entry, withdrawal or other appropriate document with respect to the merchandise involved shall be filed with the collector of customs at the port where the transaction is to take place. Each copy of any such entry, withdrawal or other appropriate document, including the additional copy, shall bear plainly on its face the number of the license pursuant to which it is filed. The original copy of the specific license shall be presented to the collector in respect of each such transaction and shall bear a notation in ink by the licensee or person presenting the license showing the description, quantity and value of the merchandise to be entered, withdrawn or otherwise dealt with. This notation should be so placed and so written that there will exist no possibility of confusing it with anything placed on the license at the time of its issuance. If the license in fact authorizes the entry, withdrawal or other transaction with regard to the merchandise the collector, or other authorized customs employee, shall verify the notation by

signing or initialing it after first assuring himself that it accurately describes the merchandise it purports to represent. The license shall thereafter be returned to the person presenting it and the additional copy of the entry, withdrawal or other appropriate document shall be forwarded by the collector to the Foreign Assets Control.

(c)(1) Whenever the original of an appropriate certificate or origin as defined in § 515.536(d) is presented to a collector of customs in accordance with this section, an additional legible copy of the entry, withdrawal or other appropriate document with respect to the merchandise involved shall be filed with the collector of customs at the port where the transaction is to take place. Each copy of the entry, withdrawal, or other appropriate document, including the additional copy, shall bear plainly on its face the following statement: ''This document is presented under the provisions of § 515.536 (c) of the Cuban Assets Control Regulations.'' The original of the certificate of origin shall not be returned to the person presenting it. It shall be securely attached to the additional copy required by this subparagraph and shall be forwarded by the collector to the Office of Foreign Assets Control, Treasury Department, Washington, DC 20220. Collectors may forward such documents weekly or more often if the volume warrants.

(2) If the original of an appropriate certificate of origin is properly presented to a collector of customs with respect to a transaction which is the first of a series of transactions which may be allowed in connection therewith under paragraph (a)(6)(iv) of this section (as, for example, where merchandise has been entered in a bonded warehouse and an appropriate certificate of origin is presented which relates to all of the merchandise entered therein but the importer desires to withdraw only part of the merchandise in the first transaction), the collector shall so note on the original of the appropriate certificate of origin and return it to the importer. In addition, the collector shall endorse his pertinent records so as to record what merchandise is covered by the appropriate certificate of origin presented. The collector may thereafter allow subsequent authorized transactions on presentation of the certificate of origin. The collector shall, with respect to each such transaction, demand an additional copy of each withdrawal or other appropriate document, which copy shall be promptly forwarded by the collector to the Office of Foreign Assets Control, Treasury Department, Washington, DC 20220, with an endorsement thereon reading:

This document has been accepted pursuant to § 515.808(c) (2) of the Cuban Assets Control Regulations. Appropriate certificate of origin No._____from (country).

When the final transaction has been effected under the certificate of origin, the original shall be taken up and attached to the entry and forwarded as in this paragraph.

(d) Whenever a person shall present an entry, withdrawal or other appropriate document affected by this section and shall assert that no specific Foreign Assets Control license or appropriate certificate of origin as defined in § 515.536 (d) is required in connection therewith, the collector of customs shall withhold action thereon and shall advise such person to communicate directly with the Office of Foreign Assets Control to request that instructions be issued to the collector to authorize him to take action with regard thereto.

[30 FR 15371, Dec. 14, 1965, as amended at 57 FR 1388, Jan. 14, 1992. Redesignated at 62 FR 45106, Aug. 25, 1997]

Subpart I—Miscellaneous Provisions

§ 515.901 Paperwork Reduction Act notice.

Collection of information on TDF 90–22.39, ''Declaration, Travel to Cuba,'' has been approved by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act (44 U.S.C. 3507(j)) and assigned control number 1505–0118. For approval by OMB under the Paperwork Reduction Act of

information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

[62 FR 45106, Aug. 25, 1997]

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
535.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

535.201 Transactions involving property in which Iran or Iranian entities have an interest.
535.202 Transactions with respect to securities registered or inscribed in the name of Iran.
535.203 Effect of transfers violating the provisions of this part.
535.208 Evasions; effective date.
535.210 Direction for establishing an escrow agreement.
535.211 Direction involving transfers by the Federal Reserve Bank concerning certain Iranian property.
535.212 Direction to transfer property in which Iran or an Iranian entity has an interest by branches and offices of United States banks located outside the United States.
535.213 Direction involving property held by offices of banks in the United States in which Iran or an Iranian entity has an interest.
535.214 Direction involving other financial assets in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.
535.215 Direction involving other properties in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.
535.216 Prohibition against prosecution of certain claims.
535.217 Blocking of property of the former Shah of Iran and of certain other Iranian nationals.
535.218 Prohibitions and nullifications with respect to property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 and standby letters of credit.
535.219 Discharge of obligation by compliance with this part.
535.220 Timing of transfers required by § 535.212.
535.221 Compliance with directive provisions.
535.222 Suspension of claims eligible for Claims Tribunal.

Subpart C—General Definitions

535.301 Iran; Iranian Entity.
535.308 Person.
535.310 Transfer.
535.311 Property; property interests.
535.312 Interest.
535.316 License.
535.317 General license.
535.318 Specific license.
535.320 Domestic bank.
535.321 United States; continental United States.
535.329 Person subject to the jurisdiction of the United States.
535.333 Properties.
535.334 Act of the Government of Iran.
535.335 Claim arising out of events in Iran.
535.337 Funds.

Subpart D—Interpretations

535.401 Reference to amended sections.
535.402 Effect of amendment of sections of this part or of other orders, etc.
535.403 Termination and acquisition of an interest of Iran or an Iranian entity.
535.413 Transfers between dollar accounts held for foreign banks.
535.414 Payments to blocked accounts under § 535.508.
535.415 Payment by Iranian entities of obligations to persons within the United States.
535.416 Letters of credit.
535.420 Transfers of accounts under § 535.508 from demand to interest-bearing status.
535.421 Prior contractual commitments not a basis for licensing.
535.433 Central Bank of Iran.
535.437 Effect on other authorities.
535.438 Standby letters of credit, performance or payment bonds and similar obligations.
535.440 Commercially reasonable interest rates.
535.441 Settlement Agreement regarding small claims.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

535.501 General and sepcific licensing procedures.
535.502 Effect of license or authorization.
535.503 Exclusion from licenses and authorizations.

535.504 Certain judicial proceedings with respect to property of Iran or Iranian entities.
535.508 Payments to blocked accounts in domestic banks.
535.528 Certain transactions with respect to Iranian patents, trademarks and copyrights authorized.
535.531 Payment of certain checks and drafts.
535.532 Completion of certain securities transactions.
535.540 Disposition of certain tangible property.
535.566 Unblocking of foreign currency deposits held by U.S.-owned or controlled foreign firms.
535.567 Payment under advised letters of credit.
535.568 Certain standby letters of credit and performance bonds.
535.569 Licensed letter of credit transactions; forwarding of documents.
535.576 Payment of non-dollar letters of credit to Iran.
535.579 Authorization of new transactions concerning certain Iranian property.
535.580 Necessary living expenses of relatives of the former Shah of Iran.

Subpart F—Reports

535.601 Records and reports.

Subpart G—Penalties

535.701 Penalties.
535.702 Prepenalty notice.
535.703 Presentation responding to prepenalty notice.
535.704 Penalty notice.
535.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

535.801 Procedures.

Subpart I—Miscellaneous Provisions

535.901 Dollar accounts at banks abroad.
535.902 Set-offs by U.S. owned or controlled firms abroad.
535.904 Payment by Iranian entities of obligations to persons within the United States.
535.905 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12170, 44 FR 65729, 3 CFR, 1979 Comp., p. 457; E.O. 12205, 45 FR 24099, 3 CFR, 1980 Comp., p. 248; E.O. 12211, 45 FR 26685, 3 CFR, 1980 Comp., p. 253; E.O. 12276, 46 FR 7913, 3 CFR, 1981 Comp., p. 104; E.O. 12279, 46 FR 7919, 3 CFR, 1981 Comp., p. 109; E.O. 12280, 46 FR 7921, 3 CFR, 1981 Comp., p. 110; E.O. 12281, 46 FR 7923, 3 CFR, 1981 Comp., p. 110; E.O. 12282, 46 FR 7925, 3 CFR, 1981 Comp., p. 113; E.O. 12283, 46 FR 7927, 3 CFR, 1981 Comp., p. 114; and E.O. 12294, 46 FR 14111, 3 CFR, 1981 Comp., p. 139.

SOURCE: 44 FR 65956, Nov. 15, 1979, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 535.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. No license or authorization contained in or issued pursuant to such parts shall be deemed to authorize any transaction prohibited by this part, nor shall any license or authorization issued pursuant to any other provision of law (except this part) be deemed to authorize any transaction so prohibited.

(b) No license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction to the extent that it is prohibited by reason of the provisions of any law or any statute other than the International Emergency Economic Powers Act, as amended, or any proclamation order or regulation other than those contained in or issued pursuant to this part.

[44 FR 65956, Nov. 15, 1979, as amended at 62 FR 45107, Aug. 25, 1997]

Subpart B—Prohibitions

§ 535.201 Transactions involving property in which Iran or Iranian entities have an interest.

No property subject to the jurisdiction of the United States or which is in the possession of or control of persons subject to the jurisdiction of the United States in which on or after the effective date Iran has any interest of any nature whatsoever may be transferred, paid, exported, withdrawn or

otherwise dealt in except as authorized.

[45 FR 24432, Apr. 9, 1980]

§ 535.202 Transactions with respect to securities registered or inscribed in the name of Iran.

Unless authorized by a license expressly referring to this section, the acquisition, transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on or otherwise dealing in any security (or evidence thereof) registered or inscribed in the name of any Iranian entity is prohibited irrespective of the fact that at any time (either prior to, on, or subsequent to the effective date) the registered or inscribed owner thereof may have, or appears to have, assigned, transferred or otherwise disposed of any such security.

§ 535.203 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date which is in violation of any provision of this part or of any regulation, ruling, instruction, license, or other direction or authorization thereunder and involves any property in which Iran has or has had an interest since such effective date is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property in which Iran has or has had an interest since the effective date unless the person with whom such property is held or maintained had written notice of the transfer or by any written evidence had recognized such transfer prior to such effective date.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Secretary of the Treasury before, during or after a transfer shall validate such transfer or render it enforceable to the same extent as it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act and this part and any ruling, order, regulation, direction or instruction issued hereunder.

(d) Transfers of property which otherwise would be null and void, or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void, or unenforceable pursuant to such provisions, as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to the provision of this part and was not so licensed or authorized or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation or the withholding of material facts or was otherwise fraudulently obtained; and

(3) Promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license or other direction or authorization thereunder, or

(ii) Such transfer was not licensed or authorized by the Secretary of the Treasury, or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation or the withholding of material facts or was otherwise fraudulently obtained; the person with whom such property was held or maintained filed with the Treasury Department, Washington, D.C., a report in triplicate setting forth in full the circumstances relating to such transfer. The filing of a report in accordance with the provisions of this paragraph shall not be deemed to be compliance or evidence of compliance

with paragraphs (d) (1) and (2) of this section.

(e) Unless licensed or authorized pursuant to this part any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the effective date there existed an interest of Iran.

(f) For the purpose of this section the term *property* includes gold, silver, bullion, currency, coin, credit, securities (as that term is defined in section 2(l) of the Securities Act of 1933, as amended), bills of exchange, notes, drafts, acceptances, checks, letters of credit, book credits, debts, claims, contracts, negotiable documents of title, mortgages, liens, annuities, insurance policies, options and futures in commodities, and evidences of any of the foregoing. The term *property* shall not, except to the extent indicated, be deemed to include chattels or real property.

[44 FR 65956, Nov. 15, 1979, as amended at 45 FR 24432, Apr. 9, 1980]

§ 535.208 Evasions; effective date.

(a) Any transaction for the purpose of, or which has the effect of, evading or avoiding any of the prohibitions set forth in this subpart is hereby prohibited.

(b) The term *effective date* means, with respect to transactions prohibited in § 535.201, 8:10 a.m. eastern standard time, November 14, 1979, and with respect to the transactions prohibited in §§ 535.206 and 535.207, 4:19 p.m. eastern standard time, April 7, 1980.

(c) With respect to any amendments of the foregoing sections or any other amendments to this part the term ''effective date'' shall mean the date of filing with the FEDERAL REGISTER.

[45 FR 24433, Apr. 9, 1980, as amended at 45 FR 26940, Apr. 21, 1980]

§ 535.210 Direction for establishing an escrow agreement.

(a) The Federal Reserve Bank of New York, as fiscal agent of the United States, is licensed, authorized, directed and compelled to enter into escrow and related agreements under which certain money and other assets shall be credited to escrow accounts by the Bank of England or the N.V. Settlement Bank of the Netherlands.

(b) The Federal Reserve Bank of New York is licensed, authorized, directed and compelled, as fiscal agent of the United States, to receive certain money and other assets in which Iran or its agencies, instrumentalities or controlled entities have an interest and to hold or transfer such money and other assets, and any earnings or interest payable thereon, in such manner and at such times as the Secretary of the Treasury deems necessary to fulfill the rights and obligations of the United States under the Declaration of the government of the Democratic and Popular Republic of Algeria dated January 19, 1981, and the Undertakings of the Government of the United States of America and the Government of Islamic Republic of Iran with respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, and the escrow and related agreements described in paragraph (a) of this section. Such money and other assets may be invested, or not, at the discretion of the Federal Reserve Bank of New York, as fiscal agent of the United States.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14333, Feb. 26, 1981, as amended at 46 FR 42063, Aug. 19, 1981]

§ 535.211 Direction involving transfers by the Federal Reserve Bank concerning certain Iranian property.

The Federal Reserve Bank of New York is licensed, authorized, directed and compelled to transfer to its account at the Bank of England, and subsequently to transfer to accounts in the name of the Central Bank of Algeria as Escrow Agent at the Bank of England that are established pursuant to an escrow and related agreements approved by the Secretary of the Treasury, all gold bullion, together with all other assets in its custody (or the cash equivalent thereof), of Iran or its agencies, instrumentalities or controlled entities. Such transfers, and

whatever further related transactions are deemed appropriate by the Secretary of the Treasury, shall be executed when and in the manner directed by the Secretary of the Treasury.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14333, Feb. 26, 1981]

§ 535.212 Direction to transfer property in which Iran or an Iranian entity has an interest by branches and offices of United States banks located outside the United States.

(a) Any branch or office of a United States bank or subsidiary thereof, which branch, office or subsidiary is located outside the territory of the United States, and which, on or after 8:10 a.m., e.s.t., on November 14, 1979:

(1) Has been or is in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or

(2) Has carried or is carrying on its books deposits standing to the credit of or beneficially owned by such government, its agencies, instrumentalities or controlled entities, is licensed, authorized, directed and compelled to transfer such funds, securities and deposits, held on January 19, 1981, including interest from November 14, 1979, at commercially reasonable rates, to the account of the Federal Reserve Bank of New York, as fiscal agent of the U.S., at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The funds, securities and deposits described in this section shall be further transferred as provided for in the Declarations of the Government of the Democratic and Popular Republic of Algeria and the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration.

(b) Any banking institution subject to the jurisdiction of the United States that has executed a set-off on or after 8:10 a.m., e.s.t., November 14, 1979, against Iranian funds, securities or deposits referred to in paragraph (a) of this section is hereby licensed, authorized, directed and compelled to cancel such set-off and to transfer all funds, securities and deposits which have been subject to such set-off, including interest from November 14, 1979, at commercially reasonable rates, pursuant to the provisions of paragraph (a) of this section.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14333, Feb. 26, 1981]

§ 535.213 Direction involving property held by offices of banks in the United States in which Iran or an Iranian entity has an interest.

(a) Any branch or office of a bank, which branch or office is located within the United States and is, on the effective date of this section, either:

(1) In possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities or controlled entities, or

(2) Carrying on its books deposits standing to the credit of or beneficially owned by such government or its agencies, instrumentalities or controlled entities, is licensed, authorized, directed and compelled to transfer such funds, securities and deposits, held on January 19, 1981, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, as fiscal agent of the U.S., to be held or transferred as directed by the Secretary of the Treasury.

(b) Transfer of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part, and such funds, securities or deposits, plus interest at commercially reasonable rates from November 14, 1979, to the transfer date, shall be received by the Federal Reserve Bank of New York by 11 a.m., E.D.T., July 10, 1981. For periods for which rates are to be determined in the future, whether by agreement between Iran and the bank or

otherwise (see § 535.440), interest for such periods shall be transferred to the Federal Reserve Bank of New York promptly upon such determination. Such interest shall include interest at commercially reasonable rates from July 19, 1981, on the interest which would have accrued by July 19, 1981.

(c) Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process not affected by § 535.218 need not be transferred as otherwise required by this section.

(d) The transfers of securities required by this section shall be made notwithstanding § 535.202.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 26477, May 13, 1981, as amended at 46 FR 30341, June 8, 1981; 46 FR 35106, July 7, 1981; 48 FR 253, Jan. 4, 1983]

§ 535.214 Direction involving other financial assets in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

(a) Any person subject to the jurisdiction of the United States which is not a banking institution and is on January 19, 1981, in possession or control of funds or securities of Iran or its agencies, instrumentalities or controlled entities is licensed, authorized, directed and compelled to transfer such funds or securities to the Federal Reserve Bank of New York, as fiscal agent of the U.S. to be held or transferred as directed by the Secretary of the Treasury. However, such funds and securities need not be transferred until any disputes (not relating to any attachment, injunction or similar order) as to the entitlement of Iran and its entities to them are resolved.

(b) Transfers of funds and securities under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part, and such funds and securities shall be received by the Federal Reserve Bank of New York by 11 a.m., E.D.T., July 10, 1981.

(c) Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process not affected by § 535.218 need not be transferred as otherwise required by this section.

(d) The transfers of securities required by this section shall be made notwithstanding § 535.202.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 26447, May 13, 1981, as amended at 46 FR 30341, June 8, 1981; 46 FR 35107, July 7, 1981]

§ 535.215 Direction involving other properties in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

(a) Except as provided in paragraphs (b) and (c) of this section, all persons subject to the jurisdiction of the United States in possession or control of properties, as defined in § 535.333 of this part, not including funds and securities owned by Iran or its agencies, instrumentalities or controlled entities, are licensed, authorized, directed and compelled to transfer such properties held on January 18, 1981 as directed after that day by the Government of Iran, acting through its authorized agent. Such directions shall include arrangements for payment of the costs of transporting the properties, unless the possessors of the properties were required to pay such costs by contract or applicable law on January 19, 1981. Except where specifically stated, this license, authorization and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

(b) Any properties subject to a valid attachment, injunction or other like proceeding or process not affected by § 535.218 need not be transferred as otherwise required by this section.

(c) Notwithstanding paragraph (a) of this section, persons subject to the jurisdiction of the United States, including agencies, instrumentalities and entities controlled by the Government of Iran, who have possession, custody or

control of blocked tangible property covered by § 535.201, shall not transfer such property without a specific Treasury license, if the export of such property requires a specific license or authorization pursuant to the provisions of any of the following acts, as amended, or regulations in force with respect to them: the Export Administration Act, 50 U.S.C. App. 2403, et seq., the Aims Export Control Act, 22 U.S.C. 2751, et seq., the Atomic Energy Act, 42 U.S.C. 2011, et seq., or any other act prohibiting the export of such property, except as licensed.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14334, Feb. 26, 1981, as amended at 46 FR 26477, May 13, 1981; 49 FR 21322, May 21, 1984; 66 FR 38554, July 25, 2001]

§ 535.216 Prohibition against prosecution of certain claims.

(a) Persons subject to the jurisdiction of the United States are prohibited from prosecuting in any court within the United States or elsewhere, whether or not litigation was commenced before or after January 19, 1981, any claim against the Government of Iran arising out of events occurring before January 19, 1981 relating to:

(1) The seizure of the hostages on November 4, 1979;

(2) The subsequent detention of such hostages;

(3) Injury to United States property or property of United States nationals within the United States Embassy compound in Tehran after November 3, 1979; or

(4) Injury to United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran.

(b) Any persons who are not United States nationals are prohibited from prosecuting any claim described in paragraph (a) of this section in any court within the United States.

(c) No further action, measure or process shall be taken after the effective date of this section in any judicial proceeding instituted before the effective date of this section which is based upon any claim described in paragraph (a) of this section, and all such proceedings shall be terminated.

(d) No judicial order issued in the course of the proceedings described in paragraph (c) of this section shall be enforced in any way.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14334, Feb. 26, 1981]

§ 535.217 Blocking of property of the former Shah of Iran and of certain other Iranian nationals.

(a) For the purpose of protecting the rights of litigants in courts within the United States, all property and assets located in the United States in the control of the estate of Mohammad Reza Pahlavi, the former Shah of Iran, or any close relative of the former Shah served as a defendant in litigation in such courts brought by Iran seeking the return of property alleged to belong to Iran, is blocked as to each such estate or person, until all such litigation against such estate or person is finally terminated. This provision shall apply only to such estate or persons as to which Iran has furnished proof of service to the Office of Foreign Assets Control and which the Office has identified in paragraph (b) of this section.

(b) [No persons presently listed].

(c) The effective date of this section is January 19, 1981, except as otherwise specified after the name of a person identified in paragraph (b) of this section.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 26478, May 13, 1981, as amended at 61 FR 8216, Mar. 4, 1996; 61 FR 15382, Apr. 8, 1996]

§ 535.218 Prohibitions and nullifications with respect to property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 and standby letters of credit.

(a) All licenses and authorizations for acquiring or exercising any right, power or privilege, by court order, attachment, or otherwise, including the license contained in § 535.504, with respect to the property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 are revoked and withdrawn.

(b) All rights, powers and privileges relating to the property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m., e.s.t., including those derived from § 535.504, other than rights, powers and privileges of the Government of Iran and its agencies, instrumentalities and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power or privilege, whether by court order or otherwise, with respect to property (and any income earned thereon) referred to in §§ 535.211, 535.212, 535.213, 535.214 and 535.215.

(d) The prohibitions contained in paragraph (c) of this section shall not apply to Iran, its agencies, instrumentalities or controlled entities.

(e) Paragraph (a) of this section does not revoke or withdraw specific licenses authorizing the operation of blocked accounts which were issued prior to January 19, 1981, and which do not relate to litigation. Such licenses shall be deemed to be revoked as of May 31, 1981, unless extended by general or specific license issued subsequent to February 26, 1981.

(f) The provisions of paragraphs (a), (b) and (c) of this section shall apply to contested and contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities or controlled entities, including debts.

(g) All existing attachments on standby letters of credit, performance bonds and similar obligations and on substitute blocked accounts established under § 535.568 relating to standby letters of credit, performance bonds and similar obligations are nullified and all future attachments on them are hereafter prohibited. All rights, powers and privileges relating to such attachments are nullified and all persons hereafter are barred from asserting or exercising any rights, powers or privileges derived therefrom.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14334, Feb. 26, 1981, as amended at 46 FR 26477, May 13, 1981]

§ 535.219 Discharge of obligation by compliance with this part.

Compliance with §§ 535.210, 535.211, 535.212, 535.213, 535.214 and 535.215, or any other orders, regulations, instructions or directions issued pursuant to this part licensing, authorizing, directing or compelling the transfer of the assets described in those sections, shall, to the extent thereof, be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions or directions.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14334, Feb. 26, 1981]

§ 535.220 Timing of transfers required by § 535.212.

Transfers required by § 535.212 to the account of the Federal Reserve Bank of New York, as fiscal agent of the U.S.,

at the Bank of England shall be executed no later than 6 a.m., e.s.t., January 20, 1981, when the banking institution had knowledge of the terms of Executive Order 12278 of January 19, 1981.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14335, Feb. 26, 1981]

§ 535.221 Compliance with directive provisions.

(a) Transfers of deposits or funds required by §§ 535.213 and 535.214 of this part shall be effected by means of wire transfer to the Federal Reserve Bank of New York for credit to the following accounts: with respect to transfers required by § 535.213, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Deposit Account A, and with respect to transfers required by § 535.214, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Deposit Account B.

(b) Securities to be transferred as required by §§ 535.213 and 535.214 of this part that are not presently registered in the name of Iran or an Iranian entity shall be delivered to the Federal Reserve Bank of New York in fully transferable form (bearer or endorsed in blank), accompanied by all necessary transfer documentation, e.g., stock or bond powers or powers of attorney. All securities transferred, including those presently registered in the name of Iran or an Iranian entity, shall be accompanied by instructions to deposit such securities to the following accounts: with respect to transfers required by § 535.213, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account A, and with respect to transfers required by § 535.214, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account B.

(1) Securities which are in book-entry form shall be transferred by wire transfer to the Federal Reserve Bank of New York to the appropriate account named in this paragraph.

(2) Definitive securities which are in bearer or registered form shall be hand delivered or forwarded by registered mail, insured, to the Federal Reserve Bank of New York, Safekeeping Department, to the appropriate account named in this paragraph.

(c) If a security in which Iran or an Iranian entity has an interest is evidenced by a depositary receipt or other evidence of a security, the legal owner of such security shall arrange to have the security placed in fully transferable form (bearer or endorsed in blank) as provided in paragraph (b) of this section, and transferred pursuant to paragraph (b)(2) of this section.

(d) Any person delivering a security or securities to the Federal Reserve Bank of New York under paragraph (b) of this section, shall provide the Bank at least 2 business days prior written notice of such delivery, specifically identifying the sending person, the face or par amount and type of security, and whether the security is in bearer, registered or book-entry form.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 30341, June 8, 1981]

§ 535.222 Suspension of claims eligible for Claims Tribunal.

(a) All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, dated January 19, 1981, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court in the United States, including the courts of any state and any locality thereof, the District of Columbia and Puerto Rico, or in any action

commenced in any such court after the effective date of this section.

(b) Nothing in paragraph (a) of this section shall prohibit the assertion of a defense, set-off or counterclaim in any pending or subsequent judicial proceeding commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality or entity controlled by the Government of Iran or any political subdivision thereof.

(c) Nothing in this section precludes the commencement of an action after the effective date of this section for the purpose of tolling the period of limitations for commencement of such action.

(d) Nothing in this section shall require dismissal of any action for want of prosecution.

(e) Suspension under this section of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or portion thereof.

(f) A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim or part thereof shall operate as a final resolution and discharge of such claim or part thereof for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim or part thereof in a specified amount shall operate as a final resolution and discharge of such claim or part thereof for all purposes upon payment to the claimant of the full amount of the award including any interest awarded by the Tribunal.

(g) Nothing in this section shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond, or other similar instrument that is not the subject of a determination by the Iran-United States Claims Tribunal on the merits thereof. However, assertion of such a claim through judicial proceedings is governed by the general license in § 535.504. A determination by the Iran-United States Claims Tribunal on the merits that a standby letter of credit, performance bond or similar obligation is invalid, has been paid or otherwise discharged, or has no further purpose, or any similar determination shall operate as a final resolution and discharge or Iran's interest therein and, notwithstanding the provisions of § 535.504, may be enforced by a judicial proceeding to obtain a final judicial judgment or order permanently disposing of that interest.

(h) The effective date of this section is February 24, 1981.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14335, Feb. 26, 1981, as amended at 47 FR 29529, July 7, 1982; 56 FR 6546, Feb. 15, 1991]

Subpart C—General Definitions

§ 535.301 Iran; Iranian Entity.

(a) The term *Iran* and *Iranian Entity* includes:

(1) The state and the Government of Iran as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof;

(2) Any partnership, association, corporation, or other organization substantially owned or controlled by any of the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date acting or purporting to act directly or indirectly on behalf of any of the foregoing;

(4) Any territory which on or since the effective date is controlled or occupied by the military, naval or police forces or other authority of Iran; and

(5) Any other person or organization determined by the Secretary of the Treasury to be included within paragraph (a) of this section.

(b) A person specified in paragraph (a)(2) of this section shall not be deemed to fall within the definition of Iran solely by reason of being located in, organized under the laws of, or having its principal place of business in, Iran.

§ 535.308 Person.

The term *person* means an individual, partnership, association, corporation or other organization.

[45 FR 24433, Apr. 9, 1980]

§ 535.310 Transfer.

The term *transfer* shall mean any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgement, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition, or the exercise of any power of appointment, power of attorney, or other power.

[44 FR 75352, Dec. 19, 1979]

§ 535.311 Property; property interests.

Except as defined in § 535.203(f) for the purposes of that section, the terms *property* and *property interest* or *property interests* shall include, but not by way of limitation, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, debentures, stocks, bonds, coupons, any other financial securities, bankers' acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, real estate and any interest therein, leaseholds, grounds rents, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 535.312 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property shall mean an interest of any nature whatsoever, direct or indirect.

[44 FR 75352, Dec. 19, 1979]

§ 535.316 License.

Except as otherwise specified, the term *license* shall mean any license or authorization contained in or issued pursuant to this part.

[44 FR 66832, Nov. 21, 1979]

§ 535.317 General license.

A general license is any license or authorization the terms of which are set forth in this part.

[44 FR 66832, Nov. 21, 1979]

§ 535.318 Specific license.

A specific license is any license or authorization issued pursuant to this part but not set forth in this part.

[44 FR 66832, Nov. 21, 1979]

§ 535.320 Domestic bank.

(a) The term *domestic bank* shall mean any branch or office within the United States of any of the following which is not Iran or an Iranian entity: any bank or trust company incorporated under the banking laws of the United States or of any state, territory, or district of the United States, or any private bank or banker subject to supervision and examination under the banking laws of the United States or of any state, territory or district of

the United States. The Secretary of the Treasury may also authorize any other banking institution to be treated as a ''domestic bank'' for the purpose of this definition or for the purpose of any or all sections of this part.

(b) For purposes of §§ 535.413, 535.508, 535.531 and 535.901, the term *domestic bank* includes any branch or office within the United States of a non-Iranian foreign bank.

[44 FR 66832, Nov. 21, 1979]

§ 535.321 United States; continental United States.

The term *United States* means the United States and all areas under the jurisdiction or authority thereof including the Trust Territory of the Pacific Islands. The term *continental United States* means the states of the United States and the District of Columbia.

[44 FR 66833, Nov. 21, 1979]

§ 535.329 Person subject to the jurisdiction of the United States.

The term *person subject to the jurisdiction of the United States* includes:

(a) Any person wheresoever located who is a citizen or resident of the United States;

(b) Any person actually within the United States;

(c) Any corporation organized under the laws of the United States or of any state, territory, possession, or district of the United States; and

(d) Any partnership, association, corporation, or other organization wheresoever organized or doing business which is owned or controlled by persons specified in paragraph (a), (b), or (c) of this section.

§ 535.333 Properties.

(a) The term properties as used in § 535.215 means all uncontested and non-contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities, or controlled entities, including debts. It does not include bank deposits or funds and securities. It also does not include obligations under standby letters of credit or similar instruments in the nature of performance bonds, including accounts established pursuant to § 535.568.

(b) Properties do not cease to fall within the definition in paragraph (a), above, merely due to the existence of unpaid obligations, charges or fees relating to such properties, or undischarged liens against such properties.

(c) Liabilities and property interests of the Government of Iran, its agencies, instrumentalities, or controlled entities may be considered contested only if the holder thereof reasonably believes that Iran does not have title or has only partial title to the asset. After October 23, 2001, such a belief may be considered reasonable only if it is based upon a bona fide opinion, in writing, of an attorney licensed to practice within the United States stating that Iran does not have title or has only partial title to the asset. For purposes of this paragraph, the term holder shall include any person who possesses the property, or who, although not in physical possession of the property, has, by contract or otherwise, control over a third party who does in fact have physical possession of the property. A person is not a holder by virtue of being the beneficiary of an attachment, injunction or similar order.

(d) Liabilities and property interests shall not be deemed to be contested solely because they are subject to an attachment, injunction, or other similar order.

[66 FR 38554, July 25, 2001]

§ 535.334 Act of the Government of Iran.

For purposes of § 535.216, an act of the Government of Iran, includes any acts ordered, authorized, allowed, approved, or ratified by the Government of Iran, its agencies, instrumentalities or controlled entities.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14336, Feb. 26, 1981]

§ 535.335 Claim arising out of events in Iran.

For purposes of § 535.216, a claim is one ''arising out of events'' of the type

specified only if such event is the specific act that is the basis of the claim.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14336, Feb. 26, 1981]

§ 535.337 Funds.

For purposes of this part, the term *funds* shall mean monies in trust, escrow and similar special funds held by non-banking institutions, currency and coins. It does not include accounts created under § 535.568.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 30341, June 8, 1981]

Subpart D—Interpretations

§ 535.401 Reference to amended sections.

Reference to any section of this part or to any regulation, ruling, order, instruction, direction or license issued pursuant to this part shall be deemed to refer to the same as currently amended unless otherwise so specified.

[45 FR 24433, Apr. 9, 1980]

§ 535.402 Effect of amendment of sections of this part or of other orders, etc.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Secretary of the Treasury pursuant to section 203 of the International Emergency Economic Powers Act shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any suit or proceeding had or commenced in any civil or criminal case, prior to such amendment, modification, or revocation and all penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

[45 FR 24433, Apr. 9, 1980]

§ 535.403 Termination and acquisition of an interest of Iran or an Iranian entity.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from Iran or an Iranian entity, such property shall no longer be deemed to be property in which Iran or an Iranian entity has or has had an interest, unless there exists in the property another such interest the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization contained in or issued pursuant to this part, if property (including any property interest) is transferred to Iran or an Iranian interest, such property shall be deemed to be property in which there exists an interest of Iran or an Iranian entity.

[45 FR 24433, Apr. 9, 1980]

§ 535.413 Transfers between dollar accounts held for foreign banks.

Transfers authorized by § 535.901 include transfers by order of a non-Iranian foreign bank from its account in a domestic bank (directly or through a foreign branch or subsidiary of a domestic bank) to an account held by a domestic bank (directly or through a foreign branch or subsidiary) for a second non-Iranian foreign bank which in turn credits an account held by it abroad for Iran. For the purposes of this section, a non-Iranian foreign bank means a bank which is not a person subject to the jurisdiction of the United States.

[44 FR 66833, Nov. 21, 1979]

§ 535.414 Payments to blocked accounts under § 535.508.

(a) Section 535.508 does not authorize any transfer from a blocked account within the United States to an account held by any bank outside the United States or any other payment into a

blocked account outside the United States.

(b) Section 535.508 only authorizes payment into a blocked account held by a domestic bank as defined by § 535.320.

[44 FR 67617, Nov. 26, 1979]

§ 535.415 Payment by Iranian entities of obligations to persons within the United States.

A person receiving payment under § 535.904 may distribute all or part of that payment to anyone: *Provided,* That any such payment to Iran or an Iranian entity must be to a blocked account in a domestic bank.

[44 FR 67617, Nov. 26, 1979]

§ 535.416 Letters of credit.

(a) *Question*. Prior to the effective date, a bank subject to the jurisdiction of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. Can payment be made upon presentation of documentary drafts?

Answer. Yes, provided payment is made into a blocked account in a domestic bank.

(b) *Question*. Prior to the effective date, a domestic branch of a bank organized or incorporated under the laws of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. Payment is to be made through a foreign branch of the bank. Can payment be made upon presentation of documentary drafts?

Answer. Yes, provided payment is made into a blocked account in a domestic bank.

(c) *Question*. Prior to the effective date, a foreign bank confirms a documentary letter of credit issued by its U.S. agency or branch for a non-Iranian account party in favor of an Iranian entity. Can the U.S. agency or branch of the foreign bank transfer funds to the foreign bank in connection with that foreign bank's payment under the letter of credit?

Answer. No, the U.S. agency's payment is blocked, unless the foreign bank made payment to the Iranian entity prior to the effective date.

(d) *Question*. Prior to the effective date, a bank subject to the jurisdiction of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. The Iranian entity presents documentry drafts which are deficient in some detail. May the non-Iranian account party waive the documentary deficiency and authorize the bank to make payment?

Answer. Yes, provided payment is made into a blocked account in a domestic bank. However, the non-Iranian account party is not obligated by these Regulations to exercise a waiver of documentary deficiencies. In cases where such a waiver is not exercised, the bank's payment obligation, if any, under the letter of credit remains blocked, as does any obligation, contingent or otherwise, of the account party. The documents are also blocked.

(e) *Question*. Prior to the effective date, a bank subject to the jurisdiction of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. The Iranian entity does not make timely, complete, or proper presentation of documents, and the letter of credit expires. Does there remain a blocked payment obligation held by the bank?

Answer. No, but any documents held by the bank continue to be blocked. It is also possible that the account party still has a related obligation to the Iranian entity and any such obligation would be blocked.

(f) *Question*. A bank subject to the jurisdiction of the United States has issued a letter of credit for a U.S. account party in favor of an Iranian entity. The letter of credit is confirmed by a foreign bank. Prior to or after the effective date, the Iranian entity presents documents to the U.S. issuing bank. Payment is deferred. After the effective date, the Iranian entity requests that the issuing bank either return the documents to the Iranian entity or transfer them to the confirming bank. Can the issuing bank do so?

Answer. No. The U.S. issuing bank can neither return nor transfer the documents without a license. The documents constitute blocked property under the Regulations.

(g) *Question*. Prior to the effective date, a bank subject to the jurisdiction of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. The Iranian entity presents documentary drafts which are deficient in some detail. May the non-Iranian account party waive the documentary deficiency and make payment?

Answer. Yes, provided payment is made into a blocked account in a domestic bank. However, the non-Iranian account party is not obligated by these Regulations to exercise a waiver of documentary deficiencies. In cases where such a waiver is not exercised, the amount of the payment held by the account party is blocked.

[44 FR 69287, Dec. 3, 1979, as amended at 44 FR 75353, Dec. 19, 1979]

§ 535.420 Transfers of accounts under § 535.508 from demand to interest-bearing status.

Section 535.508 authorizes transfer of a blocked demand deposit account to interest-bearing status at the instruction of the Iranian depositor at any time.

[44 FR 76784, Dec. 28, 1979]

§ 535.421 Prior contractual commitments not a basis for licensing.

Specific licenses are not issued on the basis that an unlicensed firm commitment or payment has been made in connection with a transaction prohibited by this part. Contractual commitments to engage in transactions subject to the prohibitions of this part should not be made, unless the contract specifically states that the transaction is authorized by general license or that it is subject to the issuance of a specific license.

[45 FR 24433, Apr. 9, 1980]

§ 535.433 Central Bank of Iran.

The Central Bank of Iran (Bank Markazi Iran) is an agency, instrumentality and controlled entity of the Government of Iran for all purposes under this part.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14336, Feb. 26, 1981]

§ 535.437 Effect on other authorities.

Nothing in this part in any way relieves any persons subject to the jurisdiction of the United States from securing licenses or other authorizations as required from the Secretary of State, the Secretary of Commerce or other relevant agency prior to executing the transactions authorized or directed by this part. This includes licenses for transactions involving military equipment.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14336, Feb. 26, 1981]

§ 535.438 Standby letters of credit, performance or payment bonds and similar obligations.

(a) Nothing contained in §§ 535.212, 535.213 and 535.214 or in any other provision or revocation or amendment of any provision in this part affects the prohibition in § 535.201 and the licensing procedure in § 535.568 relating to certain standby letters of credit, performance bonds and similar obligations. The term *funds and securities* as used in this part does not include substitute blocked accounts established under section 535.568 relating to standby letters of credit, performance or payment bonds and similar obligations.

(b) No transfer requirement under § 535.213 or § 535.214 shall be deemed to authorize or compel any payment or transfer of any obligation under a standby letter of credit, performance bond or similar obligation as to which a blocked account has been established

pursuant to § 535.568 or as to which payment is prohibited under an injunction obtained by the account party.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14336, Feb. 26, 1981, as amended at 46 FR 30341, June 8, 1981]

§ 535.440 Commercially reasonable interest rates.

(a) For purposes of §§ 535.212 and 535.213, what is meant by ''commercially reasonable rates'' depends on the particular circumstances. In the case of time or savings deposits, the ''commercially reasonable rate'' is that rate provided for by the deposit agreement or applicable law. With respect to other obligations where the rate remains to be determined, it is presently expected that the ''commercially reasonable rate'' will be the rate agreed upon by the bank and Iran. However, where a deposit has in fact operated as a demand account under Treasury license, it would be appropriate to treat the deposit for purposes of §§ 535.212 and 535.213 as a non-interest bearing account. Furthermore, in the event that the Iran-U.S Claims Tribunal (the ''Tribunal'') determines that interest additional to that agreed upon between the bank and Iran, or compensation or damages in lieu of interest, is due Iran, then that amount determined by the Tribunal to be owing to Iran shall be transferred as, or as part of, the interest at ''commercially reasonable rates'' required to be transferred pursuant to §§ 535.212 and 535.213, regardless of any settlement between the bank and Iran or any release or discharge that Iran may have given the bank.

(b) The contingent interest of Iran in any liability for further or additional interest, or compensation or damages in lieu of interest, that may be claimed in, and determined by the Tribunal, constitutes an interest of Iran in property for purposes of this part, and no agreement between Iran and any person subject to the jurisdiction of the United States is effective to extinguish such Iranian interest in property unless so specifically licensed by the Treasury Department.

(c) For deposits held as time deposits, no penalty shall be imposed for early withdrawal. (In this connection, the Board of Governors of the Federal Reserve System has determined that application of the penalty for early withdrawal of time deposits transferred before maturity, pursuant to § 535.213 is not required.)

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205; 45 FR 24099; E.O. 12211, 45 FR 26605; E.O. 12276, 46 FR 7913; E.O. 12277, 46 FR 7915; E.O. 12278, 46 FR 7917; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; and E.O. 12294, 46 FR 14111)

[48 FR 253, Jan. 4, 1983]

§ 535.441 Settlement Agreement regarding small claims.

(a) Award No. 483 of June 22, 1990 of the Iran-United States Claims Tribunal, approving and giving effect to the Settlement Agreement in Claims of Less Than $250,000, Case No. 86 and Case No. B38, dated May 13, 1990 (the ''Settlement Agreement''), constitutes a determination by the Iran-United States Claims Tribunal of all claims encompassed therein within the meaning of § 535.222(f) of this part. In accordance with § 535.222(f), upon payment from the Security Account to the United States, the Settlement Agreement shall operate as a final resolution and discharge of all claims encompassed by the Settlement Agreement for all purposes. All such claims shall be subject to the exclusive jurisdiction of the Foreign Claims Settlement Commission on the terms established in the Settlement Agreement and by the provisions of Public Law 99–93, Title V, Aug. 16, 1985, 99 Stat. 437, applicable to en bloc settlements of claims of U.S. nationals against Iran.

(b) Pursuant to the Settlement Agreement, the private claims subject to that agreement and this part are ''* * * claims of less than $250,000 each, which have been filed with the Tribunal by the United States on behalf of U.S. nationals, which claims are included in Cases Nos. 10001 through 12785, and which are still pending, * * * ,'' and ''* * * claims of U.S. nationals for less than $250,000 which have been

submitted to the United States Department of State but were not timely filed with the Tribunal, as well as claims of U.S. nationals for less than $250,000 which have been either withdrawn by the Claimants or dismissed by the Tribunal for lack of jurisdiction, * * * .'' Settlement Agreement, Art. I(A).

[55 FR 40831, Oct. 5, 1990]

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 535.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[68 FR 53657, Sept. 11, 2003]

§ 535.502 Effect of license or authorization.

(a) No license or other authorization contained in this part or otherwise issued by or under the direction of the Secretary of the Treasury pursuant to section 203 of the International Emergency Economic Powers Act, shall be deemed to authorize or validate any transaction effected prior to the issuance thereof, unless such license or other authorization specifically so provides.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Treasury Department and specifically refers to this part. No regulation, ruling, instruction or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of parts 500, 505, 515, 520 or 530 of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction or license authorizing a transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions in subpart B from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

[44 FR 66833, Nov. 21, 1979, as amended at 44 FR 75353, Dec. 19, 1979]

§ 535.503 Exclusion from licenses and authorizations.

The Secretary of the Treasury reserves the right to exclude any person from the operation of any license or from the privileges therein conferred or to restrict the applicability thereof with respect to particular persons, transactions or property or classes thereof. Such action shall be binding upon all persons receiving actual notice or constructive notice thereof.

[44 FR 66833, Nov. 21, 1979]

§ 535.504 Certain judicial proceedings with respect to property of Iran or Iranian entities.

(a) Subject to the limitations of paragraphs (b) and (c) of this section and § 535.222, judicial proceedings are authorized with respect to property in which on or after 8:10 a.m., e.s.t., November 14, 1979, there has existed an interest of Iran or an Iranian entity.

(b) This section does not authorize:

(1) Any pre-judgment attachment or any other proceeding of similar or analogous effect pertaining to any property (and any income earned thereon) subject to the provisions of § 535.211, § 535.212, § 535.213, § 535.214 or § 535.215 on January 19, 1981, including, but not limited to, a temporary restraining order or preliminary injunction, which operates as a restraint on property, for purposes of holding it within the jurisdiction of a court, or otherwise;

(2) Any payment or delivery out of a blocked account based upon a judicial proceeding, pertaining to any property subject to the provisions of §§ 535.211, 535.212, 535.213, 535.214 or 535.215 on January 19, 1981;

(3)(i) Any final judicial judgment or order (A) permanently enjoining, (B) terminating or nullifying, or (C) otherwise permanently disposing of any interest of Iran in any standby letter of

credit, performance bond or similar obligation. Any license authorizing such action is hereby revoked and withdrawn. This revocation and withdrawal of prior licenses prohibits judgments or orders that are within the terms of this paragraph (b)(3)(i), including any such judgments or orders which may have been previously entered but which had not become final by July 2, 1982, through the conclusion of appellate proceedings or the expiration of the time for appeal.

(ii) Nothing in this paragraph (b)(3) shall prohibit the assertion of any defense, set-off or counterclaim in any pending or subsequent judicial proceeding commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality or entity owned or controlled by the Government of Iran or any political subdivision thereof.

(iii) Nothing in this paragraph (b)(3) shall preclude the commencement of an action for the purpose of tolling the period of limitations for commencement of such action.

(iv) Nothing in this paragraph (b)(3) shall require dismissal of any action for want of prosecution.

(c) For purposes of this section, contested and contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities, or controlled entities, including debts, shall be deemed to be subject to § 535.215.

(d) A judicial proceeding is not authorized by this section if it is based on transactions which violated the prohibitions of this part.

(e) Judicial proceedings to obtain attachments on standby letters of credit, performance bonds or similar obligations and on substitute blocked accounts established under § 535.568 relating to standby letters of credit, performance bonds and similar obligations are not authorized or licensed.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14336, Feb. 26, 1981, as amended at 46 FR 26477, May 13, 1981; 47 FR 29529, July 7, 1982; 47 FR 55482, Dec. 10, 1982; 48 FR 57129, Dec. 28, 1983]

§ 535.508 Payments to blocked accounts in domestic banks.

(a) Any payment or transfer of credit, including any payment or transfer by any U.S.-owned or controlled foreign firm or branch to a blocked account in a domestic bank in the name of Iran or any Iranian entity is hereby authorized: *Provided*, Such payment or transfer shall not be made from any blocked account if such payment or transfer represents, directly or indirectly, a transfer of the interest of Iran or an Iranian entity to any other country or person.

(b) This section does not authorize:

(1) Any payment or transfer to any blocked account held in a name other than that of Iran or the Iranian entity who is the ultimate beneficiary of such payment or transfer; or

(2) Any foreign exchange transaction including, but not by way of limitation, any transfer of credit, or payment of an obligation, expressed in terms of the currency of any foreign country.

(c) This section does not authorize any payment or transfer of credit comprising an integral part of a transaction which cannot be effected without the subsequent issuance of a further license.

(d) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a sub-account thereof, or the income derived from such securities to a blocked account or sub-account under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such securities were held.

(e) This section does not authorize any payment or transfer from a

blocked account in a domestic bank to a blocked account held under any name or designation which differs from the name or designation of the specified blocked account or sub-account from which the payment or transfer is made.

NOTE TO § 535.508: Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers.

[44 FR 66590, Nov. 20, 1979, as amended at 62 FR 45107, Aug. 25, 1997]

§ 535.528 Certain transactions with respect to Iranian patents, trademarks and copyrights authorized.

(a) The following transactions by any person subject to the jurisdiction of the United States are authorized:

(1) The filing and prosecution of any application for an Iranian patent, trademark or copyright, or for the renewal thereof;

(2) The receipt of any Iranian patent, trademark or copyright;

(3) The filing and prosecution of opposition or infringement proceedings with respect to any Iranian patent, trademark, or copyright, and the prosecution of a defense to any such proceedings;

(4) The payment of fees currently due to the government of Iran, either directly or through an attorney or representative, in connection with any of the transactions authorized by paragraphs (a)(1), (2), and (3) of this section or for the maintenance of any Iranian patent, trademark or copyright; and

(5) The payment of reasonable and customary fees currently due to attorneys or representatives in Iran incurred in connection with any of the transactions authorized by paragraphs (a)(1), (2), (3) or (4) of this section.

(b) Payments effected pursuant to the terms of paragraphs (a)(4) and (5) of this section may not be made from any blocked account.

(c) As used in this section the term *Iranian patent, trademark, or copyright* shall mean any patent, petty patent, design patent, trademark or copyright issued by Iran.

[45 FR 29288, May 2, 1980]

§ 535.531 Payment of certain checks and drafts.

(a) A bank subject to the jurisdiction of the United States is hereby authorized to make payments from blocked accounts with such banking institution of checks and drafts drawn or issued prior to the effective date, *Provided,* That:

(1) The amount involved in any one payment, acceptance, or debit does not exceed $3000; or

(2) The check or draft was within the United States in process of collection by a domestic bank on or prior to the effective date and does not exceed $50,000.

(3) The authorization contained in this paragraph shall expire at the close of business on January 14, 1980.

(b) A bank subject to the jurisdiction of the United States as its own obligation may make payment to a person subject to the jurisdiction of the United States who is the beneficiary of any letter of credit issued or confirmed by it, or on a draft accepted by it, prior to the effective date, where the letter of credit was issued or confirmed on behalf of Iran or an Iranian entity, *Provided,* That:

(1) Notwithstanding the provisions of § 535.902, no blocked account may at any time be debited in connection with such a payment.

(2) Such a payment shall give the bank making payment no special priority or other right to blocked accounts it holds in the event that such blocked accounts are vested or otherwise lawfully used in connection with a settlement of claims.

(3) Nothing in this paragraph prevents payment being made to the beneficiary of any draft or letter of credit or to any banking institution pursuant to § 535.904.

(c) The office will consider on a case-by-case basis, without any commitment on its part to authorize any transaction or class of transactions, applications for specific licenses to make payments from blocked accounts of documentary drafts drawn under irrevocable letters of credit issued or confirmed by a domestic bank prior to the effective date, in favor of any person subject to the jurisdiction of the United States. Any bank or payee submitting such an application should include data on all such letters of credit in which it is involved. Applications

should be submitted not later than January 10, 1980.

(d) Paragraphs (a) and (b) of this section do not authorize any payment to Iran or an Iranian entity except payments into a blocked account in a domestic bank unless Iran or the Iranian entity is otherwise licensed to receive such payment.

[44 FR 75352, Dec. 19, 1979]

§ 535.532 Completion of certain securities transactions.

(a) Banking institutions within the United States are hereby authorized to complete, on or before November 21, 1979, purchases and sales made prior to the effective date of securities purchased or sold for the account of Iran or an Iranian entity provided the following terms and conditions are complied with, respectively.

(1) The proceeds of such sale are credited to a blocked account in a banking institution in the name of the person for whose account the sale was made; and

(2) The securities so purchased are held in a blocked account in a banking institution in the name of the person for whose account the purchase was made.

(b) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a sub-account thereof, to a blocked account or sub-account under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such securities were held.

§ 535.540 Disposition of certain tangible property.

(a) Specific licenses may be issued in appropriate cases at the discretion of the Secretary of the Treasury for the public sale and transfer of certain tangible property that is encumbered or contested within the meaning of § 535.333 (b) and (c) and that, because it is blocked by § 535.201, may not be sold or transferred without a specific license, provided that each of the following conditions is met:

(1) The holder or supplier of the property has made a good faith effort over a reasonable period of time to obtain payment of any amounts owed by Iran or the Iranian entity, or adequate assurance of such payment;

(2) Neither payment nor adequate assurance of payment has been received;

(3) The license applicant has, under provisions of law applicable prior to November 14, 1979, a right to sell, or reclaim and sell, such property by methods not requiring judicial proceedings, and would be able to exercise such right under applicable law, but for the prohibitions in this part, and

(4) The license applicant shall enter into an indemnification agreement acceptable to the United States providing for the applicant to indemnify the United States, in an amount up to 150 percent of the proceeds of sale, for any monetary loss which may accrue to the United States from a decision by the Iran-U.S. Claims Tribunal that the United States is liable to Iran for damages that are in any way attributable to the issuance of such license. In the event the applicant and those acting for or on its behalf are the only bidders on the property, the United States shall have the right to establish a reasonable indemnification amount.

(b) An applicant for a license under this section shall provide the Office of Foreign Assets Control with documentation on the points enumerated in paragraph (a) of this section. The applicant normally will be required to submit an opinion of legal counsel regarding the legal right claimed under paragraph (a)(3) of this section.

(c) Any sale of property licensed under this section shall be at public auction and shall be made in good faith in a commercially reasonable manner. Notwithstanding any provision of State law, the license applicant shall give detailed notice to the appropriate Iranian entity of the proposed sale or transfer at least 30 days prior to the sale or other transfer. In addition, if the license applicant has filed a claim with the Iran-U.S. Claims Tribunal, the license applicant shall give at least 30 days' advance notice of the sale to the Tribunal.

(d) The disposition of the proceeds of any sale licensed under this section, minus such reasonable costs of sale as are authorized by applicable law (which will be licensed to be deducted), shall

be in accordance with either of the following methods:

(1) Deposit into a separate blocked, interest-bearing account at a domestic bank in the name of the licensed applicant; or

(2) Any reasonable disposition in accordance with provisions of law applicable prior to November 14, 1979, which may include unrestricted use of all or a portion of the proceeds, provided that the applicant shall post a bond or establish a standby letter of credit, subject to the prior approval of the Secretary of the Treasury, in favor of the United States in the amount of the proceeds of sale, prior to any such disposition.

(e) For purposes of this section, the term *proceeds* means any gross amount of money or other value realized from the sale. The proceeds shall include any amount equal to any debt owed by Iran which may have constituted all or part of a successful bid at the licensed sale.

(f) The proceeds of any such sale shall be deemed to be property governed by § 535.215 of this part. Any part of the proceeds that constitutes Iranian property which under § 535.215 is to be transferred to Iran shall be so transferred in accordance with that section.

(g) Any license pursuant to this section may be granted subject to conditions deemed appropriate by the Secretary of the Treasury.

(h) Any person licensed pursuant to this section is required to submit a report to the Chief of Licensing, Office of Foreign Assets Control, within ten business days of the licensed sale or other transfer, providing a full accounting of the transaction, including the costs, any payment to lienholders or others, including payments to Iran or Iranian entities, and documentation concerning any blocked account established or payments made.

(Sec. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26605; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; and E.O. 12294, 46 FR 14111)

[47 FR 31683, July 22, 1982]

§ 535.566 Unblocking of foreign currency deposits held by U.S.-owned or controlled foreign firms.

Deposits held abroad in currencies other than U.S. dollars by branches and subsidiaries of persons subject to the jurisdiction of the United States are unblocked, provided however that conversions of blocked dollar deposits into foreign currencies are not authorized.

[44 FR 66833, Nov. 21, 1979]

§ 535.567 Payment under advised letters of credit.

(a) Specific licenses may be issued for presentation, acceptance, or payment of documentary drafts under a letter of credit opened by an Iranian entity and advised by a domestic bank or an Iranian bank subject to the jurisdiction of the United States, *provided*, That:

(1) The letter of credit was advised prior to the effective date;

(2) The property which is the subject of the payment under the letter of credit was not in the possession or control of the exporter on or after the effective date;

(3) The Beneficiary is a person subject to the jurisdiction of the United States.

(b) As a general matter, licenses will not be issued if the amount to be paid to a single payee exceeds $500,000, or if hardship cannot be shown.

[44 FR 75354, Dec. 19, 1979]

§ 535.568 Certain standby letters of credit and performance bonds.

(a) Notwithstanding any other provision of law, payment into a blocked account in a domestic bank by an issuing or confirming bank under a standby letter of credit in favor of an Iranian entity is prohibited by § 535.201 and not authorized, notwithstanding the provisions of § 535.508, if either:

(1) A specific license has been issued pursuant to the provisions of paragraph (b) of this section, or

(2) Eight business days have not expired after notice to the account party pursuant to paragraph (b) of this section.

(b) Whenever an issuing or confirming bank shall receive such demand for payment under a standby letter of credit, it shall promptly notify

the person for whose account the credit was opened. Such person may then apply within five business days for a specific license authorizing the account party to establish a blocked account on its books in the name of the Iranian entity in the amount payable under the credit, in lieu of payment by the issuing or confirming bank into a blocked account and reimbursement therefor by the account party.

(c) Where there is outstanding a demand for payment under a standby letter of credit, and the issuing or confirming bank has been enjoined from making payment, upon removal of the injunction, the person for whose account the credit was opened may apply for a specific license for the same purpose and in the same manner as that set forth in paragraph (b) of this section. The issuing or confirming bank shall not make payment under the standby letter of credit unless:

(1) Eight business days have expired since the bank has received notice of the removal of the injunction and;

(2) A specific license issued to the account party pursuant to the provisions of this paragraph has not been presented to the bank.

(d) If necessary to assure the availability of the funds blocked, the Secretary may at any time require the payment of the amounts due under any letter of credit described in paragraph (a) of this section into a blocked account in a domestic bank or the supplying of any form of security deemed necessary.

(e) Nothing in this section precludes any person for whose account a standby letter of credit was opened or any other person from at any time contesting the legality of the demand from the Iranian entity or from raising any other legal defense to payment under the standby letter of credit.

(f) This section does not affect the obligation of the various parties of the instruments covered by this section if the instruments and payment thereunder are subsequently unblocked.

(g) For the purposes of this section, the term *standby letter of credit* shall mean a letter of credit securing performance of, or repayment of, any advance payments of deposits, under a contract with Iran or an Iranian entity, or any similar obligation in the nature of a performance bond.

(h) The regulations do not authorize any person subject to the jurisdiction of the United States to reimburse a non-U.S. bank for payment to Iran or an Iranian entity under a standby letter of credit, except by payment into a blocked account in accordance with § 535.508 or paragraph (b) or (c) of this section.

(i) A person receiving a specific license under paragraph (b) or (c) of this section shall certify to the Office of Foreign Assets Control within five business days after receipt of that license that it has established the blocked account on its books as provided for in those paragraphs. However, in appropriate cases, this time may be extended upon application to the Office of Foreign Assets Control when the account party has filed a petition with an appropriate court seeking a judicial order barring payment by the issuing or confirming bank.

(j) The extension or renewal of a standby letter of credit is authorized.

(k) All specific licenses previously issued under this section to account parties to standby letters of credit are revoked, effective February 28, 1991, unless the license holder submits documentation to the Office of Foreign Assets Control establishing that the specific license pertains to a standby letter of credit obligation that (1) is at issue in any claim brought before the Iran-United States Claims Tribunal (''Tribunal''), (2) is or was at issue in any claim that the Tribunal resolves, or has resolved, on the merits in favor of the account party, or (3) was at issue in a matter that was settled by the parties. The documentation required for such a showing may include such items as a copy of a Tribunal Award, a copy of a signed settlement agreement, or copies of cover pages of recent filings in pending Tribunal cases.

[47 FR 12339, Mar. 23, 1982, as amended at 56 FR 6546, Feb. 15, 1991]

§ 535.569 Licensed letter of credit transactions; forwarding of documents.

When payment of a letter of credit issued, advised, or confirmed by a bank subject to the jurisdiction of the

United States is authorized by either general or specific license, the forwarding of the letter of credit documents to the account party is authorized.

[45 FR 1877, Jan. 9, 1980]

§ 535.576 Payment of non-dollar letters of credit to Iran.

Notwithstanding the prohibitions of §§ 535.201 and 535.206(a)(4), payment of existing non-dollar letters of credit in favor of Iranian entities or any person in Iran by any foreign branch or subsidiary of a U.S. firm is authorized, provided that the credit was opened prior to the respective effective date.

[45 FR 29288, May 2, 1980]

§ 535.579 Authorization of new transactions concerning certain Iranian property.

(a) Transactions involving property in which Iran or an Iranian entity has an interest are authorized where:

(1) The property comes within the jurisdiction of the United States or into the control or possession of any person subject to the jurisdiction of the United States after January 19, 1981, or

(2) The interest in the property of Iran or an Iranian entity (e.g. exports consigned to Iran or an Iranian entity) arises after January 19, 1981.

(b) Transactions involving standby letters of credit, performance or payment bonds and similar obligations, entered into prior to January 20, 1981, described in § 535.568 remain subject to the prohibitions and procedures contained in §§ 535.201 and 535.568.

(c) Property not blocked under § 535.201 as of January 19, 1981, in which the Government of Iran or an Iranian entity has an interest, which after that date is or becomes subject to the jurisdiction of the United States or comes within the control or possession of a person subject to the jurisdiction of the United States for the express purpose of settling claims against Iran or Iranian entities, is excluded from any authorization in this part for any attachment, injunction or other order of similar or analogous effect and any such attachment, injunction or order is prohibited by §§ 535.201 and 535.203.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14336, Feb. 26, 1981]

§ 535.580 Necessary living expenses of relatives of the former Shah of Iran.

The transfer, payment or withdrawal of property described in § 535.217 is authorized to the extent necessary to pay living expenses of any individual listed in that section. Living expenses for this purpose shall include food, housing, transportation, security and other personal expenses.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12211, 45 FR 26685; E.O. 12284, 46 FR 7929)

[46 FR 14330, Feb. 26, 1981]

Subpart F—Reports

§ 535.601 Records and reports.

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

[62 FR 45107, Aug. 25, 1997]

Subpart G—Penalties

§ 535.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'') (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act.

(1) A civil penalty not to exceed the amount set forth in Section 206 of the Act may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under the Act.

NOTE TO PARAGRAPH (a)(1) OF § 535.701: As of June 10, 2008, the Act provides for a maximum civil penalty not to exceed the greater

of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in the Act are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in the Act are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Attention is directed to 18 U.S.C. 2332d, as added by Public Law 104–132, section 321, which provides that, except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, a U.S. person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act, 50 U.S.C. App. 2405, as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under title 18, United States Code, or imprisoned for not more than 10 years, or both.

[44 FR 65956, Nov. 15, 1979, as amended at 61 FR 43461, Aug. 23, 1996; 61 FR 54938, Oct. 23, 1996; 62 FR 45107, Aug. 25, 1997; 71 FR 29252, May 22, 2006; 73 FR 32651, June 10, 2008]

§ 535.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control (hereinafter ''Director'') has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the violation.

(ii) Specify the laws and regulations allegedly violated.

(iii) State the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within thirty (30) days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

[53 FR 7356, Mar. 8, 1988]

§ 535.703 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the

prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

[53 FR 7356, Mar. 8, 1988]

§ 535.704 Penalty notice.

(a) *No violation*. If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation*. If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

[53 FR 7356, Mar. 8, 1988]

§ 535.705 Administrative collection; referral to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

[70 FR 15762, Mar. 29, 2005]

Subpart H—Procedures

§ 535.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

[62 FR 45107, Aug. 25, 1997, as amended at 68 FR 53657, Sept. 11, 2003]

Subpart I—Miscellaneous Provisions

§ 535.901 Dollar accounts at banks abroad.

Any domestic bank is hereby authorized to effect withdrawals or other transfers from any account held in the name of a non-Iranian bank located in a foreign country, provided such non-Iranian foreign bank is not a person subject to the jurisdiction of the United States.

§ 535.902 Set-offs by U.S. owned or controlled firms abroad.

(a) Branches and subsidiaries in foreign countries of persons subject to the jurisdiction of the United States are licensed to set-off their claims against Iran or Iranian entities by debit to blocked accounts held by them for Iran or Iranian entities.

(b) The general license in paragraph (a) of this section is revoked as of January 19, 1981.

(c) For purposes of this section, set-offs include combinations of accounts and any similar actions.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111)

[46 FR 14337, Feb. 26, 1981]

§ 535.904 Payment by Iranian entities of obligations to persons within the United States.

The transfer of funds after the effective date by, through or to any U.S. banking institution or other person within the United States solely for purposes of payment of obligations by Iranian entities owed to persons within the United States is authorized: *Provided*, That there is no debit to a blocked account. Property is not blocked by virtue of being transferred or received pursuant to this section.

[44 FR 66591, Nov. 20, 1979]

§ 535.905 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

[62 FR 45107, Aug. 25, 1997]

PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
536.100 Licensing procedures.
536.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

536.201 Prohibited transactions involving blocked property.
536.202 Effect of transfers violating the provisions of this part.
536.203 Holding of certain types of blocked property in interest-bearing accounts.
536.204 Evasions; attempts; conspiracies.
536.205 Exempt transactions.

Subpart C—General Definitions

536.301 Blocked account; blocked property.
536.302 Effective date.
536.303 Entity.
536.304 Foreign person.
536.305 General license.
536.306 Information and informational materials.
536.307 Interest.
536.308 License.
536.309 Person.
536.310 Property; property interest.
536.311 Narcotics trafficking.
536.312 Specially designated narcotics trafficker.
536.313 Specific license.
536.314 Transfer.
536.315 United States.
536.316 United States person; U.S. person.
536.317 U.S. financial institution.

Subpart D—Interpretations

536.401 Reference to amended sections.
536.402 Effect of amendment.
536.403 Termination and acquisition of an interest in blocked property.
536.404 Setoffs prohibited.
536.405 Transactions incidental to a licensed transaction.
536.406 Provision of services.
536.407 Offshore transactions.
536.408 Alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker.
536.409 Credit extended and cards issued by U.S. financial institutions.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

536.501 Effect of license or authorization.
536.502 Exclusion from licenses and authorizations.
536.503 Payments and transfers to blocked accounts in U.S. financial institutions.
536.504 Investment and reinvestment of certain funds.
536.505 Entries in certain accounts for normal service charges authorized.
536.506 Provision of certain legal services authorized.
536.507 Authorization of emergency medical services.

Subpart F—Reports

536.601 Records and reports.

Subpart G—Penalties

536.701 Penalties.
536.702 Prepenalty notice.
536.703 Response to prepenalty notice.
536.704 Penalty notice.
536.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

536.801 Procedures.
536.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

536.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

SOURCE: 62 FR 9960, Mar. 5, 1997, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 536.100 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[68 FR 53657, Sept. 11, 2003]

§ 536.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

[62 FR 9960, Mar. 5, 1997, as amended at 62 FR 45107, Aug. 25, 1997]

Subpart B—Prohibitions

§ 536.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, no property or interests in property of a specially designated narcotics trafficker that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

(b) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

[62 FR 9960, Mar. 5, 1997, as amended at 62 FR 45107, Aug. 25, 1997]

§ 536.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date, which is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, license, or other authorization hereunder and involves any property held in the name of a specially designated narcotics trafficker or in which a specially designated narcotics trafficker has or has had an interest since such date, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property held in the name of a specially designated narcotics trafficker or in which a specially designated narcotics trafficker has an interest, or has had an interest since such date, unless the person with whom such property is held or maintained, prior to such date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued hereunder.

(d) Transfers of property which otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization hereunder; or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d)(3): The filing of a report in accordance with the provisions of this paragraph (d)(3) shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property which, on or since the effective date, was held in the name of a specially designated narcotics trafficker or in which there existed an interest of a specially designated narcotics trafficker.

§ 536.203 Holding of certain types of blocked property in interest-bearing accounts.

(a)(1) Any person, including a U.S. financial institution, currently holding property subject to § 536.201 which, as of the effective date or the date of receipt if subsequent to the effective date, is not being held in an interest-bearing account, or otherwise invested in a manner authorized by the Office of Foreign Assets Control (*e.g.*, § 536.504), shall transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account or interest-bearing status in a U.S. financial institution as of the effective date or the date of receipt if subsequent to the effective date of this section, unless otherwise authorized or directed by the Office of Foreign Assets Control.

(2) The requirement set forth in paragraph (a)(1) of this section shall apply to currency, bank deposits, accounts, obligations, and any other financial or economic resources or assets, and any proceeds resulting from the sale of tangible or intangible property. If interest is credited to an account separate from that in which the interest-bearing asset is held, the name of the account party on both accounts must be the same and must clearly indicate the specially designated narcotics trafficker having an interest in the accounts. If the account is held in the name of a specially designated narcotics trafficker, the name of the account to which interest is credited must be the same.

(b) For purposes of this section, the term *interest-bearing account* means a blocked account in a U.S. financial institution earning interest at rates that are commercially reasonable for the amount of funds in the account. Except as otherwise authorized, the funds may not be invested or held in instruments the maturity of which exceeds 90 days.

(c) This section does not apply to blocked tangible property, such as chattels, nor does it create an affirmative obligation on the part of the holder of such blocked tangible property to sell or liquidate the property and put the proceeds in a blocked account. However, the Office of Foreign Assets Control may issue licenses permitting or directing sales of tangible property in appropriate cases.

§ 536.204 Evasions; attempts; conspiracies.

Any transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this part, is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is hereby prohibited.

§ 536.205 Exempt transactions.

(a) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication, which does not involve the transfer of anything of value.

(b) *Information and informational materials.* (1) The importation from any country and the exportation to any country of information or informational materials as defined in § 536.306, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part.

(2) This section does not authorize transactions related to information and informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services by a U.S. person. Such prohibited transactions include, without limitation, payment of advances for informational materials not yet created and completed, provision of services to market, produce or coproduce, create or assist in the creation of information and informational materials, and payment of royalties to a specially designated narcotics trafficker with respect to income received for enhancements or alterations made by U.S. persons to information or informational materials imported from a specially designated narcotics trafficker.

(3) This section does not authorize transactions incident to the exportation of technology that is not informational material as defined in § 536.306(b)(1) or incident to the exportation of goods for use in the transmission of any information.

(c) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including non-scheduled air, sea, or land voyages. Any transactions entered into by a specially designated narcotics trafficker while traveling in the United States that are outside the scope of those set forth in this paragraph are in violation of § 536.201.

Subpart C—General Definitions

§ 536.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibition in § 536.201 held in the name of a specially designated narcotics trafficker or in which a specially designated narcotics trafficker has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

§ 536.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part which is 12:01 a.m. EDT, October 22, 1995, or, in the case of specially designated narcotics traffickers designated after that date, the earlier of

the date on which a person receives actual or constructive notice of such designation.

§ 536.303 Entity.

The term *entity* means a partnership, association, corporation, or other organization, group or subgroup.

§ 536.304 Foreign person.

The term *foreign person* means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States), or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.

§ 536.305 General license.

The term *general license* means any license or authorization the terms of which are set forth in this part.

§ 536.306 Information and informational materials.

(a) For purposes of this part, the term *information and informational materials* means:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds, and other information and informational articles.

(2) To be considered informational materials, artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The terms *information* and *informational materials* with respect to U.S. exports do not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (the ''EAA''), or section 6 of the EAA to the extent that such controls promote nonproliferation or antiterrorism policies of the United States, including *software* as defined in 15 CFR part 772 that is not *publicly available* (see 15 CFR parts 734 and 772); or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 536.307 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (e.g., ''an interest in property'') means an interest of any nature whatsoever, direct or indirect.

§ 536.308 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 536.309 Person.

The term *person* means an individual or entity.

§ 536.310 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 536.311 Narcotics trafficking.

The term *narcotics trafficking* means any activity undertaken illicitly to cultivate, produce, manufacture, distribute, sell, finance or transport, or

otherwise assist, abet, conspire, or collude with others in illicit activities relating to narcotic drugs, including, but not limited to, cocaine.

§ 536.312 Specially designated narcotics trafficker.

The term *specially designated narcotics trafficker* means:

(a) Persons listed in the annex to Executive Order 12978 (3 CFR, 1995 Comp., p.415);

(b) Foreign persons designated by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State, because they are found:

(1) To play a significant role in international narcotics trafficking centered in Colombia; or

(2) Materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of specially designated narcotics traffickers; and

(c) Persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, any other specially designated narcotics trafficker.

NOTE TO § 536.312: The names of persons determined to fall within this definition, whose property and interests in property therefore are blocked pursuant to this part, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SDNT].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this part.

[62 FR 9960, Mar. 5, 1997, as amended at 62 FR 45107, Aug. 25, 1997; 76 FR 38536, June 30, 2011]

§ 536.313 Specific license.

The term *specific license* means any license or authorization not set forth in this part but issued pursuant to this part.

§ 536.314 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 536.315 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 536.316 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen or national; permanent resident alien; entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches); or any person in the United States.

§ 536.317 U.S. financial institution.

The term *U.S. financial institution* means any U.S. person (including foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including, but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions which are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 536.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

§ 536.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 536.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a specially designated narcotics trafficker, such property shall no longer be deemed to be property in which a specially designated narcotics trafficker has or has had an interest, or which is held in the name of a specially designated narcotics trafficker, unless there exists in the property another interest of a specially designated narcotics trafficker, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a specially designated narcotics trafficker, such property shall be deemed to be property in which there exists an interest of the specially designated narcotics trafficker.

§ 536.404 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 536.201 if effected after the effective date.

§ 536.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except a transaction by an unlicensed, specially designated narcotics trafficker or involving a debit to a blocked account or a transfer of blocked property not explicitly authorized within the terms of the license.

§ 536.406 Provision of services.

(a) Except as provided in § 536.205, the prohibitions contained in § 536.201 apply to services performed by U.S. persons, wherever located:

(1) On behalf of, or for the benefit of, a specially designated narcotics trafficker; or

(2) With respect to property interests of a specially designated narcotics trafficker.

(b) *Example:* U.S. persons may not, except as authorized by the Office of Foreign Assets Control by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, educational, or other services to a specially designated narcotics trafficker. See § 536.506, with respect to certain authorized legal services.

§ 536.407 Offshore transactions.

The prohibitions contained in § 536.201 apply to transactions by U.S. persons in locations outside the United States with respect to property which the U.S. person knows, or has reason to know, is held in the name of a specially designated narcotics trafficker, or in which the U.S. person knows, or has reason to know, a specially designated narcotics trafficker has or has had an interest since the effective date.

§ 536.408 Alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker.

(a) A change or alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker shall not be the basis for removal of that entity from the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List unless, upon investigation by the Office of Foreign Assets Control and submission of evidence by the entity, it is demonstrated to the satisfaction of the Director of the Office of Foreign Assets Control that the transfer to a bona fide purchaser at arm's length is legitimate and that the entity no longer meets the criteria for designation under § 536.312. Evidence submitted must conclusively demonstrate that all ties with other specially designated narcotics traffickers have been completely severed, and may include, but is not limited to, articles of incorporation; identification of new directors, officers, shareholders, and sources of capital; and contracts evidencing the sale of the entity to its new owners.

(b) Any continuing substantial financial obligations on the part of the new owners to any specially designated narcotics traffickers, including long-term payment plans, leases, or rents, will be considered as evidence of continuing control of the entity by the specially designated narcotics trafficker. Purchase of a designated entity without ongoing substantial financial obligations to a specially designated narcotics trafficker may nonetheless be a basis for subsequent designation of the purchaser, if the transaction is determined materially to assist in or provide financial support for the narcotics trafficking activities of specially designated narcotics traffickers for purposes of § 536.312(b)(2). For example, any acquisition transaction resulting in a direct cash transfer to or other enrichment of a specially designated narcotics trafficker could lead to designation of the purchaser. Mere change in name of an entity will not be considered as constituting a change of the entity's status.

[62 FR 9960, Mar. 5, 1997, as amended at 76 FR 38536, June 30, 2011]

§ 536.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 536.201 on dealing in property in which a specially designated narcotics trafficker has an interest prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person designated under this part.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 536.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 536.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§ 536.503 Payments and transfers to blocked accounts in U.S. financial institutions.

(a) Any payment of funds or transfer of credit or other financial or economic resources or assets into a blocked account in a U.S. financial institution is authorized, provided that a transfer from a blocked account pursuant to this authorization may only be made to another blocked account held in the same name on the books of the same U.S. financial institution.

(b) This section does not authorize any transfer from a blocked account within the United States to an account held outside the United States.

NOTE TO § 536.503: Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers.

[62 FR 9960, Mar. 5, 1997, as amended at 62 FR 45107, Aug. 25, 1997]

§ 536.504 Investment and reinvestment of certain funds.

(a) U.S. financial institutions are hereby authorized and directed to invest and reinvest assets held in blocked accounts in the name of a specially designated narcotics trafficker, subject to the following conditions:

(1) The assets representing such investments and reinvestments are credited to a blocked account or sub-account which is in the name of the specially designated narcotics trafficker and which is located in the United States or within the possession or control of a U.S. person; and

(2) The proceeds of such investments and reinvestments are not credited to a blocked account or sub-account under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such funds or securities were held; and

(3) No immediate financial or economic benefit or access accrues (e.g., through pledging or other use) to the specially designated narcotics trafficker.

(b)(1) U.S. persons seeking to avail themselves of this authorization must register with the Office of Foreign Assets Control, Blocked Assets Division, before undertaking transactions authorized under this section.

(2) Transactions conducted pursuant to this section must be reported to the Office of Foreign Assets Control, Blocked Assets Division, in a report filed no later than 10 business days following the last business day of the month in which the transactions occurred.

§ 536.505 Entries in certain accounts for normal service charges authorized.

(a) U.S. financial institutions are hereby authorized to debit any blocked account with such U.S. financial institution in payment or reimbursement

for normal service charges owed to such U.S. financial institution by the owner of such blocked account.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photostats, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, check books, and other similar items.

§ 536.506 Provision of certain legal services authorized.

(a) The provision to or on behalf of a specially designated narcotics trafficker of the legal services set forth in paragraph (b) of this section is authorized, provided that all receipt of payment therefor must be specifically licensed.

(b) Specific licenses may be issued, on a case-by-case basis, authorizing receipt of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to a specially designated narcotics trafficker:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling is not provided to facilitate transactions that would violate any of the prohibitions contained in this part;

(2) Representation of a specially designated narcotics trafficker when named as a defendant in or otherwise made a party to domestic United States legal, arbitration, or administrative proceedings;

(3) Initiation of domestic United States legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction of a specially designated narcotics trafficker;

(4) Representation before any federal or state agency with respect to the imposition, administration, or enforcement of United States sanctions against significant narcotics traffickers centered in Colombia or specially designated narcotics traffickers; and

(5) Provision of legal services in any other context in which prevailing United States law requires access to legal counsel at public expense.

(c) The provision of any other legal services to a specially designated narcotics trafficker, not otherwise authorized in or exempted by this part, requires the issuance of a specific license.

(d) Entry into a settlement agreement affecting property or interests in property of a specially designated narcotics trafficker or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment or other judicial process purporting to transfer or otherwise alter or affect a property interest of a specially designated narcotics trafficker is prohibited unless specifically licensed in accordance with § 536.202(e).

§ 536.507 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services to a specially designated narcotics trafficker located in the United States is authorized, provided that any payment for such services requires prior authorization by specific license.

Subpart F—Reports

§ 536.601 Records and reports.

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

[62 FR 45107, Aug. 25, 1997]

Subpart G—Penalties

§ 536.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705—the ''Act''), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act.

(1) A civil penalty not to exceed the amount set forth in Section 206 of the Act may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under the Act.

NOTE TO PARAGRAPH (a)(1) OF § 536.701: As of June 10, 2008, the Act provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in the Act are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in the Act are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

[62 FR 9960, Mar. 5, 1997, as amended at 71 FR 29252, May 22, 2006; 73 FR 32652, June 10, 2008]

§ 536.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice may be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to respond to the notice within 30 days of its mailing as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 536.703 Response to prepenalty notice.

(a) *Time within which to respond.* The respondent shall have 30 days from the date of mailing of the prepenalty notice to respond in writing to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of written response.* The written response need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should respond to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

(c) *Informal settlement.* In addition or as an alternative to a written response to a prepenalty notice pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in

the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30–day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control.

§ 536.704 Penalty notice.

(a) *No violation*. If, after considering any written response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation*. If, after considering any written response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition of the monetary penalty or other available disposition on the respondent.

§ 536.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 536.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

[62 FR 45107, Aug. 25, 1997, as amended at 68 FR 53657, Sept. 11, 2003]

§ 536.802 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12978 or any further executive orders relating to the national emergency declared in Executive Order 12978 may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

[62 FR 9960, Mar. 5, 1997. Redesignated at 62 FR 45108, Aug. 25, 1997]

Subpart I—Paperwork Reduction Act

§ 536.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

[62 FR 45108, Aug. 25, 1997]

PART 537—BURMESE SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
537.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

537.201 Prohibited transactions involving certain blocked property.
537.202 Prohibited exportation or reexportation of financial services to Burma.
537.203 Prohibited importation of products of Burma.
537.204 Prohibited new investment in Burma.
537.205 Prohibited facilitation.
537.206 Evasions; attempts; conspiracies.
537.207 Effect of transfers violating the provisions of this part.
537.208 Holding of funds in interest-bearing accounts; investment and reinvestment.
537.209 Expenses of maintaining blocked property; liquidation of blocked account.
537.210 Exempt transactions.

Subpart C—General Definitions

537.301 Blocked account; blocked property.
537.302 Economic development of resources located in Burma.
537.303 Effective date.
537.304 Entity.
537.305 Exportation or reexportation of financial services to Burma.
537.306 Foreign person.
537.307 Government of Burma.
537.308 Information or informational materials.
537.309 Interest.
537.310 Licenses; general and specific.
537.311 New investment.
537.312 Nongovernmental entity in Burma.
537.313 Person.
537.314 Product of Burma.
537.315 Property; property interest.
537.316 Resources located in Burma.
537.317 Transfer.
537.318 United States.
537.319 U.S. depository institution.
537.320 U.S. financial institution.
537.321 U.S. person.
537.322 U.S. registered broker or dealer in securities.
537.323 U.S. registered money transmitter.

Subpart D—Interpretations

537.401 Reference to amended sections.
537.402 Effect of amendment.
537.403 Termination and acquisition of an interest in blocked property.
537.404 Transactions incidental to a licensed transaction authorized.
537.405 Provision of services.
537.406 Offshore transactions.
537.407 Payments from blocked accounts to satisfy obligations prohibited.
537.408 Setoffs prohibited.
537.409 Activities under pre-May 21, 1997 agreements.
537.410 Contracts and subcontracts regarding economic development of resources in Burma.
537.411 Purchase of shares in economic development projects in Burma.
537.412 Investments in entities involved in economic development projects in Burma.
537.413 Sale of interest in economic development projects in Burma.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

537.501 General and specific licensing procedures.
537.502 Effect of license or authorization.
537.503 Exclusion from licenses.
537.504 Payments and transfers to blocked accounts in U.S. financial institutions.
537.505 Entries in certain accounts for normal service charges authorized.
537.506 Investment and reinvestment of certain funds.
537.507 Provision of certain legal services authorized.
537.508 Authorization of emergency medical services.
537.509 Official activities of the U.S. Government and certain international organizations.
537.510 Third-country diplomatic and consular funds transfers.
537.511 Importation of accompanied baggage and household effects of U.S. diplomatic and consular officials.
537.512 Importation for official or personal use by foreign diplomatic and consular officials.
537.513 Importation and exportation of diplomatic pouches.
537.514 Importation of certain personal and household effects.
537.515 Importation of information or informational materials.
537.516 Importation of Burmese-origin articles and incidental transactions.
537.517 Noncommercial, personal remittances.
537.518 Transactions incident to exportations to Burma.
537.519 Activities undertaken pursuant to certain pre-May 21, 1997 agreements.
537.520 Payments for overflights of Burmese airspace.
537.521 Operation of accounts.

537.522 Certain transactions related to patents, trademarks and copyrights authorized.
537.523 Authorization of nongovernmental organizations to engage in humanitarian or religious activities.
537.524 Divestiture of U.S. person's investments in Burma.
537.525 Transactions related to U.S. citizens residing in Burma.
537.526 Authorized transactions necessary and ordinarily incident to publishing.
537.527 Importation into the United States of Burmese-origin animals and specimens.

Subpart F—Reports

537.601 Records and Reports.

Subpart G—Penalties

537.701 Penalties.
537.702 Prepenalty notice.
537.703 Response to prepenalty notice; informal settlement.
537.704 Penalty imposition or withdrawal.
537.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

537.801 Procedures.
537.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

537.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Sec. 570, Pub. L. 104–208, 110 Stat. 3009; Pub. L. 108–61, 117 Stat. 864; Pub. L. 110–96, 121 Stat. 1011; E.O. 13047, 62 FR 28301, 3 CFR, 1997 Comp., p. 202; E.O. 13310, 68 FR 44853, 3 CFR, 2003 Comp., p. 241.

SOURCE: 70 FR 48241, Aug. 16, 2005, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 537.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 537.201 Prohibited transactions involving certain blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to 12:01 a.m. eastern daylight time, July 29, 2003, all property and interests in property of the following persons that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13310 of July 28, 2003 (68 FR 44853, July 30, 2003); and

(2) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State,

(i) To be a senior official of the Government of Burma, the State Peace and Development Council of Burma, the Union Solidarity and Development Association of Burma, or any successor entity to any of the foregoing, or

(ii) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property or interests in property are blocked pursuant to this section.

NOTE 1 TO PARAGRAPH (a) OF § 537.201: The names of persons whose property and interests in property are blocked pursuant to paragraph (a) of this section are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[BURMA].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter.

NOTE 2 TO PARAGRAPH (a) OF § 537.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–BURMA].''

NOTE 3 TO PARAGRAPH (a) OF § 537.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any person whose property or interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to 12:01 a.m. eastern daylight time, July 29, 2003) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

[70 FR 48241, Aug. 16, 2005, as amended at 76 FR 38536, June 30, 2011]

§ 537.202 Prohibited exportation or reexportation of financial services to Burma.

Except as authorized, and notwithstanding any contracts entered into or any license or permit granted prior to July 29, 2003, the exportation or reexportation of financial services to Burma, directly or indirectly, from the United States or by a U.S. person, wherever located, is prohibited.

§ 537.203 Prohibited importation of products of Burma.

Except as otherwise authorized, and notwithstanding any contracts entered into or any license or permit granted prior to August 28, 2003, the importation into the United States of any article that is a product of Burma is prohibited.

NOTE TO § 537.203: Section 3(b) of the Burmese Freedom and Democracy Act of 2003 provides that the prohibition contained in this section may be waived by the President for any or all articles that are a product of Burma if the President determines and notifies specified committees of Congress that to do so is in the national interest of the United States. Therefore, the Office of Foreign Assets Control will not issue licenses authorizing transactions prohibited under this section in the absence of such a waiver process. The President's waiver functions and authorities under section 3(b) have been delegated to the Secretary of State.

§ 537.204 Prohibited new investment in Burma.

Except as otherwise authorized, new investment, as defined in § 537.311, in Burma by U.S. persons is prohibited.

NOTE TO § 537.204: Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (*Public Law 104–208*) provides that the prohibition contained in this section may be waived, temporarily or permanently, by the President if he determines and certifies to Congress that the application of this sanction would be contrary to the national interests of the United States. Licenses are thus not available for purposes of authorizing transactions prohibited under this section in the absence of such a waiver determination and certification to Congress.

§ 537.205 Prohibited facilitation.

(a) Except as otherwise authorized, U.S. persons, wherever located, are prohibited from approving, financing, facilitating, or guaranteeing a transaction by a person who is a foreign person where the transaction would be prohibited if performed by a U.S. person or within the United States.

(b) With respect to new investment in Burma, the prohibition against facilitation does not include the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology unless such contract includes any of the activities described in § 537.311(a)(2), (3) or (4).

NOTE TO § 537.205: This section's prohibitions include, but are not limited to, the approval, financing, facilitation, or guarantee of transactions prohibited by either section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Pub. L. 104–208), or the Burmese Freedom and Democracy Act of 2003 (Pub. L. 108–61). The prohibitions of these two statutes may be waived by the President upon the making of certain determinations and notification to Congress. Therefore, the Office of Foreign Assets Control will not issue licenses authorizing the approval, financing, facilitation, or guarantee of the transactions prohibited by these statutes in the absence of such waivers.

§ 537.206 Evasions; attempts; conspiracies.

(a) Any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this part is prohibited.

NOTE TO § 537.206: See § 537.303 for a definition of the term *effective date*.

§ 537.207 Effect of transfers violating the provisions of this part.

(a) Any transfer after July 28, 2003, that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 537.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before July 29, 2003 shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 537.201(a), unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization

had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 537.207: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Except to the extent otherwise provided by law or unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, at or since 12:01 a.m. eastern daylight time, July 29, 2003, there existed an interest of a person whose property or interests in property are blocked pursuant to § 537.201(a).

§ 537.208 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 537.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 537.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 537.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 537.201(a). However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property or interests in property are blocked pursuant to

§ 537.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 537.209 Expenses of maintaining blocked property; liquidation of blocked account.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted before 12:01 a.m. eastern daylight time, July 29, 2003, all expenses incident to the maintenance of physical property blocked pursuant to § 537.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 537.201(a) may, in the discretion of the Director, Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 537.210 Exempt transactions.

(a) *Personal communications*. The prohibitions contained in this part, other than those set forth in § 537.203, do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(b) *Information or informational materials*. (1) The prohibitions contained in this part, other than those set forth in § 537.203, do not apply to the importation from any country, or the exportation to any country, whether commercial or otherwise, of information or informational materials, regardless of format or medium of transmission.

NOTE TO PARAGRAPH (b)(1) OF § 537.210: Section 537.203 prohibits the importation of products of Burma into the United States pursuant to the Burmese Freedom and Democracy Act of 2003. Therefore, the importation into the United States of information or informational materials that are products of Burma is not exempt from the prohibition set forth in § 537.203. However, such transactions are authorized by the general license set forth in § 537.515.

(2) This section does not exempt from regulation or authorize transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include, but are not limited to, payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for widely-circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and, with respect to information or informational materials imported from persons whose property or interests in property are blocked pursuant to § 537.201(a), payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt from regulation or authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730–774, or to the exportation of goods, technology or software, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person whose property or interests in property are blocked pursuant to § 537.201(a) are prohibited.

(c) *Pre-1997 contracts*. The prohibitions contained in this part, other than those set forth in § 537.203, do not apply to any activity undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that was entered into by a U.S. person with the Government of Burma or a non-governmental entity in Burma prior to 12:01 a.m. eastern daylight time on May 21, 1997.

(d) *Travel exemption*. The prohibitions contained in this part, other than the prohibition against the importation into the United States of products of

Burma set forth in § 537.203, do not apply to transactions ordinarily incident to travel to or from any country, including exportation or importation of accompanied baggage (other than importation of baggage that comes within the prohibition set forth in § 537.203) for personal use, maintenance within any country, including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel, including nonscheduled air, sea, or land voyages.

NOTE TO § 537.211: See the authorizations relating to the importation of certain personal and household effects set forth in §§ 537.511 and 537.514.

Subpart C—General Definitions

§ 537.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 537.201 held in the name of a person whose property or interests in property are blocked pursuant to § 537.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

§ 537.302 Economic development of resources located in Burma.

(a) The term *economic development of resources located in Burma* means activities pursuant to a contract the subject of which includes responsibility for the development or exploitation of resources located in Burma, including making or attempting to make those resources accessible or available for exploitation or economic use. The term shall not be construed to include not-for-profit educational, health, or other humanitarian programs or activities.

(b) *Examples:* The economic development of resources located in Burma includes a contract conferring rights to explore for, develop, extract, or refine petroleum, natural gas, or minerals in the ground in Burma; or a contract to assume control of a mining operation in Burma, acquire a forest or agricultural area for commercial use of the timber or other crops, or acquire land for the construction and operation of a hotel or factory.

§ 537.303 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to prohibited transfers or other dealings in blocked property or interests in property of persons listed in the Annex to Executive Order 13310 of July 28, 2003 (68 FR 44853, July 30, 2003), 12:01 a.m. eastern daylight time, July 29, 2003;

(b) With respect to prohibited transfers or other dealings in blocked property or interests in property of persons designated pursuant to § 537.201(a)(2), the earlier of the date on which either actual notice or constructive notice is received of such person's designation;

(c) With respect to the exportation or reexportation of financial services to Burma prohibited by § 537.202, 12:01 a.m. eastern daylight time, July 29, 2003;

(d) With respect to the importation into the United States of products of Burma prohibited by § 537.203, 12:01 a.m. eastern daylight time, August 28, 2003;

(e) With respect to new investment prohibited by § 537.204, 12:01 a.m. eastern daylight time, May 21, 1997.

§ 537.304 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 537.305 Exportation or reexportation of financial services to Burma.

The term *exportation or reexportation of financial services to Burma* means:

(a) The transfer of funds, directly or indirectly, from the United States or by a U.S. person, wherever located, to Burma; or

(b) The provision, directly or indirectly, to persons in Burma of insurance services, investment or brokerage services (including but not limited to brokering or trading services regarding securities, debt, commodities, options or foreign exchange), banking services, money remittance services; loans,

guarantees, letters of credit or other extensions of credit; or the service of selling or redeeming traveler's checks, money orders and stored value.

NOTE TO § 537.305: This defined term has not appeared in other parts of 31 CFR chapter V and is specifically tailored to further the goals of the sanctions prohibitions set forth in this part.

§ 537.306 Foreign person.

The term *foreign person* means any person that is not a U.S. person.

§ 537.307 Government of Burma.

The term *Government of Burma* means the Government of Burma (sometimes referred to as Myanmar), its agencies, instrumentalities and controlled entities, and the Central Bank of Burma.

§ 537.308 Information or informational materials.

(a) For purposes of this part, the term *information or informational materials* includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

NOTE TO PARAGRAPH (a) OF § 537.307: To be considered information or informational materials, artworks must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials*, with respect to United States exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the ''EAA''), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 537.309 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (e.g., ''an interest in property'') means an interest of any nature whatsoever, direct or indirect.

§ 537.310 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 537.309: See § 501.801 of this chapter on licensing procedures.

§ 537.311 New investment.

(a) The term *new investment* means any of the following activities if such activity is undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Government of Burma or a nongovernmental entity in Burma on or after May 21, 1997:

(1) The entry into a contract that includes the economic development of resources located in Burma, as defined in § 537.302;

(2) The entry into a contract providing for the general supervision and guarantee of another person's performance of a contract that includes the economic development of resources located in Burma;

(3) The purchase of a share of ownership, including an equity interest, in the economic development of resources located in Burma; or

(4) The entry into a contract providing for the participation in royalties, earnings, or profits in the economic development of resources located in Burma, without regard to the form of the participation.

(b) The term *new investment* shall not include the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology unless such contract includes any of the activities described in paragraph (a)(2), (a)(3) or (a)(4) of this section.

§ 537.312 Nongovernmental entity in Burma.

The term *nongovernmental entity in Burma* means a partnership, association, trust, joint venture, corporation, or other organization, wherever organized, that is located in Burma or exists for the exclusive or predominant purpose of engaging in the economic development of resources located in Burma or derives its income predominantly from such economic development, and is not the Government of Burma.

§ 537.313 Person.

The term *person* means an individual or entity.

§ 537.314 Product of Burma.

The term *product of Burma* means goods of Burmese origin pursuant to rules of origin of U.S. Customs and Border Protection.

§ 537.315 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 537.316 Resources located in Burma.

The term *resources located in Burma* means any resources, including natural, agricultural, commercial, financial, industrial and human resources, located within the territory of Burma, including the territorial sea, or located within the exclusive economic zone or continental shelf of Burma.

§ 537.317 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 537.318 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 537.319 U.S. depository institution.

The term *U.S. depository institution* means any entity (including its foreign branches) organized under the laws of the United States or of any jurisdiction within the United States, or any agency, office or branch located in the United States of a foreign entity, that is engaged primarily in the business of banking (for example, banks, savings banks, savings associations, credit unions, trust companies and United States bank holding companies) and is subject to regulation by federal or state banking authorities.

§ 537.320 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including, but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 537.321 U.S. person.

The term *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 537.322 U.S. registered broker or dealer in securities.

The term *U.S. registered broker or dealer in securities* means any U.S. citizen, permanent resident alien, or entity organized under the laws of the United States or of any jurisdiction within the United States, including its foreign branches, or any agency, office or branch of a foreign entity located in the United States, that:

(a) Is a ''broker'' or ''dealer'' in securities within the meanings set forth in the Securities Exchange Act of 1934;

(b) Holds or clears customer accounts; and

(c) Is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

§ 537.323 U.S. registered money transmitter.

The term *U.S. registered money transmitter* means any U.S. citizen, permanent resident alien, or entity organized under the laws of the United States or of any jurisdiction within the United States, including its foreign branches, or any agency, office or branch of a foreign entity located in the United States, that is a money transmitter, as defined in 31 CFR 103.11(uu)(5), and that is registered pursuant to 31 CFR 103.41.

Subpart D—Interpretations

§ 537.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 537.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment,

modification, or revocation had not been made.

§ 537.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 537.201(a), unless there exists in the property another interest that is blocked pursuant to § 537.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property or interests in property are blocked pursuant to § 537.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 537.404 Transactions incidental to a licensed transaction authorized.

(a) Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(1) A transaction, not explicitly authorized within the terms of the license, by or with a person whose property or interests in property are blocked pursuant to § 537.201(a), except as provided in paragraph (b) of this section; or

(2) A transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property, except as provided in paragraph (b) of this section.

(b) Transactions licensed pursuant to subpart E of this part and those transactions falling within the scope of paragraph (a) of this section are authorized even though they may involve transfers to or from an account of a financial institution whose property or interests in property are blocked pursuant to § 537.201(a), provided that the account is not on the books of a financial institution that is a U.S. person.

§ 537.405 Provision of services.

(a) Except as provided in § 537.210, the prohibitions on transactions involving blocked property contained in § 537.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property or interests in property are blocked pursuant to § 537.201(a); or

(2) With respect to property interests subject to § 537.201.

(b) *Example:* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property or interests in property are blocked pursuant to § 537.201(a).

NOTE TO § 537.405: See §§ 537.507 and 537.508 on licensing policy with regard to the provision of certain legal or medical services, respectively.

§ 537.406 Offshore transactions.

The prohibitions in § 537.201 on transactions involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property that the U.S. person knows, or has reason to know, is held in the name of a person whose property or interests in property are blocked pursuant to § 537.201(a) or in which the U.S. person knows, or has reason to know, a person whose property or interests in property are blocked pursuant to § 537.201(a) has or has had an interest since the effective date.

§ 537.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 537.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 537.408 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 537.201 if effected after the effective date.

§ 537.409 Activities under pre-May 21, 1997 agreements.

Section 537.210(c) exempts from all prohibitions contained in this part, except those contained in § 537.203, activities undertaken by a U.S. person pursuant to an agreement entered into prior to May 21, 1997, between a U.S. person and the Government of Burma or a nongovernmental entity in Burma. A U.S. person who is a party to a pre-May 21, 1997 agreement falling outside the scope of § 537.203 may enter into subsequent agreements with foreign persons where such agreements are pursuant to, or in exercise of rights under, the pre-May 21, 1997 agreement and are specifically contemplated by the pre-May 21, 1997 agreement. The exercise of rights under a pre-May 21, 1997 agreement falling outside the scope of § 537.203 may include the exercise of options to extend the contract, depending on such factors as the degree of specificity with which the option to extend is described in the pre-May 21, 1997 agreement, and the degree to which the party wishing to renew can enforce its decision to exercise the option.

§ 537.410 Contracts and subcontracts regarding economic development of resources in Burma.

Section 537.204 prohibits new investment in Burma by U.S. persons. Section 537.311 defines the term *new investment* to include certain contracts providing for the general supervision and guarantee of another person's performance of a contract that includes the economic development of resources located in Burma. With respect to entry into such contracts, only the following will be considered new investment in Burma:

(a) Entry into contracts for supervision and guarantee at the highest level of project management, such as entry into a contract with a development project's sponsor or owner to become a prime contractor or general manager for a development project;

(b) Entry into subcontracts where the functional scope of the subcontractor's obligations is substantially similar to that of a prime contractor's or general manager's obligations for a development project; or

(c) Entry into a contract or subcontract where the consideration includes a share of ownership in, or participation in the royalties, earnings or profits of, the economic development of resources located in Burma.

§ 537.411 Purchase of shares in economic development projects in Burma.

The purchase, directly or indirectly, from the Government of Burma or a nongovernmental entity in Burma of shares of ownership, including an equity interest, in the economic development of resources located in Burma is prohibited unless the purchase is pursuant to an agreement entered into prior to May 21, 1997.

§ 537.412 Investments in entities involved in economic development projects in Burma.

(a) The purchase of shares in a third-country company that is engaged in the economic development of resources located in Burma is prohibited by § 537.204 where the company's profits are predominantly derived from the company's economic development of resources located in Burma.

(b) If a U.S. person holds shares in an entity which subsequently engages predominantly in the economic development of resources located in Burma or subsequently derives its income exclusively or predominantly from such economic development, the U.S. person is not required to relinquish its shares, but may not purchase additional shares. Divestiture of the shares in such an entity to a foreign person—otherwise constituting the facilitation of that foreign person's investment in Burma—is authorized under general license pursuant to § 537.524.

§ 537.413 Sale of interest in economic development projects in Burma.

The sale to a foreign person of a U.S. person's equity or income interest in a

development project in Burma constitutes facilitation of that foreign person's investment in Burma, unless pursuant to a pre-May 21, 1997 agreement. Such a sale, however, is authorized by general license under § 537.524.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 537.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart D, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 537.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited by this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 537.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

§ 537.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property or interests in property are blocked pursuant to § 537.201(a) has any interest, that comes within the possession or control of a U.S. financial institution, must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may only be made to another blocked account held in the same name.

NOTE TO § 537.504: Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 537.208 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 537.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charge* shall include

charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 537.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 537.208, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 537.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount which is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to persons whose property or interests in property are blocked pursuant to § 537.201(a).

§ 537.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property or interests in property are blocked pursuant to § 537.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property or interests in property are blocked pursuant to § 537.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 537.201(a) is prohibited except to the extent otherwise provided by law or unless specifically licensed in accordance with § 537.207(e).

§ 537.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property or interests in property are blocked pursuant to § 537.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

§ 537.509 Official activities of the U.S. Government and certain international organizations.

All transactions and activities otherwise prohibited by this part that are for the conduct of the official business of the United States Government, the United Nations, the World Bank, or the

International Monetary Fund are authorized. This section does not authorize any importation into the United States of any article that is a product of Burma.

§ 537.510 Third-country diplomatic and consular funds transfers.

All transactions that are related to funds transfers otherwise prohibited by §§ 537.201 and 537.202 and that are for the conduct of diplomatic or consular activities of third-country diplomatic or consular missions in Burma are authorized.

§ 537.511 Importation of accompanied baggage and household effects of U.S. diplomatic and consular officials.

U.S. diplomatic or consular officials entering the United States directly or indirectly from Burma are authorized to engage in all transactions incident to the importation into the United States of products of Burma as accompanied baggage or household effects, provided that such products are not intended for any other person or for sale and are not otherwise prohibited from importation under applicable United States laws.

§ 537.512 Importation for official or personal use by foreign diplomatic and consular officials.

All transactions incident to the importation into the United States of any article that is a product of Burma that is destined for official or personal use by personnel employed by a diplomatic mission or consulate in the United States are authorized, provided that such article is not intended for any other person or for sale and is not otherwise prohibited from importation under applicable United States laws.

§ 537.513 Importation and exportation of diplomatic pouches.

All transactions in connection with the importation into the United States or the exportation from the United States of diplomatic pouches and their contents are authorized.

§ 537.514 Importation of certain personal and household effects.

(a) A U.S. person who maintained a residence in Burma prior to July 28, 2003, is authorized to import into the United States personal and household effects that are products of Burma, including accompanied baggage and articles for family use, provided the imported items were purchased by the U.S. person prior to July 28, 2003, have been actually used abroad by the U.S. person or by other family members arriving from the same foreign household, are not intended for any other person or for sale, and are not otherwise prohibited from importation.

(b) A national of Burma who arrives in the United States after July 28, 2003, is authorized to import into the United States personal and household effects that are products of Burma, including accompanied baggage and articles for family use, provided the imported items are ordinarily incident to the Burmese national's arrival in the United States, have been actually used abroad by the Burmese national or by other family members arriving from the same foreign household, are not intended for any other person or for sale, and are not otherwise prohibited from importation.

§ 537.515 Importation of information or informational materials.

The importation of information or informational materials that are products of Burma and all transactions directly incident to such importation are authorized.

§ 537.516 Importation of Burmese-origin articles and incidental transactions.

(a) The importation of an article that is a product of Burma, otherwise prohibited by § 537.203, is authorized, provided the article was purchased prior to July 28, 2003, shipped from Burma to the United States prior to August 28, 2003, and is not property in which a person whose property or interests in property are blocked pursuant to § 537.201(a) has an interest.

(b) All transactions otherwise prohibited by §§ 537.201 and 537.202 that are directly incident to the importation into the United States of an article that is a product of Burma are authorized, provided that:

(1) The importation is authorized pursuant to paragraph (a) of this section; or

(2) The importation occurred prior to August 28, 2003, and was not from a person whose property or interests in property are blocked pursuant to § 537.201(a).

(c) All transactions otherwise prohibited by §§ 537.201 and 537.202 that are directly incident to the importation into a country other than the United States or Burma of an article that is a product of Burma are authorized, provided that:

(1) The article was purchased prior to July 28, 2003, shipped from Burma prior to August 28, 2003, and is not property in which a person whose property or interests in property are blocked pursuant to § 537.201(a) has an interest; or

(2) The importation occurred prior to August 28, 2003, and was not from a person whose property or interests in property are blocked pursuant to § 537.201(a).

(d) Financing agreements with respect to the importations described in paragraphs (a), (b) and (c) of this section may be performed only according to their terms and may not be extended or renewed.

§ 537.517 Noncommercial, personal remittances.

(a)(1) U.S. depository institutions, U.S. registered brokers or dealers in securities, and U.S. registered money transmitters are authorized to process transfers of funds to or from Burma or for or on behalf of an individual ordinarily resident in Burma in cases in which the transfer involves a noncommercial, personal remittance, provided the following conditions are met:

(i) The transfer is not by, to, or through a person whose property or interests in property are blocked pursuant to § 537.201(a), except as explained in § 537.404 of this part; and

(ii) Total remittances to the territory of Burma in any consecutive 3-month period do not exceed $300 per Burmese household, regardless of the number of individuals comprising the household.

(2) Noncommercial, personal remittances do not include charitable donations to or for the benefit of an entity or funds transfers for use in supporting or operating a business.

NOTE TO PARAGRAPH (a) OF § 537.517: U.S. persons may make charitable donations to nongovernmental organizations in Burma that are authorized to operate pursuant to § 537.523, provided that the donations are made pursuant to § 537.523 and the terms of the authorization.

(b) The transferring institutions identified in paragraph (a) of this section may rely on the originator of a funds transfer with regard to compliance with paragraph (a) of this section, provided that the transferring institution does not know or have reason to know that the funds transfer is not in compliance with paragraph (a) of this section.

(c) This section does not authorize transactions with respect to property blocked pursuant to § 537.201, except as explained in § 537.404(b) of this part.

§ 537.518 Transactions incident to exportations to Burma.

All transactions otherwise prohibited by §§ 537.201 and 537.202 that are ordinarily incident to an exportation to Burma of goods, technology or services, other than financial services, are authorized, provided the exportation is not to or on behalf of a person whose property or interests in property are blocked pursuant to § 537.201(a). This section does not authorize a financial institution that is a U.S. person to advise or confirm any financing by a person whose property or interests in property are blocked pursuant to § 537.201(a).

§ 537.519 Activities undertaken pursuant to certain pre-May 21, 1997 agreements.

Except as prohibited by § 537.203, U.S. persons are authorized to engage in any activity, or any transaction incident to an activity, undertaken pursuant to an agreement entered into prior to 12:01 a.m., eastern daylight time, on May 21, 1997, or pursuant to the exercise of rights under such an agreement, provided that the parties to the agreement include:

(a) The Government of Burma or a nongovernmental entity in Burma, and

(b) An entity organized under the laws of a foreign state.

NOTE TO § 537.519: The authorization contained in § 537.519 pertains to pre-May 21, 1997 contracts between foreign business entities and either the Government of Burma or a nongovernmental entity in Burma. Pre-May 21, 1997 contracts between U.S. persons and the Government of Burma or a nongovernmental entity in Burma are exempt from all prohibitions contained in this part except those contained in § 537.203. See § 537.210 (exemptions).

§ 537.520 Payments for overflights of Burmese airspace.

Payments to Burma of charges for services rendered by the Government of Burma in connection with the overflight of Burma or emergency landing in Burma of aircraft owned or operated by a U.S. person or registered in the United States are authorized.

§ 537.521 Operation of accounts.

The operation of an account in a U.S. financial institution for an individual ordinarily resident in Burma, other than an individual whose property or interests in property are blocked pursuant to § 537.201(a), is authorized, provided that each transaction processed through the account:

(a) Is of a personal nature and not for use in supporting or operating a business;

(b) Does not involve a transfer directly or indirectly to Burma or for the benefit of individuals ordinarily resident in Burma unless authorized by § 537.517; and

(c) Is not otherwise prohibited by this part.

§ 537.522 Certain transactions related to patents, trademarks and copyrights authorized.

(a) All of the following transactions in connection with patent, trademark, copyright or other intellectual property protection in the United States or Burma, except for those transactions prohibited by § 537.203, are authorized:

(1) The filing and prosecution of any application to obtain a patent, trademark, copyright or other form of intellectual property protection;

(2) The receipt of a patent, trademark, copyright or other form of intellectual property protection;

(3) The renewal or maintenance of a patent, trademark, copyright or other form of intellectual property protection; and

(4) The filing and prosecution of opposition or infringement proceedings with respect to a patent, trademark, copyright or other form of intellectual property protection, or the entrance of a defense to any such proceedings.

(b) This section authorizes the payment of fees currently due to the United States Government, or of the reasonable and customary fees and charges currently due to attorneys or representatives within the United States, in connection with the transactions authorized in paragraph (a) of this section. Payment effected pursuant to the terms of this paragraph may not be made from a blocked account.

(c) This section authorizes the payment of fees currently due to the Government of Burma, or of the reasonable and customary fees and charges currently due to attorneys or representatives within Burma, in connection with the transactions authorized in paragraph (a) of this section.

(d) Nothing in this section affects obligations under any other provision of law.

§ 537.523 Authorization of nongovernmental organizations to engage in humanitarian or religious activities.

(a) Specific licenses may be issued on a case-by-case basis authorizing nongovernmental organizations to engage in transactions otherwise prohibited by §§ 537.201 and 537.202 that are necessary for their humanitarian or religious activities in Burma. Applications for specific licenses must include:

(1) The organization's name in English, in the language of origin, and any acronym or other names used to identify the organization;

(2) Address and phone number of the organization's headquarters location;

(3) Identification of field offices and partner offices, including addresses and organizational names used;

(4) Identification of key staff, such as directors and senior officers, at the organization's headquarters and partner offices, including the nationality, citizenship, current country of residence, place and date of birth, and current position of each person identified;

(5) Identification of subcontracting organizations, if any, to the extent known or contemplated at the time of the application;

(6) Existing sources of income, such as official grants, private endowments, commercial activities;

(7) Financial institutions that hold deposits on behalf of or extend lines of credit to the organization (names of individuals and organizations shall be provided in English, in the language of origin, and shall include any acronym or other names used to identify the individuals or organizations);

(8) Independent accounting firms, if employed in the production of the organization's financial statements (names of individuals and organizations shall be provided in English, in the language of origin, and shall include any acronym or other names used to identify the individuals or organizations);

(9) A detailed description of the organization's humanitarian, environmental or religious activities and projects in countries or geographic areas subject to economic sanctions pursuant to this chapter V, including, if applicable, a summary of all information provided in grant proposals or funding requests made in connection with the proposed activities;

(10) Most recent official registry documents, annual reports, and annual filings with the pertinent government, as applicable; and

(11) Names and addresses of organizations to which the applicant currently provides or proposes to provide funding, services or material support, to the extent known at the time of the application, as applicable.

(b) This section does not authorize transfers from blocked accounts.

NOTE TO § 537.523: Authorization pursuant to this section does not excuse a U.S. person from compliance with other applicable U.S. laws governing the exportation or reexportation of U.S.-origin goods, software, or technology (including technical data). See, e.g., the Export Administration Regulations administered by the U.S. Department of Commerce (15 CFR parts 730–774).

§ 537.524 Divestiture of U.S. person's investments in Burma.

All transactions, except those prohibited by § 537.203, related to the divestiture or transfer to a foreign person of a U.S. person's share of ownership, including an equity interest, in the economic development of resources located in Burma are authorized. U.S. persons participating in such a transaction valued at more than $10,000 are required, within 10 business days after the transaction takes place, to file a report for statistical purposes with the Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue NW.–Annex, Washington, DC 20220.

§ 537.525 Transactions related to U.S. citizens residing in Burma.

To the extent otherwise prohibited, U.S. citizens who reside on a permanent basis in Burma are authorized to pay their personal living expenses and engage in other transactions in Burma ordinarily incident to their routine and necessary personal maintenance.

§ 537.526 Authorized transactions necessary and ordinarily incident to publishing.

(a) To the extent that such activities are not exempt from this part, and subject to the restrictions set forth in paragraphs (b) through (d) of this section, U.S. persons are authorized to engage in all transactions otherwise prohibited by § 537.201 or § 537.202 that are necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals, and newspapers in paper or electronic format (collectively, ''written publications''). This section does not apply if the parties to the transactions described in this paragraph include the State Peace and Development Council of Burma or the Union Solidarity and Development Association of Burma; any successor entity to any of the foregoing entities; or any person, other than personnel of academic and research institutions, acting or purporting to act directly or indirectly on behalf of the foregoing entities with respect to the transactions described in this paragraph. Pursuant to this section, transactions incident to the following activities are authorized, provided they do not involve any importations prohibited by

§ 537.203 that are not authorized by another section of this part 537, and further provided that U.S. persons ensure that they are not engaging, without separate authorization, in the activities identified in paragraphs (b) through (d) of this section:

(1) Commissioning and making advance payments for identifiable written publications not yet in existence, to the extent consistent with industry practice;

(2) Collaborating on the creation and enhancement of written publications;

(3)(i) Augmenting written publications through the addition of items such as photographs, artwork, translation, explanatory text, and, for a written publication in electronic format, the addition of embedded software necessary for reading, browsing, navigating, or searching the written publication;

(ii) Exporting embedded software necessary for reading, browsing, navigating, or searching a written publication in electronic format, provided that, to the extent a license is required under the Export Administration Regulations, 15 CFR parts 730 through 774 (the ''EAR''), the exportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the EAR;

(4) Substantive editing of written publications;

(5) Payment of royalties for written publications;

(6) Creating or undertaking a marketing campaign to promote a written publication; and

(7) Other transactions necessary and ordinarily incident to the publishing and marketing of written publications as described in this paragraph (a).

(b) This section does not authorize transactions constituting the exportation or reexportation of financial services from the United States or by U.S. persons to Burma that are not necessary and ordinarily incident to the publishing and marketing of written publications as described paragraph (a) of this section. For example, this section does not authorize U.S. persons to transfer funds to Burma relating to the following:

(1) The provision or receipt of individualized or customized services (including, but not limited to, accounting, legal, design, or consulting services), other than those necessary and ordinarily incident to the publishing and marketing of written publications, even though such individualized or customized services are delivered through the use of information and informational materials;

(2) The creation or undertaking of a marketing campaign for any person with respect to any service or product other than a written publication, or the creation or undertaking of a marketing campaign of any kind for the benefit of the State Peace and Development Council of Burma or the Union Solidarity and Development Association of Burma; or

(3) The operation of a publishing house, sales outlet, or other office in Burma.

NOTE TO PARAGRAPH (b): The importation of information or informational materials, as defined in § 537.308, that are products of Burma is authorized by the general license set forth in § 537.515. The exportation to Burma of information or informational materials, as defined in § 537.308, whether commercial or otherwise, regardless of format or medium of transmission, is exempt from the prohibitions and regulations of this part. See § 537.210(b).

(c) This section does not authorize U.S. persons to engage in transactions constituting the exportation or reexportation of financial services to Burma that relate to the services of publishing houses or translators in Burma unless such activity is primarily for the dissemination of written publications in Burma.

(d) This section does not authorize:

(1) The importation into the United States of any article that is a product of Burma.

NOTE TO PARAGRAPH (d)(1): The importation of information or informational materials, as defined in § 537.308, that are products of Burma is authorized by the general license set forth in § 537.515.

(2) Transactions constituting the exportation or reexportation of financial services from the United States or by U.S. persons to Burma that relate to the development, production, design, or marketing of technology specifically controlled by the International Traffic in Arms Regulations, 22 CFR parts 120

through 130 (the ''ITAR''), the EAR, or the Department of Energy Regulations set forth at 10 CFR part 810.

(3) Transactions constituting the exportation or reexportation of financial services from the United States or by U.S. persons to Burma that relate to the exportation of information or technology subject to the authorization requirements of 10 CFR part 810, or Restricted Data as defined in section 11y. of the Atomic Energy Act of 1954, as amended, or of other information, data, or technology the release of which is controlled under the Atomic Energy Act and regulations therein;

(4) Transactions constituting the exportation or reexportation of financial services from the United States or by U.S. persons to Burma that relate to the exportation of any item (including information) subject to the EAR where a U.S. person knows or has reason to know that the item will be used, directly or indirectly, with respect to certain nuclear, missile, chemical, or biological weapons or nuclear-maritime end-uses as set forth in part 744 of the EAR. In addition, U.S. persons are precluded from exporting any item subject to the EAR to certain restricted end-users, as set forth in part 744 of the EAR, as well as certain persons whose export privileges have been denied pursuant to parts 764 or 766 of the EAR, without authorization from the Department of Commerce; or

(5) Transactions constituting the exportation or reexportation of financial services from the United States or by U.S. persons to Burma that relate to the exportation of information subject to licensing requirements under the ITAR or exchanges of information that are subject to regulation by other government agencies.

[72 FR 50049, Aug. 30, 2007]

§ 537.527 Importation into the United States of Burmese-origin animals and specimens.

Specific licenses may be issued on a case-by-case basis authorizing the importation into the United States of animals and specimens of Burmese origin, in sample quantities only, for bona fide scientific research and analysis purposes.

[72 FR 34377, June 22, 2007]

Subpart F—Reports

§ 537.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 537.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'') (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act.

(1) A civil penalty not to exceed the amount set forth in Section 206 of the Act may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under the Act.

NOTE TO PARAGRAPH (a)(1) OF § 537.701: As of June 10, 2008, the Act provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) Adjustments to penalty amounts. (1) The civil penalties provided in the Act are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in the Act are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

[70 FR 48241, Aug. 16, 2005, as amended at 71 FR 29252, May 22, 2006; 73 FR 32652, June 10, 2008]

§ 537.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of the respondent's right to make a written presentation within the applicable 30-day period set forth in § 537.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed 60 days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within the Director's discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 537.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director may grant, at the Director's discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be

postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in typewritten form and signed by the respondent or a representative thereof. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Failure to Respond.* Where OFAC receives no response to a prepenalty notice within the applicable time period set forth in paragraph (a) of this section, a penalty notice generally will be issued, taking into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control have been codified in the Appendix to the Reporting, Procedures and Penalties Regulations, 31 CFR part 501.

(g) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations

contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 537.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

§ 537.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart H—Procedures

§ 537.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart D, of this chapter.

§ 537.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13047 of May 20, 1997 (62 FR 28299, May 22, 1997) and Executive Order 13310 of July 28, 2003 (68 FR 44853, July 30, 2003), and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 537.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to record keeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 538—SUDANESE SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
538.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

538.201 Prohibited transactions involving blocked property.
538.202 Effect of transfers violating the provisions of this part.
538.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
538.204 Prohibited importation of goods or services from Sudan.
538.205 Prohibited exportation and reexportation of goods, technology, or services to Sudan.
538.206 Prohibited facilitation.
538.207 Prohibited performance of contracts.
538.208 Prohibited grant or extension of credits or loans to the Government of Sudan.
538.209 Prohibited transportation-related transactions involving Sudan.
538.210 Prohibited transactions relating to petroleum and petrochemical industries.
538.211 Evasions; attempts; conspiracies.
538.212 Exempt transactions.

Subpart C—General Definitions

538.301 Blocked account; blocked property.
538.302 Effective date.
538.303 Entity.
538.304 General license.
538.305 Government of Sudan.
538.306 Information and informational materials.
538.307 Interest.
538.308 License.
538.309 Person.
538.310 Property; property interest.
538.311 Specific license.
538.312 Sudanese origin.
538.313 Transfer.
538.314 United States.
538.315 United States person; U.S. person.
538.316 U.S. financial institution.
538.317 U.S. depository institution.
538.318 U.S. registered broker or dealer in securities.
538.319 U.S. registered money transmitter.
538.320 Specified Areas of Sudan.

Subpart D—Interpretations

538.401 Reference to amended sections.
538.402 Effect of amendment.
538.403 Termination and acquisition of an interest in blocked property.
538.404 Setoffs prohibited.
538.405 Transactions incidental to a licensed transaction authorized.
538.406 Exportation of services; performance of service contracts; legal services.
538.407 Facilitation by a United States person.
538.408 Offshore transactions.
538.409 Transshipments through the United States prohibited.
538.410 Imports of Sudanese goods from third countries; transshipments.
538.411 Exports to third countries; transshipments.
538.414 Loans or extensions of credit.
538.415 Payments involving Sudan.
538.416 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.
538.417 Transshipments through Sudan.
538.418 Financial transactions in Sudan.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

538.500 Licensing procedures.
538.501 Effect of license or authorization.
538.502 Exclusion from licenses and authorizations.
538.503 Payments and transfers to blocked accounts in U.S. financial institutions.
538.504 Entries in certain accounts for normal service charges authorized.
538.505 Provision of certain legal services to the Government of Sudan, persons in Sudan, or benefitting Sudan.
538.506 30–day delayed effective date for pre-November 4, 1997 trade contracts involving Sudan.
538.507 Reexports by non-U.S. persons.
538.508 Certain payments by the Government of Sudan of obligations to persons within the United States authorized.
538.509 Certain services relating to participation in various events authorized.
538.510 Importation and exportation of certain gifts authorized.
538.511 Accompanied baggage authorized.
538.512 Transactions related to telecommunications authorized.
538.513 Transactions related to mail authorized.
538.514 Certain transactions related to patents, trademarks and copyrights authorized.
538.515 Sudanese diplomatic missions in the United States.
538.516 Diplomatic pouches.
538.517 Allowable payments for overflights of Sudanese airspace.
538.518 Household goods and personal effects.
538.519 Aircraft and maritime safety.
538.520 Extensions or renewals of loans and credits.
538.521 Registration of nongovernmental organizations for humanitarian or religious activities.

538.522 Transactions related to U.S. citizens residing in Sudan.
538.523 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.
538.524 [Reserved]
538.525 Payment for and financing of commercial sales of agricultural commodities, medicine, and medical equipment.
538.526 Brokering sales of agricultural commodities, medicine, and medical devices.
538.527 Operation of accounts.
538.528 Noncommercial, personal remittances.
538.529 Authorized transactions necessary and ordinarily incident to publishing.
538.530 Licenses and registrations issued pursuant to Executive Order 13067 or this part authorized pursuant to Executive Order 13412.
538.531 Official activities of the United States Government and international organizations.
538.532 Humanitarian transshipments to or from Southern Sudan and Darfur authorized.
538.533 Exportation of certain services and software incident to Internet-based communications.

Subpart F—Reports

538.601 Records and reports.

Subpart G—Penalties

538.701 Penalties.
538.702 Prepenalty notice.
538.703 Response to prepenalty notice; informal settlement.
538.704 Penalty imposition or withdrawal.
538.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

538.801 Procedures.
538.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

538.901 Paperwork Reduction Act notice.
APPENDIX A TO PART 538—BULK AGRICULTURAL COMMODITIES

AUTHORITY: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 7201–7211; Pub. L. 109–344, 120 Stat. 1869; Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13412, 71 FR 61369, 3 CFR, 2006 Comp., p. 244.

SOURCE: 63 FR 35810, July 1, 1998, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 538.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 538.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, no property or interests in property of the Government of Sudan, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, or otherwise dealing in any security (or evidence thereof) registered or inscribed in the name of the Government of Sudan, and held within the possession or control of a U.S. person is prohibited, irrespective of the

fact that at any time (either prior to, on, or subsequent to the effective date) the registered or inscribed owner thereof may have, or appears to have, assigned, transferred, or otherwise disposed of any such security.

(c) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

§ 538.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date, which is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, license, or other authorization hereunder and involves any property or interest in property blocked pursuant to § 538.201 is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property or interest in property blocked pursuant to § 538.201, unless the person with whom such property is held or maintained, prior to such date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued hereunder.

(d) Transfers of property which otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization hereunder; or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d): The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is

null and void with respect to any property or interest in property blocked pursuant to § 538.201.

§ 538.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 538.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates which are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury Bills.

(2) For purposes of this section, a rate is *commercially reasonable* if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or sub-account, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 538.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 538.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates which are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 538.201. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner which provides immediate financial or economic benefit or access to the Government of Sudan or its entities, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 538.204 Prohibited importation of goods or services from Sudan.

Except as otherwise authorized, the importation into the United States, directly or indirectly, of any goods or services of Sudanese origin, other than information or informational materials, is prohibited.

§ 538.205 Prohibited exportation and reexportation of goods, technology, or services to Sudan.

Except as otherwise authorized, the exportation or reexportation, directly or indirectly, to Sudan of any goods, technology (including technical data, software, or other information) or services from the United States or by a United States person, wherever located, or requiring the issuance of a license by a Federal agency, is prohibited.

[66 FR 36688, July 12, 2001]

§ 538.206 Prohibited facilitation.

Except as otherwise authorized, the facilitation by a United States person, including but not limited to brokering activities, of the exportation or reexportation of goods, technology, or services from Sudan to any destination, or to Sudan from any location, is prohibited.

§ 538.207 Prohibited performance of contracts.

Except as otherwise authorized, the performance by any United States person of any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Sudan is prohibited.

§ 538.208 Prohibited grant or extension of credits or loans to the Government of Sudan.

Except as otherwise authorized, the grant or extension of credits or loans by any United States person to the Government of Sudan is prohibited.

§ 538.209 Prohibited transportation-related transactions involving Sudan.

Except as otherwise authorized, the following are prohibited:

(a) Any transaction by a U.S. person relating to transportation of cargo to or from Sudan;

(b) The provision of transportation of cargo to or from the United States by any Sudanese person or any vessel or aircraft of Sudanese registration; or

(c) The sale in the United States by any person holding authority under 49 U.S.C. subtitle VII of any transportation of cargo by air that includes any stop in Sudan.

§ 538.210 Prohibited transactions relating to petroleum and petrochemical industries.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to October 13, 2006, all transactions by United States persons relating to the petroleum or petrochemical industries in Sudan, including, but not limited to, oilfield services and oil or gas pipelines, are prohibited.

(b) Except as otherwise authorized, the facilitation by a United States person, including but not limited to brokering activities, of any transaction relating to the petroleum or petrochemical industries in Sudan is prohibited.

[72 FR 61515, Oct. 31, 2007]

§ 538.211 Evasions; attempts; conspiracies.

Any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this part is prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is prohibited.

[63 FR 35810, July 1, 1998. Redesignated at 72 FR 61515, Oct. 31, 2007]

§ 538.212 Exempt transactions.

(a) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication, which does not involve the transfer of anything of value.

(b) *Humanitarian donations.* The prohibitions of this part do not apply to donations by United States persons of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering.

(c) *Information and informational materials.* (1) The importation from any country and the exportation to any country of information or informational materials as defined in § 538.306, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part.

(2) This section does not authorize transactions related to information and informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include, without limitation, payment of advances for informational materials not yet created and completed, provision of services to market, produce or co-produce, create or assist in the creation of information and informational materials, and payment of royalties to the Government of Sudan or a person in Sudan with respect to income received for enhancements or alterations made by U.S. persons to information or informational

materials imported from the Government of Sudan or a person in Sudan.

(3) This section does not authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730–774, or to the exportation of goods, technology or software for use in the transmission of any data. The exportation of such items to the Government of Sudan or to Sudan is prohibited, as provided in §§ 538.201 and 538.205.

(d) *Travel*. The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including exportation or importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including non-scheduled air, sea, or land voyages.

(e) *Official business*. The prohibitions contained in this part do not apply to transactions for the conduct of the official business of the Federal Government or the United Nations by employees thereof.

(f) *Journalistic activity*. The prohibitions contained in this part do not apply to transactions in Sudan for journalistic activity by persons regularly employed in such capacity by a news-gathering organization.

(g)(1) *Specified Areas of Sudan*. Except for the provisions of §§ 538.201 through 538.203, 538.210, and 538.211, and except as provided in paragraph (g)(2) of this section, the prohibitions contained in this part do not apply to activities or related transactions with respect to the Specified Areas of Sudan.

(2) The exemption in paragraph (g)(1) of this section does not apply to the exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part 538), medicine, and medical devices.

NOTE TO § 538.212(g)(2): See § 538.523(a)(2) for a general license authorizing the exportation and reexportation of agricultural commodities, medicine, and medical devices to the Specified Areas of Sudan, and the conduct of related transactions.

[63 FR 35810, July 1, 1998, as amended at 66 FR 36688, July 12, 2001. Redesignated and amended at 72 FR 61515, Oct. 31, 2007; 74 FR 46363, Sept. 9, 2009]

Subpart C—General Definitions

§ 538.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibition in § 538.201 held in the name of the Government of Sudan or in which the Government of Sudan has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

§ 538.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part which is 12:01 a.m. EST, November 4, 1997.

§ 538.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, or other organization.

§ 538.304 General license.

The term *general license* means any license or authorization the terms of which are set forth in this part.

§ 538.305 Government of Sudan.

(a) The term *Government of Sudan* includes:

(1) The state and the Government of Sudan, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Sudan;

(2) Any entity owned or controlled by the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(4) Any other person determined by the Director of the Office of Foreign Assets Control to be included within paragraphs (a)(1) through (a)(3) of this section.

(b) Effective October 13, 2006, the term *Government of Sudan*, as defined in paragraph (a) of this section, does not include the regional government of Southern Sudan.

NOTE TO § 538.305: Please refer to the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') for a non-exhaustive listing of persons determined to fall within this definition, whose property and interests in property therefore are blocked pursuant to this part. The SDN List entries for such persons include the identifier ''[SUDAN].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this part.

[63 FR 35810, July 1, 1998, as amended at 72 FR 61516, Oct. 31, 2007; 76 FR 38536, June 30, 2011]

§ 538.306 Information and informational materials.

(a)(1) For purposes of this part, the term *information and informational materials* means publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds, and other information and informational materials.

(2) To be considered informational materials, artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information and informational materials* with respect to U.S. exports does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (the ''EAA''), or section 6 of the EAA to the extent that such controls promote nonproliferation or antiterrorism policies of the United States.

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 538.307 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (e.g., '' an interest in property'') means an interest of any nature whatsoever, direct or indirect.

§ 538.308 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 538.309 Person.

The term *person* means an individual or entity.

§ 538.310 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 538.311 Specific license.

The term *specific license* means any license or authorization not set forth in this part but issued pursuant to this part.

§ 538.312 Sudanese origin.

The term *goods or services of Sudanese origin* includes:

(a) Goods produced, manufactured, grown, extracted, or processed within Sudan;

(b) Goods which have entered into Sudanese commerce;

(c) Services performed in Sudan or by a person ordinarily resident in Sudan who is acting as an agent, employee, or contractor of the Government of Sudan or of a business entity located in Sudan. Services of Sudanese origin are not imported into the United States when such services are provided in the United States by a Sudanese national employed or resident in the United States.

(d) The term *services of Sudanese origin* does not include:

(1) Diplomatic and consular services performed by or on behalf of the Government of Sudan;

(2) Diplomatic and consular services performed by or on behalf of the Government of the United States.

§ 538.313 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 538.314 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 538.315 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 538.316 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including, but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions which are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 538.317 U.S. depository institution.

The term *U.S. depository institution* means any entity (including its foreign branches) organized under the laws of the United States or of any jurisdiction within the United States, or any agency, office or branch located in the United States of a foreign entity, that is engaged primarily in the business of banking (for example, banks, savings banks, savings associations, credit unions, trust companies and United States bank holding companies) and is subject to regulation by federal or state banking authorities.

[70 FR 34062, June 13, 2005]

§ 538.318 U.S. registered broker or dealer in securities.

The term *U.S. registered broker or dealer in securities* means any U.S. citizen, permanent resident alien, or entity organized under the laws of the United States or of any jurisdiction within the United States, including its foreign branches, or any agency, office or branch of a foreign entity located in the United States, that:

(a) Is a ''broker'' or ''dealer'' in securities within the meanings set forth in the Securities Exchange Act of 1934;

(b) Holds or clears customer accounts; and

(c) Is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

[70 FR 34062, June 13, 2005]

§ 538.319 U.S. registered money transmitter.

The term *U.S. registered money transmitter* means any U.S. citizen, permanent resident alien, or entity organized under the laws of the United States or of any jurisdiction within the United States, including its foreign branches, or any agency, office or branch of a foreign entity located in the United States, that is a money transmitter, as defined in 31 CFR 103.11(uu)(5), that is registered pursuant to 31 CFR 103.41.

[70 FR 34062, June 13, 2005]

§ 538.320 Specified Areas of Sudan.

(a) The term *Specified Areas of Sudan* means Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and marginalized areas in and around Khartoum.

(b) The term *marginalized areas in and around Khartoum* means the following official camps for internally displaced persons: Mayo, El Salaam, Wad El Bashir, and Soba.

[72 FR 61516, Oct. 31, 2007]

Subpart D—Interpretations

§ 538.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

§ 538.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 538.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from the Government of Sudan, such property shall no longer be deemed to be property in which the Government of Sudan has or has had an interest unless there exists in the property another interest of the Government of Sudan, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization

issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to the Government of Sudan, such property shall be deemed to be property in which there exists an interest of the Government of Sudan.

§ 538.404 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 538.201 if effected after the effective date.

§ 538.405 Transactions incidental to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) A transaction by an unlicensed Sudanese governmental entity or involving a debit to a blocked account or a transfer of blocked property not explicitly authorized within the terms of the license;

(b) Provision of any transportation services to or from Sudan not explicitly authorized in or pursuant to this part other than loading, transporting, and discharging licensed or exempt cargo there.

(c) Distribution or leasing in Sudan of any containers or similar goods owned or controlled by United States persons after the performance of transportation services to Sudan; and

(d) Financing of licensed sales for exportation or reexportation of agricultural commodities or products, medicine, or medical equipment to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing. See § 538.525.

[64 FR 41786, Aug. 2, 1999, as amended at 66 FR 36688, July 12, 2001; 74 FR 46363, Sept. 9, 2009]

§ 538.406 Exportation of services; performance of service contracts; legal services.

(a) The prohibition on the exportation of services contained in § 538.205 applies to services performed on behalf of the Government of Sudan, or where the benefit of such services is otherwise received in Sudan, when such services are performed:

(1) In the United States;

(2) By a U.S. person, wherever located;

(3) By an entity located in the United States, including its overseas branches; or

(4) Outside the United States by an individual U.S. person ordinarily resident in the United States.

(b) The benefit of services performed anywhere in the world on behalf of the Government of Sudan, including services performed for a controlled entity or agent of the Government of Sudan, is presumed to be received in Sudan.

(c) The prohibitions contained in §§ 538.201 and 538.207 apply to services performed by U.S. persons, wherever located:

(1) On behalf of the Government of Sudan;

(2) With respect to property interests of the Government of Sudan; or

(3) In support of an industrial, commercial, public utility or governmental project in Sudan.

(d) *Example:* U.S. persons may not, without specific authorization from the Office of Foreign Assets Control, represent an individual or entity with respect to contract negotiations, contract performance, commercial arbitration, or other business dealings with the Government of Sudan. See § 538.505 on licensing policy with regard to the provision of certain legal services.

§ 538.407 Facilitation by a United States person.

(a) The prohibition contained in § 538.206 against facilitation by a United States person of the exportation or reexportation of goods, technology, or services between Sudan and any destination (including the United States) bars any unlicensed action by a U.S. person that assists or supports trading activity with Sudan by any person. Facilitation of a trade or financial transaction that could be engaged in directly by a U.S. person or from the United States consistent with the prohibitions, general licenses and exemptions contained in this part is not prohibited. Activity of a purely clerical or reporting nature that does not further

trade or financial transactions with Sudan or the Government of Sudan is not considered prohibited facilitation. For example, reporting on the results of a subsidiary's trade with Sudan is not prohibited, while financing or insuring that trade or warranting the quality of goods sold by a subsidiary to the Government of Sudan constitutes prohibited facilitation.

(b) To avoid potential liability for U.S. persons under this part, a U.S. parent corporation must ensure that its foreign subsidiaries act independently of any U.S. person with respect to all transactions and activities relating to the exportation or reexportation of goods, technology, or services between Sudan and any other location including but not limited to business and legal planning; decision making; designing, ordering or transporting goods; and financial, insurance, and other risks. See § 538.505 with respect to exports of, inter alia, certain legal services benefitting Sudan.

(c) No U.S. person may change its policies or operating procedures, or those of a foreign affiliate or subsidiary, in order to enable a foreign entity owned or controlled by U.S. persons to enter into a transaction that could not be entered into directly by a U.S. person or from the United States pursuant to this part.

(d) No U.S. person may refer to a foreign person purchase orders, requests for bids, or similar business opportunities involving Sudan or the Government of Sudan to which the United States person could not directly respond as a result of the prohibitions contained in this part.

§ 538.408 Offshore transactions.

(a) The prohibitions contained in §§ 538.201 and 538.206 apply to transactions by any U.S. person in a location outside the United States with respect to property in which the U.S. person knows, or has reason to know, the Government of Sudan has or has had an interest since the effective date, or with respect to goods, technology or services which the U.S. person knows, or has reason to know, are of Sudanese origin or owned or controlled by the Government of Sudan.

(b) Prohibited transactions include, but are not limited to, importation into or exportation from locations outside the United States of, or purchasing, selling, financing, swapping, insuring, transporting, lifting, storing, incorporating, transforming, brokering, or otherwise dealing in, within such locations, goods, technology or services of Sudanese origin.

(c) *Examples*. (1) A U.S. person may not, within the United States or abroad, purchase, sell, finance, insure, transport, act as a broker for the sale or transport of, or otherwise deal in, Sudanese crude oil or sugar refined in Sudan.

(2) A U.S. person may not, within the United States or abroad, conduct transactions of any nature whatsoever with an entity that the U.S. person knows or has reason to know is the Government of Sudan, including a controlled entity or agent of that Government, or which benefits or supports the business of an entity located in Sudan, unless the entity is licensed by the Office of Foreign Assets Control to conduct such transactions with U.S. persons or the transaction is generally licensed in, or exempted from the prohibitions of, this part.

§ 538.409 Transshipments through the United States prohibited.

(a) The prohibitions in § 538.205 apply to the importation into the United States, for transshipment or transit, of goods which are intended or destined for Sudan, or an entity operated from Sudan.

(b) The prohibitions in § 538.204 apply to the importation into the United States, for transshipment or transit, of goods of Sudanese origin which are intended or destined for third countries.

(c) Goods in which the Government of Sudan has an interest which are imported into or transshipped through the United States are blocked pursuant to § 538.201.

§ 538.410 Imports of Sudanese goods from third countries; transshipments.

(a) Importation into the United States from third countries of goods

containing raw materials or components of Sudanese origin is not prohibited if those raw materials or components have been incorporated into manufactured products or otherwise substantially transformed in a third country.

(b) Importation into the United States of goods of Sudanese origin that have been transshipped through a third country without being incorporated into manufactured products or otherwise substantially transformed in a third country are prohibited.

§ 538.411 Exports to third countries; transshipments.

Exportation of goods or technology (including technical data, software, information not exempted from the prohibition of this part pursuant to § 538.211, or technical assistance) from the United States to third countries is prohibited if the exporter knows, or has reason to know, that the goods or technology are intended for transshipment to Sudan (including passage through, or storage in, intermediate destinations). The exportation of goods or technology intended specifically for incorporation or substantial transformation into a third-country product is also prohibited if the particular product is to be used in Sudan, is being specifically manufactured to fill a Sudanese order, or if the manufacturer's sales of the particular product are predominantly to Sudan.

§ 538.414 Loans or extensions of credit.

(a) The prohibition in § 538.205 applies to loans or extensions of credit to a person in Sudan, including overdraft protection on checking accounts, and the unlicensed renewal or rescheduling of credits or loans in existence as of the effective date, whether by affirmative action or operation of law.

(b) The prohibition in § 538.205 applies to financial services including loans or credits extended in any currency.

§ 538.415 Payments involving Sudan.

Before a United States financial institution initiates a payment subject to the prohibitions contained in this part on behalf of any customer, or credits a transfer subject to such prohibitions to the account on its books of the ultimate beneficiary, the U.S. financial institution must determine that the transfer is not prohibited by this part.

§ 538.416 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.

No debits may be made to a blocked account to pay obligations to U.S. persons or other persons, including payment for goods, technology or services exported prior to the effective date, except as authorized pursuant to this part.

§ 538.417 Transshipments through Sudan.

(a) The exportation or reexportation of goods, technology, or services to the Specified Areas of Sudan is exempt under § 538.212(g) only if such goods, technology, or services do not transit or transship through any area of Sudan other than the Specified Areas of Sudan.

(b) The importation into the United States of goods or services from, or originating in, the Specified Areas of Sudan is exempt under § 538.212(g) only if such goods or services do not transit or transship through any area of Sudan other than the Specified Areas of Sudan.

NOTE TO § 538.417. See § 538.532, which authorizes humanitarian transshipments to or from Southern Sudan and Darfur.

[72 FR 61516, Oct. 31, 2007]

§ 538.418 Financial transactions in Sudan.

(a) Any financial transaction with a depository institution located in an area of Sudan other than the Specified Areas of Sudan, e.g., Khartoum, remains prohibited.

(b) Financial transactions are no longer prohibited by this part if:

(1) The underlying activity is not prohibited by this part;

(2) The financial transaction involves a third-country depository institution, or a Sudanese depository institution not owned or controlled by the Government of Sudan, that is located in the Specified Areas of Sudan; and

(3) The financial transaction is not routed through a depository institution that is located in an area of Sudan

other than the Specified Areas of Sudan or that is owned or controlled by the Government of Sudan, wherever located.

(c) *Example*. A U.S. bank is instructed to transfer funds to the Abyei branch of a Sudanese bank that is not owned or controlled by the Government of Sudan. In order for the transfer to take place, the U.S. bank is required to route the funds through the Sudanese bank's headquarters, which is located in Khartoum. Due to the routing of the financial transaction through Khartoum, this transaction is prohibited and requires authorization from the Office of Foreign Assets Control. However, if the U.S. bank is able to bypass the Khartoum headquarters and transfer the funds directly to the Abyei branch of the Sudanese bank, then the transaction would not be prohibited.

[72 FR 61516, Oct. 31, 2007]

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 538.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[68 FR 53658, Sept. 11, 2003]

§ 538.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 538.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§ 538.503 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which the Government of Sudan has any interest, that comes within the possession or control of a U.S. financial institution, must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may only be made to another blocked account held in the same name.

NOTE TO § 538.503: Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 538.203 concerning the obligation to

hold blocked funds in interest-bearing accounts.

§ 538.504 Entries in certain accounts for normal service charges authorized.

(a) U.S. financial institutions are hereby authorized to debit any blocked account with such U.S. financial institution in payment or reimbursement for normal service charges owed to such U.S. financial institution by the owner of such blocked account.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 538.505 Provision of certain legal services to the Government of Sudan, persons in Sudan, or benefitting Sudan.

(a) The provision to the Government of Sudan, to a person in Sudan, or in circumstances in which the benefit is otherwise received in Sudan, of the legal services set forth in paragraph (b) of this section is authorized, provided that all receipts of payment therefor must be specifically licensed. The provision of any other legal services as interpreted in § 538.406 requires the issuance of a specific license.

(b) Specific licenses may be issued, on a case-by-case basis, authorizing receipt, from unblocked sources, of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to the Government of Sudan or to a person in Sudan:

(1) Provision of legal advice and counseling to the Government of Sudan, to a person in Sudan, or in circumstances in which the benefit is otherwise received in Sudan, on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling is not provided to facilitate transactions in violation of this part;

(2) Representation of the Government of Sudan or a person in Sudan when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction of the Government of Sudan, or of a person in Sudan;

(4) Representation of the Government of Sudan or a person in Sudan before any federal agency with respect to the imposition, administration, or enforcement of U.S. sanctions against Sudan; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(c) Enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment or other judicial process purporting to transfer or otherwise alter or affect a property interest of the Government of Sudan is prohibited unless specifically licensed in accordance with § 538.202(e).

§ 538.506 30–day delayed effective date for pre-November 4, 1997 trade contracts involving Sudan.

(a) *Pre-existing trade contracts.* Trade transactions required under a contract entered into prior to November 4, 1997 (a ''pre-existing trade contract''), otherwise prohibited by this part, including the importation of goods or services of Sudanese origin or the exportation of goods, services, or technology that was authorized under applicable Federal regulations in force immediately prior to November 4, 1997, are authorized without specific licensing by the Office of Foreign Assets Control as follows:

(1) Exports or reexports are authorized until 12:01 a.m. EST, December 4, 1997, and non-financing activity by U.S. persons incidental to the performance of the pre-existing trade contract (such as the provision of transportation or insurance) is authorized through 12:01 a.m. EST, February 2, 1998, if the pre-existing trade contract is for:

(i) The exportation of goods, services, or technology from the United States or a third country that was authorized under applicable Federal regulations in force immediately prior to November 4, 1997; or

(ii) The reexportation of goods or technology that was authorized under applicable Federal regulations in force immediately prior to November 4, 1997.

(2) If the pre-existing trade contract is for the importation of goods or services of Sudanese origin or other trade transactions relating to goods or services of Sudanese origin or owned or controlled by the Government of Sudan, importations under the pre-existing trade contract are authorized until 12:01 a.m. EST, December 4, 1997.

(3) For purposes of this section, goods are considered to be exported upon final loading aboard the exporting conveyance in the country of export. Goods are considered to be imported upon arrival in the jurisdiction of the country of importation.

(b)(1) *Financing for pre-existing trade contracts.* In general, no financing services prohibited by this part may be performed after 12:01 a.m. EST, November 4, 1997. However, letters of credit and other financing agreements with respect to the trade transactions authorized in paragraph (a) of this section may be performed according to their terms, and may be extended or renewed, except that:

(i) Any payment required to be made to the Government of Sudan or any person blocked pursuant to this part or otherwise, including payments authorized with respect to trade transactions described in paragraph (a) of this section, must be made into a blocked account in the United States; and

(ii) No payment may be made from a blocked account unless authorized by a specific license issued by the Office of Foreign Assets Controls.

(2) Specific licenses may be issued by the Office of Foreign Asset Controls on a case-by-case basis to permit a U.S. bank to debit a blocked account of the Government of Sudan for funds held as collateral under an irrevocable letter of credit issued or confirmed by it, or a letter of credit reimbursement confirmed by it, for goods, services or technology exported, or goods or technology reexported, prior to 12:01 a.m. EST, December 4, 1997, directly or indirectly to Sudan, or to third countries for an entity operated from Sudan, or for the benefit of the Government of Sudan. The application for a license must:

(i) Present evidence satisfactory to the Office of Foreign Asset Controls that the exportation or reexportation occurred prior to 12:01 a.m. EST, December 4, 1997; and

(ii) Include an explanation of the facts and circumstances surrounding the entry and execution of the export or reexport transaction, including the names and addresses of all Sudanese participants in the transaction and all Sudanese persons having an ownership interest in the beneficiary of the letter of credit.

(c) *Blocked Government of Sudan accounts.* Nothing in this section permits debits to a blocked account of the Government of Sudan absent the issuance of a specific license by Office of Foreign Asset Controls authorizing such a debit. The operation of an account of the Government of Sudan in a financial institution does not constitute a trade transaction for purposes of this section.

(d) *Existence of contract.* The existence of a contract will be determined with reference to the principles contained in Article 2 of the Uniform Commercial Code.

(e) *Reporting requirement.* Although a specific license from Office of Foreign Asset Controls is not required for any transaction authorized in paragraph (a) of this section, any U.S. person engaging in a transaction described in paragraph (a) of this section is required to report such transaction immediately to the Office of Foreign Asset Controls and provide a description of the underlying trade contract. Such reports should be directed to the Office of Foreign Assets Control, Attn: Compliance Programs Division/Sudan Contracts, 1500 Pennsylvania Avenue, NW., Annex–2nd Floor, Washington, DC 20220. Such reports may be made by facsimile transmission to 202/622–1657.

(f) *Licensing and reporting provisions.* For provisions relating to applications to the Office of Foreign Asset Controls

for specific licenses and reporting requirements, see §§ 501.606 and 501.808 of this chapter.

§ 538.507 Reexports by non-U.S. persons.

(a) *Goods and technology subject to export license application requirements under other United States regulations.* The reexportation to Sudan or the Government of Sudan by a non-U.S. person of any goods or technology exported from the United States, the exportation of which to Sudan is subject to export or reexport license application requirements, is authorized under this section provided that the goods or technology:

(1) Have been incorporated into another product outside the United States and constitute 10 percent or less by value of that product exported from a third country; or

(2) Have been substantially transformed outside the United States.

NOTE TO PARAGRAPH (a) OF § 538.507: Notwithstanding the authorization set forth in paragraph (a), a non-U.S. person's reexportation of goods, technology or software of U.S. origin that are subject to the Export Administration Regulations (15 CFR parts 730 through 774) may require specific authorization from the Department of Commerce, Bureau of Industry and Security.

(b) *Goods and technology not subject to export license application requirements under other United States regulations.* The reexportation to Sudan or the Government of Sudan by a non-U.S. person of any goods or technology of U.S. origin, the exportation of which to Sudan is not subject to any export license application requirements under any other United States regulations, is authorized under this section.

NOTE TO PARAGRAPH (b) OF § 538.507: However, the reexportation by non-U.S. persons of U.S.-origin goods, technology or software classified as EAR99 under the Export Administration Regulations (15 CFR parts 730 through 774) may require specific authorization from the Department of Commerce, Bureau of Industry and Security. See, for example, the end-use and end-user restrictions set forth in 15 CFR part 744.

[70 FR 34062, June 13, 2005]

§ 538.508 Certain payments by the Government of Sudan of obligations to persons within the United States authorized.

Specific licenses may be issued on a case-by-case basis to permit the transfer of funds after the effective date by, through, or to any U.S. financial institution or other U.S. person not blocked pursuant to this chapter, from a nonblocked account outside of the United States, solely for the purpose of payment of obligations of the Government of Sudan to persons or accounts within the United States, provided that the obligation arose prior to the effective date, and the payment requires no debit to a blocked account.

§ 538.509 Certain services relating to participation in various events authorized.

The importation of Sudanese-origin services into the United States is authorized where such services are performed in the United States by a Sudanese national who enters the United States on a visa issued by the State Department for the purpose of participating in a public conference, performance, exhibition or similar event, and such services are consistent with that purpose.

§ 538.510 Importation and exportation of certain gifts authorized.

The importation into the United States of Sudanese-origin goods, and the exportation from the United States of goods, is authorized for goods sent as gifts to persons provided that the value of the gift is not more than $100; the goods are of a type and in quantities normally given as gifts between individuals; and the goods are not controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), or nuclear proliferation (NP)(see Commerce Control List, 15 CFR part 774 of the Export Administration Regulations).

§ 538.511 Accompanied baggage authorized.

(a) Persons entering the United States directly or indirectly from Sudan are authorized to import into

the United States Sudanese-origin accompanied baggage normally incident to travel.

(b) Persons leaving the United States for Sudan are authorized to export from the United States accompanied baggage normally incident to travel.

(c) For purposes of this section, the term *accompanied baggage normally incident to travel* includes only baggage that:

(1) Accompanies the traveler on the same aircraft, train, or vehicle;

(2) Includes only articles that are necessary for personal use incident to travel, are not intended for any other person or for sale, and are not otherwise prohibited from importation or exportation under applicable United States laws.

§ 538.512 Transactions related to telecommunications authorized.

All transactions with respect to the receipt and transmission of telecommunications involving Sudan are authorized. This section does not authorize the provision to the Government of Sudan or a person in Sudan of telecommunications equipment or technology.

§ 538.513 Transactions related to mail authorized.

All transactions by U.S. persons, including payment and transfers to common carriers, incident to the receipt or transmission of mail between the United States and Sudan are authorized, provided that mail is limited to personal communications not involving a transfer of anything of value.

§ 538.514 Certain transactions related to patents, trademarks and copyrights authorized.

(a) All of the following transactions in connection with patent, trademark, copyright or other intellectual property protection in the United States or Sudan are authorized:

(1) The filing and prosecution of any application to obtain a patent, trademark, copyright or other form of intellectual property protection;

(2) The receipt of a patent, trademark, copyright or other form of intellectual property protection;

(3) The renewal or maintenance of a patent, trademark, copyright or other form of intellectual property protection; and

(4) The filing and prosecution of opposition or infringement proceedings with respect to a patent, trademark, copyright or other form of intellectual property protection, or the entrance of a defense to any such proceedings.

(b) This section authorizes the payment of fees currently due to the United States Government, or of the reasonable and customary fees and charges currently due to attorneys or representatives within the United States, in connection with the transactions authorized in paragraph (a) of this section. Payment effected pursuant to the terms of this paragraph may not be made from a blocked account.

(c) This section authorizes the payment of fees currently due to the Government of Sudan, or of the reasonable and customary fees and charges currently due to attorneys or representatives within Sudan, in connection with the transactions authorized in paragraph (a) of this section.

(d) Nothing in this section affects obligations under any other provision of law.

§ 538.515 Sudanese diplomatic missions in the United States.

(a) The importation of goods or services into the United States by, and the provision of goods or services in the United States to, the diplomatic missions of the Government of Sudan to the United States and the United Nations are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the missions, or for personal use of the employees of the missions, and are not for resale;

(2) The transaction does not involve the purchase, sale, financing, or refinancing of real property;

(3) The transaction is not otherwise prohibited by law; and

(4) The transaction is conducted through an account at a U.S. financial institution specifically licensed by OFAC.

NOTE TO PARAGRAPH (a)(4) OF § 538.515: U.S. financial institutions are required to obtain specific licenses to operate accounts for, or

extend credit to, the diplomatic missions of the Government of Sudan to the United States and the United Nations.

(b) The importation of goods or services into the United States by, and the provision of goods or services in the United States to, the employees of the diplomatic missions of the Government of Sudan to the United States and the United Nations are authorized, provided that:

(1) The goods or services are for personal use of the employees of the missions, and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

(c) The importation of goods or services into the United States by the regional Government of Southern Sudan and its employees that involves the transit or transshipment of goods from the Specified Areas of Sudan through areas of Sudan other than the Specified Areas of Sudan is authorized, provided that:

(1) The goods or services are for the conduct of the business of the regional Government, or for personal use of the employees of the regional Government, and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

NOTE TO PARAGRAPH (c) OF § 538.515: The authorization contained in paragraph (c) of this section permits the regional Government of Southern Sudan and its employees to import into the United States goods or services that have transited or transshipped through areas of Sudan other than the Specified Areas of Sudan without the need to obtain a specific license under § 538.417. The importation of goods and services into the United States by the regional Government of Southern Sudan not involving transit or transshipment through areas of Sudan other than the Specified Areas of Sudan already is exempt pursuant to §§ 538.212(g) and 538.305(b) and, therefore, requires no authorization. Similarly, the provision of goods and services in the United States to the regional Government of Southern Sudan and its employees already is exempt pursuant to §§ 538.212(g) and 538.305(b) and also requires no authorization.

[74 FR 27434, June 10, 2009]

§ 538.516 Diplomatic pouches.

The following transactions are authorized:

(a) The importation into the United States from Sudan, or the exportation from the United States to Sudan, of diplomatic pouches and their contents; and

(b) The exportation or reexportation, directly or indirectly, from the United States or by a U.S. person, wherever located, of any goods or technology to a third-country government, or to its contractors or agents, for shipment to Sudan via a diplomatic pouch. To the extent necessary, this section also authorizes the shipment of such goods or technology by the third-country government to Sudan via a diplomatic pouch.

NOTE TO PARAGRAPH (b) OF § 538.516: The exportation or reexportation of certain U.S.-origin goods or technology to a third-country government, or to its contractors or agents, may require authorization by the U.S. Department of Commerce under the Export Administration Regulations (15 CFR parts 730 et seq.).

[72 FR 15832, Apr. 3, 2007]

§ 538.517 Allowable payments for overflights of Sudanese airspace.

Payments to Sudan of charges for services rendered by the Government of Sudan in connection with the overflight of Sudan or emergency landing in Sudan of aircraft owned by a United States person or registered in the United States are authorized.

§ 538.518 Household goods and personal effects.

(a) The exportation from the United States to Sudan of household and personal effects, including baggage and articles for family use, of persons departing the United States to relocate in Sudan is authorized provided the articles included in such effects have been actually used by such persons or by family members accompanying them, are not intended for any other person or for sale, and are not otherwise prohibited from exportation.

(b) The importation of Sudanese-origin household and personal effects, including baggage and articles for family use, of persons arriving in the United States is authorized; to qualify, articles included in such effects must have been actually used abroad by such persons or by other family members arriving from the same foreign household,

must not be intended for any other person or for sale, and must not be otherwise prohibited from importation.

§ 538.519 Aircraft and maritime safety.

Specific licenses may be issued on a case-by-case basis for the exportation and reexportation of goods, services, and technology to insure the safety of civil aviation and safe operation of U.S.-origin commercial passenger aircraft, and to ensure the safety of ocean-going maritime traffic in international waters.

§ 538.520 Extensions or renewals of loans and credits.

(a) Specific licenses may be issued on a case-by-case basis for rescheduling loans or otherwise extending the maturities of existing loans, and for charging fees or interest at commercially reasonable rates in connection therewith, provided that no new funds or credits are thereby transferred or extended to Sudan or the Government of Sudan.

(b) Specific licenses may be issued on a case-by-case basis, at the request of the account party, for the extension or renewal of a letter of credit or a standby letter of credit issued or confirmed by a U.S. financial institution.

§ 538.521 Registration of nongovernmental organizations for humanitarian or religious activities.

(a) Registration numbers may be issued on a case-by-case basis for the registration of nongovernmental organizations involved in humanitarian or religious activities in Sudan, authorizing transactions by such organizations otherwise prohibited by this part, including the exportation of services, goods, software, or technology to Sudan and the transfer of funds to and from Sudan for the purpose of relieving human suffering. Applicants for registration numbers must comply with the requirements of § 501.801(c), 31 CFR chapter V.

(b) This section does not authorize transfers from blocked accounts.

NOTE TO § 538.521: Registration does not excuse a U.S. person from compliance with other applicable U.S. laws governing the exportation or reexportation of U.S.-origin goods, software, or technology (including technical data). See, e.g., the Export Administration Regulations administered by the U.S. Department of Commerce (15 CFR parts 730–774).

[66 FR 2728, Jan. 11, 2001]

§ 538.522 Transactions related to U.S. citizens residing in Sudan.

U.S. persons are authorized to engage in transactions in Sudan ordinarily incident to the routine and necessary maintenance and other personal living expenses of U.S. citizens who reside on a permanent basis in Sudan.

§ 538.523 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.

(a)(1) *One-year specific license requirement.* The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part 538), medicine, or medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing, shall only be made pursuant to a one-year specific license issued by the U.S. Department of the Treasury, Office of Foreign Assets Control, for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No specific license will be granted for the exportation or reexportation of agricultural commodities, medicine, or medical equipment to any entity or individual in Sudan promoting international terrorism, to any narcotics trafficking entity designated pursuant to Executive Order 12978 of October 21, 1995 (60 FR 54579, October 24, 1995) or the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908), or to any foreign organization, group, or persons subject to any restriction for their involvement in weapons of mass destruction or missile proliferation. Executory contracts entered into pursuant to paragraph (b)(2) of this section prior to the issuance of the one-year specific license described in this paragraph shall be deemed to have been signed on the

date of issuance of that one-year specific license (and, therefore, the exporter is authorized to make shipments under that contract within the 12-month period beginning on the date of issuance of the one-year specific license).

(2) *General license for the Specified Areas of Sudan*. The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part 538), medicine, and medical devices to the Specified Areas of Sudan and the conduct of related transactions, including, but not limited to, the making of shipping and cargo inspection arrangements, the obtaining of insurance, the arrangement of financing and payment, the entry into executory contracts, and the provision of brokerage services for such sales and exports or reexports, are hereby authorized, provided that such activities or transactions do not involve any property or interests in property of the Government of Sudan and do not relate to the petroleum or petrochemical industries in Sudan, and also provided that all such exports or reexports are shipped within the 12-month period beginning on the date of the signing of the contract for export or reexport.

NOTE 1 TO § 538.523(a)(2): Consistent with section 906(a)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7205), each year by the anniversary of its effective date of September 9, 2009, the Office of Foreign Assets Control will determine whether to revoke this general license. Unless revoked, the general license will remain in effect.

NOTE 2 TO § 538.523(a)(2): See §§ 538.417 and 538.418 for additional requirements with respect to transshipments through, and financial transactions in, Sudan.

(b) *General license for arrangement of exportation or reexportation of covered products*. (1) With respect to sales pursuant to § 538.523(a)(1), the making of shipping arrangements, cargo inspection, obtaining of insurance, and arrangement of financing (consistent with § 538.525) for the exportation or reexportation of agricultural commodities, medicine, or medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing, are authorized.

(2) If desired, entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing, is authorized, provided that performance of an executory contract is expressly made contingent upon the prior issuance of the one-year specific license described in paragraph (a)(1) of this section.

(c) *Instructions for obtaining one-year specific licenses*. In order to obtain the one-year specific license described in paragraph (a)(1) of this section, the exporter must provide to the Office of Foreign Assets Control:

(1) The applicant's full legal name (if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business).

(2) The applicant's mailing and street address (so that OFAC may reach a responsible point of contact, the applicant should also include the name of the individual(s) responsible for the application and related commercial transactions along with their telephone and fax numbers and, if available, e-mail addresses).

(3) The names, mailing addresses, and if available, fax and telephone numbers of all parties with an interest in the transaction. If the goods are being exported or reexported to a purchasing agent in Sudan, the exporter must identify the agent's principals at the wholesale level for whom the purchase is being made. If the goods are being exported or reexported to an individual, the exporter must identify any organizations or entities with which the individual is affiliated that have an interest in the transaction.

(4) A description of all items to be exported or reexported pursuant to the requested one-year license, including a statement that the item is classified as

EAR 99, and, if necessary, documentation sufficient to verify that the items to be exported or reexported are classified as EAR 99 and do not fall within any of the limitations contained in paragraph (d) of this section.

(5) An Official Commodity Classification of EAR 99 issued by the Department of Commerce, Bureau of Industry and Security (''BIS''), certifying that the product is EAR 99, is required to be submitted to OFAC with the request for a license authorizing the exportation or reexportation of all fertilizers, live horses, western red cedar, and medical devices other than basic medical supplies, such as syringes, bandages, gauze and similar items, that are specifically listed on BIS's Web site, *http://www.bis.doc.gov/policiesandregulations/tradesanctionsreformexportenhancementact.html*. Medical supplies that are specifically listed on BIS's Web site may not require an Official Commodity Classification of EAR 99 from BIS. BIS will also provide a list on its Web site of medicines that are ineligible for a one-year license under these procedures. Exporters should seek an Official Commodity Classification of EAR 99 from BIS for medicines and submit a copy to OFAC. See 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BIS.

(d) *Limitations*. (1) Nothing in this section or in any license issued pursuant to paragraph (a) of this section relieves the exporter from compliance with the export license application requirements of another Federal agency.

(2) Nothing in this section or in any license issued pursuant to paragraph (a) of this section authorizes the exportation or reexportation of any agricultural commodity, medicine, or medical device controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 *et seq.*); or used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.

(3) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects prohibitions on the sale or supply of U.S. technology or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices.

(4) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

(5) This section does not apply to any transaction or dealing involving property blocked pursuant to this chapter or to any other activity prohibited by this chapter that is not otherwise authorized in this part.

(e) *Covered items*. For the purposes of this part, agricultural commodities, medicine, and medical devices are defined below.

(1) *Agricultural commodities*. For the purposes of this section, agricultural commodities are:

(i) Products that are not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, and that fall within the term ''agricultural commodity'' as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that are intended for ultimate use in Sudan as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine*. For the purposes of this section, the term medicine has the same meaning given the term ''drug'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on

the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this section, the term medical device has the meaning given the term ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

[74 FR 61032, Nov. 23, 2009]

§ 538.524 [Reserved]

§ 538.525 Payment for and financing of commercial sales of agricultural commodities, medicine, and medical equipment.

(a) *General license for payment terms.* The following payment terms for sales, pursuant to § 538.523(a)(1), of agricultural commodities and products, medicine, and medical equipment to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas, or to persons in third countries purchasing specifically for resale to the foregoing are authorized:

(1) Payment of cash in advance;

(2) Sales on open account, provided that the account receivable may not be transferred by the person extending the credit; or

(3) Financing by third-country financial institutions that are neither United States persons nor Government of Sudan entities. Such financing may be confirmed or advised by U.S. financial institutions.

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to § 538.523(a)(1). See § 501.801(b) of this chapter for specific licensing procedures.

(c) *No debits to blocked accounts.* Nothing in this section authorizes payment terms or trade financing involving a debit to an account of the Government of Sudan blocked pursuant to this part.

(d) *Transfers through the U.S. financial system.* Before a United States financial institution initiates a payment on behalf of any customer, or credits a transfer to the account on its books of the ultimate beneficiary, the United States financial institution must determine that the underlying transaction is not prohibited by this part. Any payment relating to a transaction authorized in or pursuant to § 538.523 or § 538.526 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the blocking or rejection of the transfer.

(e) Notwithstanding any other provision of this part, no commercial exportation to Sudan may be made with United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees absent a Presidential waiver.

[74 FR 61033, Nov. 23, 2009]

§ 538.526 Brokering sales of agricultural commodities, medicine, and medical devices.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sale and exportation or reexportation by United States persons of agricultural commodities, medicine, and medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing, provided that the sale and exportation or reexportation is authorized by a one-year specific license issued pursuant to § 538.523(a)(1).

(b) *Specific licensing for brokering sales by non-U.S. persons of bulk agricultural commodities.* Specific licenses may be issued on a case-by-case basis to permit United States persons to provide brokerage services on behalf of non-United States, non-Sudanese persons for the sale and exportation or reexportation of bulk agricultural commodities to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of

Sudan, or to persons in third countries purchasing specifically for resale to the foregoing. Specific licenses issued pursuant to this section will authorize the brokering only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix A to this part 538;

(2) Are to purchasers permitted pursuant to § 538.523(a)(1); and

NOTE TO PARAGRAPH (b)(2) OF § 538.526: Requests for specific licenses to provide brokerage services under this paragraph must include all of the information described in § 538.523(c).

(3) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, items classified EAR 99 under the Export Administration Regulations, 15 CFR parts 730 through 774, may in certain instances require a license from the Department of Commerce, Bureau of Industry and Security. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9.)

(c) *No debit to blocked accounts.* Payment for any brokerage fee earned pursuant to this section may not involve a debit to an account blocked pursuant to this part.

(d) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

[74 FR 61033, Nov. 23, 2009]

§ 538.527 Operation of accounts.

The operation of an account in a U.S. financial institution for an individual ordinarily resident in Sudan who is not included within the term ''Government of Sudan,'' as defined in § 538.305, is authorized, provided that transactions processed through the account:

(a) Are of a personal nature and not for use in supporting or operating a business;

(b) Do not involve transfers directly or indirectly to Sudan or for the benefit of individuals ordinarily resident in Sudan unless authorized by § 538.528; and

(c) Are not otherwise prohibited by this part.

[70 FR 34062, June 13, 2005]

§ 538.528 Noncommercial, personal remittances.

(a) U.S. depository institutions, U.S. registered brokers or dealers in securities, and U.S. registered money transmitters are authorized to process transfers of funds to or from Sudan or for or on behalf of an individual ordinarily resident in Sudan who is not included within the term ''Government of Sudan,'' as defined in § 538.305, in cases in which the transfer involves a noncommercial, personal remittance, provided the transfer is not by, to, or through a person who is included within the term ''Government of Sudan,'' as defined in § 538.305. Noncommercial, personal remittances do not include charitable donations to or for the benefit of an entity or funds transfers for use in supporting or operating a business.

NOTE TO PARAGRAPH (a) OF § 538.528: The institutions identified in paragraph (a) may transfer charitable donations made by U.S. persons to nongovernmental organizations in Sudan registered pursuant to § 538.521, provided that the transfer is made pursuant to § 538.521 and the terms of the registration.

(b) The transferring institutions identified in paragraph (a) of this section may rely on the originator of a funds transfer with regard to compliance with paragraph (a), provided that the transferring institution does not know or have reason to know that the funds transfer is not in compliance with paragraph (a).

(c) This section does not authorize transactions with respect to property blocked pursuant to § 538.201.

[70 FR 34062, June 13, 2005]

§ 538.529 Authorized transactions necessary and ordinarily incident to publishing.

(a) To the extent that such activities are not exempt from this part, and subject to the restrictions set forth in paragraphs (b) through (d) of this section, U.S. persons are authorized to engage in all transactions necessary and

ordinarily incident to the publishing and marketing of manuscripts, books, journals, and newspapers in paper or electronic format (collectively, ''written publications''). This section does not apply if the parties to the transactions described in this paragraph include the Government of Sudan. For the purposes of this section, the term ''Government of Sudan'' includes the state and the Government of Sudan, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Sudan, and any person acting or purporting to act directly or indirectly on behalf of any of the foregoing with respect to the transactions described in this paragraph. For the purposes of this section, the term ''Government of Sudan'' does not include any academic and research institutions and their personnel. Pursuant to this section, the following activities are authorized, provided that U.S. persons ensure that they are not engaging, without separate authorization, in the activities identified in paragraphs (b) through (d) of this section:

(1) Commissioning and making advance payments for identifiable written publications not yet in existence, to the extent consistent with industry practice;

(2) Collaborating on the creation and enhancement of written publications;

(3)(i) Augmenting written publications through the addition of items such as photographs, artwork, translation, explanatory text, and, for a written publication in electronic format, the addition of embedded software necessary for reading, browsing, navigating, or searching the written publication;

(ii) Exporting embedded software necessary for reading, browsing, navigating, or searching a written publication in electronic format, provided that the software is classified as ''EAR 99'' under the Export Administration Regulations, 15 CFR parts 730–774 (the ''EAR''), or is not subject to the EAR;

(4) Substantive editing of written publications;

(5) Payment of royalties for written publications;

(6) Creating or undertaking a marketing campaign to promote a written publication; and

(7) Other transactions necessary and ordinarily incident to the publishing and marketing of written publications as described in this paragraph (a).

(b) This section does not authorize transactions involving the provision of goods or services not necessary and ordinarily incident to the publishing and marketing of written publications as described in paragraph (a) of this section. For example, this section does not authorize U.S. persons:

(1) To provide or receive individualized or customized services (including, but not limited to, accounting, legal, design, or consulting services), other than those necessary and ordinarily incident to the publishing and marketing of written publications, even though such individualized or customized services are delivered through the use of information and informational materials;

(2) To create or undertake for any person a marketing campaign with respect to any service or product other than a written publication, or to create or undertake a marketing campaign of any kind for the benefit of the Government of Sudan;

(3) To engage in the exportation or importation of goods to or from Sudan other than the exportation of embedded software described in paragraph (a)(3)(ii) of this section; or

(4) To operate a publishing house, sales outlet, or other office in Sudan.

NOTE TO PARAGRAPH (b): The importation from Sudan and the exportation to Sudan of information or informational materials, as defined in § 538.306, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part. See § 538.211(c).

(c) This section does not authorize U.S. persons to engage the services of publishing houses or translators in Sudan unless such activity is primarily for the dissemination of written publications in Sudan.

(d) This section does not authorize:

(1) The exportation from or importation into the United States of services for the development, production, or design of software;

(2) Transactions for the development, production, design, or marketing of technology specifically controlled by the International Traffic in Arms Regulations, 22 CFR parts 120 through 130 (the ''ITAR''), the EAR, or the Department of Energy Regulations set forth at 10 CFR part 810.

(3) The exportation of information or technology subject to the authorization requirements of 10 CFR part 810, or Restricted Data as defined in section 11 y. of the Atomic Energy Act of 1954, as amended, or of other information, data, or technology the release of which is controlled under the Atomic Energy Act and regulations therein;

(4) The exportation of any item (including information) subject to the EAR where a U.S. person knows or has reason to know that the item will be used, directly or indirectly, with respect to certain nuclear, missile, chemical, or biological weapons or nuclear-maritime end-uses as set forth in part 744 of the EAR. In addition, U.S. persons are precluded from exporting any item subject to the EAR to certain restricted end-users, as set forth in part 744 of the EAR, as well as certain persons whose export privileges have been denied pursuant to parts 764 or 766 of the EAR, without authorization from the Department of Commerce; or

(5) The exportation of information subject to licensing requirements under the ITAR or exchanges of information that are subject to regulation by other government agencies.

[72 FR 50050, Aug. 30, 2007]

§ 538.530 Licenses and registrations issued pursuant to Executive Order 13067 or this part authorized pursuant to Executive Order 13412.

(a) All general licenses issued pursuant to Executive Order 13067 are authorized pursuant to Executive Order 13412 and remain in effect.

(b) All specific licenses and all nongovernmental organization registrations issued pursuant to Executive Order 13067 or this part prior to October 13, 2006, are authorized pursuant to Executive Order 13412 and remain in effect until the expiration date specified in the license or registration or, if no expiration date is specified, June 30, 2008.

[72 FR 61516, Oct. 31, 2007]

§ 538.531 Official activities of the United States Government and international organizations.

(a) Subject to the conditions of paragraphs (b), (c), and (d) of this section, the following transactions are authorized:

(1) All transactions and activities otherwise prohibited by this part that are for the conduct of the official business of the United States Government or the United Nations by contractors or grantees thereof; and

(2) All transactions and activities otherwise prohibited by this part that are for the conduct of the official business of the United Nations specialized agencies, programmes, and funds by employees, contractors, or grantees thereof.

(b) Contractors or grantees conducting transactions authorized pursuant to paragraph (a) of this section must provide a copy of their contract or grant with the United States Government or the United Nations, or its specialized agencies, programmes, and funds, to any U.S. person before the U.S. person engages in or facilitates any transaction or activity prohibited by this part. If the contract or grant contains any sensitive or proprietary information, such information may be redacted or removed from the copy given to the U.S. person, provided that the information is not necessary to demonstrate that the transaction is authorized pursuant to paragraph (a) of this section.

(c) Any U.S. person engaging in or facilitating transactions authorized pursuant to this section shall keep a full and accurate record of each such transaction, including a copy of the contract or grant, and such record shall be available for examination for at least five (5) years after the date of the transaction.

(d) No payment pursuant to this section may involve a debit to an account blocked pursuant to this part.

NOTE 1 TO § 538.531. This license does not relieve any persons participating in transactions authorized hereunder from compliance with any other U.S. legal requirements

applicable to the transactions authorized pursuant to paragraph (a) of this section. See, e.g., the Export Administration Regulations (15 CFR parts 730 et seq.).

NOTE 2 TO § 538.531. Paragraph (e) of § 538.212 exempts transactions for the conduct of the official business of the Federal Government or the United Nations by employees thereof from the prohibitions contained in this part.

[72 FR 61516, Oct. 31, 2007]

§ 538.532 Humanitarian transshipments to or from Southern Sudan and Darfur authorized.

The transit or transshipment to or from Southern Sudan and Darfur of goods, technology, or services intended for humanitarian purposes, through any area of Sudan not exempted by paragraph (g)(1) of § 538.212, is authorized.

[72 FR 61517, Oct. 31, 2007]

§ 538.533 Exportation of certain services and software incident to Internet-based communications.

(a) To the extent that such transactions are not exempt from the prohibitions of this part and subject to the restrictions set forth in paragraph (b) of this section, the following transactions are authorized:

(1) The exportation from the United States or by U.S. persons, wherever located, to persons in Sudan of services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, provided that such services are publicly available at no cost to the user.

(2) The exportation from the United States or by U.S. persons, wherever located, to persons in Sudan of software necessary to enable the services described in paragraph (a)(1) of this section, provided that such software is classified as ''EAR99'' under the Export Administration Regulations, 15 CFR parts 730 through 774 (the ''EAR''), is not subject to the EAR, or is classified by the U.S. Department of Commerce (''Commerce'') as mass market software under export control classification number (''ECCN'') 5D992 of the EAR, and provided further that such software is publicly available at no cost to the user.

(b) This section does not authorize:

(1) The direct or indirect exportation of services or software with knowledge or reason to know that such services or software are intended for the Government of Sudan.

(2) The direct or indirect exportation of any goods or technology listed on the Commerce Control List in the EAR, 15 CFR part 774, supplement No. 1 (''CCL''), except for software necessary to enable the services described in paragraph (a)(1) of this section that is classified by Commerce as mass market software under ECCN 5D992 of the EAR.

(3) The direct or indirect exportation of Internet connectivity services or telecommunications transmission facilities (such as satellite links or dedicated lines).

(4) The direct or indirect exportation of web-hosting services that are for purposes other than personal communications (e.g., web-hosting services for commercial endeavors) or of domain name registration services.

(c) Specific licenses may be issued on a case-by-case basis for the exportation of other services and software incident to the sharing of information over the Internet, provided the software is classified as ''EAR99,'' not subject to the EAR, or classified by Commerce as mass market software under ECCN 5D992 of the EAR.

(d) Nothing in this section or in any license issued pursuant to paragraph (c) of this section relieves the exporter from compliance with the export license application requirements of another Federal agency.

[75 FR 10999, Mar. 10, 2010]

Subpart F—Reports

§ 538.601 Records and reports.

For additional provisions relating to records and reports, see subpart C of part 501 of this chapter.

Subpart G—Penalties

§ 538.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'')(50

U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act.

(1) A civil penalty not to exceed the amount set forth in Section 206 of the Act may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under the Act.

NOTE TO PARAGRAPH (a)(1) OF § 538.701: As of June 10, 2008, the Act provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in the Act are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in the Act are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

[63 FR 35810, July 1, 1998, as amended at 70 FR 34063, June 13, 2005; 71 FR 29253, May 22, 2006; 73 FR 32652, June 10, 2008]

§ 538.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of the respondent's right to make a written presentation within the applicable 30-day period set forth in § 538.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within the Director's discretion, the Office of Foreign Assets Control will agree to withhold

issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations with respect to the potential civil monetary penalty claim.

[70 FR 34063, June 13, 2005]

§ 538.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director may grant, at the Director's discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in typewritten form and signed by the respondent or a representative thereof. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice and must identify the Office of Foreign Assets Control identification number listed on the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Failure to respond.* Where OFAC receives no response to a prepenalty notice within the applicable time period set forth in paragraph (a) of this section, a penalty notice generally will be issued, taking into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control's Civil Penalties Division as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (g) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect, unless additional time is granted by the Office of Foreign Assets Control.

(f) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control have been codified in the Appendix to 31 CFR part 501, the Reporting, Procedures and Penalties Regulations.

(g) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

[70 FR 34063, June 13, 2005]

§ 538.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that agency action in federal district court.

[70 FR 34064, June 13, 2005]

§ 538.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 538.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

[63 FR 35810, July 1, 1998, as amended at 68 FR 53658, Sept. 11, 2003]

§ 538.802 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 13067 (3 CFR, 1997 Comp., p. 230), and any further Executive orders relating to the national emergency declared with respect to Sudan in Executive Order 13067, may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 538.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 538.506 and 538.521 have been approved by the Office of Management and Budget (''OMB'') and assigned control number 1505–0169. For approval by OMB under the Paperwork Reduction Act of other information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

APPENDIX A TO PART 538—BULK AGRICULTURAL COMMODITIES

Notes:

1. Appendix A sets forth those agricultural commodities eligible for the bulk agricultural commodity sales licensing procedures in § 538.524.

2. Commodities are identified by their classification numbers in the Harmonized Tariff Schedule of the United States (see 19 U.S.C. 1202) (''HTS'').

HTS Number	Commodity
1001.10	Durum Wheat
1001.90	Other Wheat and Meslin, including seed, Red Spring Wheat, White Winter Wheat, ''Canadian'' Western Red Winter Wheat, Soft White Spring Wheat, and Wheat not elsewhere specified
1101.00	Wheat or Meslin Flour
1006.10	Rice in the husk (paddy or rough)
1006.20	Husked (brown) Rice
1006.30	Semi-milled or wholly milled Rice, whether or not polished or glazed
1006.40	Broken Rice
1102.30	Rice Flour
1103.14	Rice Groats, Meal and Pellets
1002.00	Rye
1003.00	Barley
1004.00	Oats
1007.00	Grain Sorghum
1005.00	Corn (Maize)
0713.31	Dried Beans including *Vigna mungo (L.), Hepper,* and *Vigna radiata (L.) Wilczek*
0713.32	Small red (adzuki) beans
0713.33	Kidney beans, including white pea beans
0713.39	Beans, other
0713.50	Broad beans and horse beans
0713.10	Dried Peas (*Pisum sativum*)
0713.20	Chickpeas (garbanzos)
0713.40	Lentils
0713.90	Dried leguminous vegetables, shelled, not elsewhere specified
1201.00	Soybeans, whether or not broken
2304.00	Soybean cake, meal and pellets
1507.10	Soybean oil, crude
1507.90	Soybean oil, other
1514.10	Rapeseed, colza and mustard oil, crude
1514.90	Rapeseed, colza and mustard oil, other
1515.21	Corn (Maize) oil, crude
1515.29	Corn (Maize) oil, other
1512.21	Cottonseed oil, crude
1512.29	Cottonseed oil, other
1517.90	Cottonseed oil, hydrogenated
1508.10	Peanut (ground-nut) oil, crude
1508.90	Peanut (ground-nut) oil, other
1515.50	Sesame oil
1512.11	Sunflower-seed oil, crude
1512.19	Sunflower-seed oil, other
1212.91	Sugar Beets, fresh, chilled, frozen or dried
1212.92	Sugar Cane, fresh, chilled, frozen or dried
1701.11	Cane Sugar, raw, solid form
1701.12	Beet Sugar, raw, solid form
1701.91	Cane or Beet Sugar, solid form, containing added coloring or flavoring
1701.99	Cane or Beet Sugar, other, not elsewhere specified

[65 FR 41789, Aug. 2, 1999]

PART 539—WEAPONS OF MASS DESTRUCTION TRADE CONTROL REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
539.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

539.201 Prohibited importation of goods, technology, or services.
539.202 Prohibition on import-related transactions.
539.203 Evasions; attempts; conspiracies.
539.204 Exempt transactions.

Subpart C—General Definitions

539.301 Designated foreign person.
539.302 Effective date.
539.303 Entity.
539.304 Entity owned or controlled by a person listed in appendix I to this part.
539.305 General license.
539.306 Goods, technology, or services produced or provided by a designated foreign person.
539.307 Importation into the United States.
539.308 Information or informational materials.
539.309 License.
539.310 Person.
539.311 Specific license.
539.312 United States.
539.313 United States person; U.S. person.

Subpart D—Interpretations

539.401 Reference to amended sections.
539.402 Effect of amendment.
539.403 Transactions incidental to a licensed transaction.
539.404 Transshipments through the United States prohibited.
539.405 Importation of goods or technology from third countries.
539.406 Importation into and release from a bonded warehouse or foreign trade zone.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

539.501 General and specific licensing procedures.
539.502 Effect of license.
539.503 Exclusion from licenses.
539.504 Departments and agencies of the United States Government.

Subpart F—Reports

539.601 Records and reports.

Subpart G—Penalties

539.701 Penalties.
539.702 Prepenalty notice.
539.703 Response to prepenalty notice; informal settlement.
539.704 Penalty imposition or withdrawal.
539.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

539.801 Procedures.
539.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

539.901 Paperwork Reduction Act notice.
APPENDIX I TO PART 539—DESIGNATED FOREIGN PERSONS

AUTHORITY: 3 U.S.C. 301; 22 U.S.C. 2751–2799aa–2; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200.

SOURCE: 64 FR 8716, Feb. 23, 1999, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§539.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the provisions of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 539.201 Prohibited importation of goods, technology, or services.

Except as otherwise authorized, the importation into the United States, on or after the effective date, directly or indirectly, of any goods, technology, or services produced or provided by a designated foreign person, other than information or informational materials, is prohibited.

§ 539.202 Prohibition on import-related transactions.

Except as otherwise authorized, no United States person may finance, act as broker for, transfer, transport, or otherwise participate in the importation into the United States on or after the effective date of any goods, technology, or services produced or provided by a designated foreign person, other than information or informational materials.

§ 539.203 Evasions; attempts; conspiracies.

Any transaction by any United States person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is prohibited.

§ 539.204 Exempt transactions.

(a) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication, which does not involve the transfer of anything of value.

(b) *Information or informational materials.* (1) The prohibitions contained in this part do not apply to the importation from any country, or to the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials as defined in § 539.308, or any transaction directly incident to such importation or exportation.

(2) Paragraph (b)(1) of this section does not exempt from regulation or authorize transactions related to information or informational materials not fully created and in existence at the date of the transaction, or to the substantive or artistic alteration or enhancement of information or informational materials, or to the provision of marketing and business consulting services. Examples of prohibited transactions include, but are not limited to, payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for mass-market magazines and other periodical publications that are widely-circulated); importation into the United States of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and payment of royalties to a designated foreign person with respect to income received for enhancements or alterations made by U.S. persons to informational or informational materials imported from a designated foreign person.

(3) Paragraph (b)(1) of this section does not exempt from regulation or authorize the importation into the United States of or transactions incident to the importation into the United States or leasing of telecommunications transmission facilities (such as satellite links or dedicated lines) for use in the transmission of any data.

(c) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 539.301 Designated foreign person.

The term *designated foreign person* means any person determined by the Secretary of State pursuant to section 4(a) of Executive Order 12938 of November 14, 1994 (59 FR 59099, 3 CFR, 1994 Comp., p. 950), as amended by section

1(a) of Executive Order 13094 of July 28, 1998 (63 FR 40803, July 30, 1998), to be subject to import measures. Designated foreign persons are any persons listed in appendix I to this part and any entities owned or controlled by any person listed in appendix I to this part unless otherwise indicated in appendix I to this part.

§ 539.302 Effective date.

The term *effective date* means the ''effective date'' specified in the relevant FEDERAL REGISTER notice issued by the Department of State identifying a designated foreign person. This date is listed after the name of each designated foreign person in appendix I to this part.

§ 539.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, or other organization.

§ 539.304 Entity owned or controlled by a person listed in appendix I to this part.

The term *entity owned or controlled by a person listed in appendix I to this part* includes any subsidiaries and branches, wherever located, of entities listed in appendix I to this part, any successors to such entities, and any persons acting or purporting to act for or on behalf of any of the foregoing.

§ 539.305 General license.

The term *general license* means any license the terms of which are set forth in this part.

§ 539.306 Goods, technology, or services produced or provided by a designated foreign person.

With respect to the prohibitions in §§ 539.201 and 539.202, the term *goods, technology, or services produced or provided by a designated foreign person* includes but is not limited to the following:

(a) Goods grown, manufactured, extracted, or processed by a designated foreign person;

(b) Technology developed, owned, licensed, or otherwise controlled by a designated foreign person;

(c) Services performed by or on behalf of a designated foreign person, or by a third party under contract, directly or indirectly, to a designated foreign person, regardless of location.

§ 539.307 Importation into the United States.

The term *importation into the United States* means:

(a) With respect to goods or technology, the bringing of any goods or technology into the United States, except that in the case of goods or technology being transported by vessel, *importation into the United States* means the bringing of any goods or technology into the United States with the intent to unlade. See also § 539.404.

(b) With respect to services, the receipt in the United States of services or of the benefit of services wherever such services may be performed. The benefit of services is received in the United States if the services are:

(1) Performed on behalf of or for the benefit of a person located in the United States;

(2) Received by a person located in the United States;

(3) Received by a person located outside the United States on behalf of or for the benefit of an entity organized in the United States; or

(4) Received by an individual temporarily located outside the United States for the purpose of obtaining such services for use in the United States.

(c) The following example illustrates the provisions of paragraph (b) of this section:

Example: An employee of an entity organized in the United States may not, without specific authorization from the Office of Foreign Assets Control, receive from a designated foreign person consulting services for use in the United States.

§ 539.308 Information or informational materials.

(a) For purposes of this part, the term *information or informational materials* includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

(b) To be considered information or informational materials, artworks

must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

§ 539.309 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 539.310 Person.

The term *person* means an individual or entity.

§ 539.311 Specific license.

The term *specific license* means any license not set forth in this part but issued pursuant to this part.

§ 539.312 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 539.313 United States person; U.S. person.

The term *United States person or U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 539.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 539.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 539.403 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect to the licensed transaction is also authorized by the license. Except as specifically authorized by the terms of the license, prohibited transactions involving designated foreign persons not named in the license are not considered incidental to a licensed transaction and therefore remain prohibited.

§ 539.404 Transshipments through the United States prohibited.

(a) The prohibitions in §§ 539.201 and 539.202 apply to the importation into the United States, for transshipment or transit, of goods, technology, or services produced or provided by a designated foreign person that are intended or destined for third countries.

(b) In the case of goods or technology transported by vessel, the prohibitions in §§ 539.201 and 539.202 apply to the unlading in the United States and the intent to unlade in the United States of goods or technology produced or provided by a designated foreign person that is intended or destined for third countries.

§ 539.405 Importation of goods or technology from third countries.

Importation into the United States from third countries of goods or technology is prohibited if undertaken with knowledge or reason to know that those goods contain raw materials or components produced or provided by a designated foreign person or technology produced or provided by a designated foreign person.

§ 539.406 Importation into and release from a bonded warehouse or foreign trade zone.

The prohibitions in §§ 539.201 and 539.202 apply to importation into a

bonded warehouse or a foreign trade zone of the United States.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 539.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[64 FR 8716, Feb. 23, 1999, as amended at 68 FR 53658, Sept. 11, 2003]

§ 539.502 Effect of license.

(a) No license contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control pursuant to this part, authorizes or validates any transaction effected prior to the issuance of the license, unless the prior transaction is specifically authorized in such license.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited by this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part authorizes any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited by this part has the effect of removing from the transaction a prohibition or prohibitions contained in this part, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest that would not otherwise exist under ordinary principles of law in or with respect to any property.

§ 539.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

§ 539.504 Departments and agencies of the United States Government.

(a) Departments and agencies of the United States Government may by written authorization signed by the head of the Department or Agency or his designee provide for:

(1) Procurement contracts necessary to meet U.S. operational military requirements or requirements under defense production agreements; intelligence requirements; sole source suppliers, spare parts, components, routine servicing and maintenance of products for the United States Government; and medical and humanitarian items; and

(2) Performance pursuant to contracts in force as of 12:01 a.m. EDT, July 29, 1998, under appropriate circumstances.

(b) Such written authorization shall:

(1) Include details about the goods, technology, and services which have been approved for importation; the rationale for such approval; and 24-hour-a-day contact information for the approving official or designee for use by the U.S. Customs Service should questions arise about an approved import;

(2) Be in the form of license, regulation, order, directive, or exception;

(3) Include information about the results of prior written consultation with the Under Secretary of State for Arms Control and International Security Affairs (through the Office of Chemical, Biological and Missile Nonproliferation and the Office of the Assistant Legal Adviser for Political-Military Affairs); and

(4) Be provided to U.S. Customs Service officials upon the importation of

any goods or technology covered by an authorization described in paragraph (a) of this section in a form which clearly establishes that the imported goods or technology is covered by the authorization.

Subpart F—Reports

§ 539.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 539.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'') (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act.

(1) A civil penalty not to exceed the amount set forth in Section 206 of the Act may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under the Act.

NOTE TO PARAGRAPH (a)(1) OF § 539.701: As of June 10, 2008, the Act provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in the Act are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in the Act are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

[64 FR 8716, Feb. 23, 1999, as amended at 71 FR 29253, May 22, 2006; 73 FR 32653, June 10, 2008]

§ 539.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall issue to the person concerned a notice of intent to impose a monetary penalty. This prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to make a written presentation within 30 days of the date

of mailing of the notice as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

§ 539.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent shall have 30 days from the date of mailing of the prepenalty notice to make a written response to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of response.* The written response need not be in any particular form, but must contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(c) *Informal settlement.* In addition or as an alternative to a written response to a prepenalty notice issued pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30–day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control.

§ 539.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to a prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any response to a prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition of the monetary penalty to the respondent.

(1) The penalty notice shall inform the respondent that payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice.

(2) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

§ 539.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 539.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions;

rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

[64 FR 8716, Feb. 23, 1999, as amended at 68 FR 53658, Sept. 11, 2003]

§ 539.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 12938 of November 14, 1994 (59 FR 59099, 3 CFR, 1994 Comp., p. 950), as amended by Executive Order 13094 of July 28, 1998 (63 FR 40803, July 30, 1998), and any further Executive orders relating to the national emergency declared in Executive Order 12938 may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 539.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

APPENDIX I TO PART 539—DESIGNATED FOREIGN PERSONS

The following foreign persons have been determined by the Secretary of State to have materially contributed or attempted to contribute materially to the efforts of a foreign country, project, or entity of proliferation concern to use, acquire, design, develop, produce, or stockpile weapons of mass destruction or missiles capable of delivering such weapons, for purposes of section 4(a) of Executive Order 12938, as amended by section 1(a) of Executive Order 13094, and to be subject to import measures authorized in Executive Orders 12938 and 13094. They, and any entities owned or controlled by them, unless indicated otherwise, are designated foreign persons for purposes of this part. The applicable effective date and citation to the FEDERAL REGISTER for each such person is given in brackets after that person's name and identifying information:

1. Baltic State Technical University, including at 1/21, 1–ya Krasnoarmeiskaya Ul., 198005 St. Petersburg, Russia [July 30, 1998; 63 FR 42089, August 6, 1998].
2. Europalace 2000, including at Moscow, Russia [July 30, 1998; 63 FR 42089, August 6, 1998].
3. Glavkosmos, including at 9 Krasnoproletarskaya St., 103030 Moscow, Russia [July 30, 1998; 63 FR 42089, August 6, 1998].
4. Grafit, also known as (''aka'') State Scientific Research Institute of Graphite or NIIGRAFIT, including at 2 Ulitsa Elektrodnaya, 111524 Moscow, Russia [July 30, 1998; 63 FR 42089, August 6, 1998].
5. MOSO Company, including at Moscow, Russia [July 30, 1998; 63 FR 42089, August 6, 1998].
6. D. Mendeleyev University of Chemical Technology of Russia, including at 9 Miusskaya Sq., Moscow 125047, Russia [January 8, 1999; 64 FR 2935, January 19, 1999].
7. Moscow Aviation Institute (MAI), including at 4 Volokolamskoye Shosse, Moscow 125871, Russia [January 8, 1999; 64 FR 2935, January 19, 1999].
8. The Scientific Research and Design Institute of Power Technology, aka NIKIET, Research and Development Institute of Power Engineering [RDIPE], and ENTEK, including at 101000, P.O. Box 788, Moscow, Russia.

[64 FR 8716, Feb. 23, 1999, as amended at 66 FR 57381, Nov. 15, 2001]

PART 540—HIGHLY ENRICHED URANIUM (HEU) AGREEMENT ASSETS CONTROL REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
540.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

540.201 Prohibited transactions involving blocked property.
540.202 Effect of transfers violating the provisions of this part.
540.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

Subpart C—General Definitions

540.301 Blocked account; blocked property.
540.302 Effective date.
540.303 Entity.
540.304 Government of the Russian Federation.
540.305 HEU Agreements.
540.306 Highly Enriched Uranium (HEU).
540.307 Licenses; general and specific.
540.308 Low Enriched Uranium (LEU).
540.309 Natural uranium.
540.310 Person.
540.311 Property; property interest.
540.312 Transfer.
540.313 United States.
540.314 United States person; U.S. person.
540.315 Uranium-235 (U235).
540.316 Uranium enrichment.
540.317 Uranium feed; natural uranium feed.
540.318 Uranium Hexafluoride (UF6).
540.319 U.S. financial institution.

Subpart D—Interpretations

540.401 Reference to amended sections.
540.402 Effect of amendment.
540.403 Termination and acquisition of an interest in blocked property.
540.404 Setoffs prohibited.
540.405 Transactions incidental to a licensed transaction.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

540.500 Licensing procedures.
540.501 Effect of license or authorization.
540.502 Exclusion from licenses.
540.503 Payments and transfers to blocked accounts in U.S. financial institutions.
540.504 Entries in certain accounts for normal service charges authorized.

Subpart F—Reports

540.601 Records and reports.

Subpart G—Penalties

540.701 Penalties.
540.702 Prepenalty notice.
540.703 Response to prepenalty notice; informal settlement.
540.704 Penalty imposition or withdrawal.
540.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

540.801 Procedures.
540.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

540.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13159, 65 FR 39279, 3 CFR, 2000 Comp., p. 277.

SOURCE: 66 FR 38555, July 25, 2001, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 540.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) Nothing contained in these regulations shall relieve a person from any requirement to obtain a license or other authorization from any department or agency of the United States Government in compliance with applicable laws and regulations subject to the jurisdiction of that department or agency, and no license contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 540.201 Prohibited transactions involving blocked property.

(a) Except as otherwise authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, the property or property interests of the Government of the Russian Federation

that are directly related to the implementation of the Highly Enriched Uranium (HEU) Agreements, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any blocked property or interest in blocked property covered by this part.

§ 540.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date (see § 540.302) that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 540.201(a) is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 540.201, unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) The Director of the Office of Foreign Assets Control may, in his discretion, retroactively license a transfer of property that is null and void or unenforceable by virtue of the provisions of this section so that such a transfer shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license or other direction, or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 540.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

§ 540.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations subject to § 540.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section the term blocked interest-bearing account means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates which are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or U.S. Treasury Bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or sub-account, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 540.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) or this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 540.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates which are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 540.201. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales in appropriate cases.

(f) Except as otherwise licensed, authorized or directed by OFAC, funds subject to this section may not be invested, used for collateral or reinvested in a manner which provides immediate financial or economic benefit or access to the Government of the Russian Federation or its entities, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

Subpart C—General Definitions

§ 540.301 Blocked account; blocked property.

The terms blocked account and blocked property shall mean any account or property subject to the prohibition in § 540.201 and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

§ 540.302 Effective date.

The term effective date refers to the effective date of the applicable prohibitions and directives contained in this part which is 12:01 a.m., Eastern Daylight Time, June 22, 2000.

§ 540.303 Entity.

The term entity means a partnership, association, trust, joint venture, corporation, or other organization.

§ 540.304 Government of the Russian Federation.

(a) The term Government of the Russian Federation means the Government of the Russian Federation, any political subdivision, agency, or instrumentality thereof, and any person owned or controlled by, or acting for or on behalf

of, the Government of the Russian Federation.

(b) Any person or entity to the extent such person or entity is or has been, or to the extent that there is reasonable cause to believe that such person or entity is, or has been, since the effective date (see § 540.302), acting or purporting to act directly or indirectly for or on behalf of any of the foregoing.

§ 540.305 HEU Agreements.

The term HEU Agreements means the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993; the Initial Implementing Contract, Contract Number DE-AC01-93NE50067, dated January 14, 1994; and all current and future amendments thereto; as well as the related current and future implementing agreements, memoranda of understanding, protocols, and contracts, including all current and future amendments thereto, to include without limitation the following:

(a) Memorandum of Agreement Between the United States, Acting By and Through the United States Department of State, and the United States Department of Energy and the United States Enrichment Corporation (USEC), for USEC to Serve as the United States Government's Executive Agent under the Agreement Between the United States and the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated April 18, 1997;

(b) Agreement Between the United States Department of Energy and the Ministry of the Russian Federation for Atomic Energy Concerning the Transfer of Source Material to the Russian Federation signed at Washington on March 24, 1999, with Implementing Agreement and Administrative Arrangement, dated March 24, 1999, and related letter agreements; and

(c) UF6 Feed Component Implementing Contract Among Cameco Europe S.A. and Compagnie Général des Matières Nucléaires and Nukem, Inc. and Nukem Nuklear Gmbh and OAO Techsnabexport, and Tenex Contract # 08843672/90100–02D, dated March 24, 1999.

§ 540.306 Highly Enriched Uranium (HEU).

The term highly enriched uranium or HEU means uranium enriched to twenty (20) percent or greater in the isotope U235.

§ 540.307 Licenses; general and specific.

(a) Except as otherwise specified, the term license means any license or authorization contained in or issued pursuant to this part.

(b) The term general license means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term specific license means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 540.307. See § 501.801 of this chapter on licensing procedures.

§ 540.308 Low Enriched Uranium (LEU).

The term low enriched uranium or LEU means uranium enriched to less than twenty (20) percent in the isotope U235.

§ 540.309 Natural uranium.

The term natural uranium means uranium found in nature, with an average concentration of 0.711 percent by weight of the isotope U235.

§ 540.310 Person.

The term person means an individual or entity.

§ 540.311 Property; property interest.

The terms property and property interest include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership, or indebtedness, letters of credit and any documents relating to any

rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks, copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of whatever nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interests therein, present, future, or contingent.

§ 540.312 Transfer.

The term transfer means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 540.313 United States.

The term United States means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 540.314 United States person; U.S. person.

The term United States person or U.S. person means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches, or any person in the United States.

§ 540.315 Uranium-235 (U235).

The term uranium-235 or U235 means the fissile isotope found in natural uranium.

§ 540.316 Uranium enrichment.

The term uranium enrichment means the process of increasing the concentration of the isotope U235 relative to that of the isotope U238.

§ 540.317 Uranium feed; natural uranium feed.

The term uranium feed or natural uranium feed means natural uranium in the form of UF6 suitable for uranium enrichment.

§ 540.318 Uranium Hexafluoride (UF6).

The term uranium hexafluoride or UF6 means a compound of uranium and fluorine.

§ 540.319 U.S. financial institution.

The term U.S. financial institution means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges,

clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 540.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

§ 540.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 540.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from the Government of the Russian Federation, such property shall no longer be deemed to be property in which the Government of the Russian Federation has or has had an interest unless there exists in the property another interest of the Government of the Russian Federation, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to the Government of the Russian Federation, such property shall be deemed to be property in which there exists an interest of the Government of the Russian Federation.

§ 540.404 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 540.201 if effected after the effective date (see § 540.302).

§ 540.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except for any attachment, judgment, decree, lien, execution, garnishment, or other judicial process which has the effect of encumbering the property or interest in property of the Government of the Russian Federation directly related to the implementation of the HEU agreements, or any transaction involving a debit to a blocked account or transfer of blocked property not explicitly authorized within the terms of a license.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 540.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[68 FR 53658, Sept. 11, 2003]

§ 540.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any

transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or licenses specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 540.502 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

§ 540.503 Payments and transfers to blocked accounts in U.S. financial institutions.

Except as otherwise authorized, licensed or directed by the Office of Foreign Assets Control, any payment of funds or transfer of credit in which the Government of the Russian Federation has any interest that is directly related to the implementation of the HEU Agreements and that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may only be made to another blocked account held in the same name. U.S. financial institutions are authorized to engage in routine currency exchange transfers involving funds directly associated with the implementation of the HEU agreements that flow through correspondence accounts in U.S. financial institutions.

NOTE TO § 540.503. Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 501.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 540.504 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held by that financial institution in payment or reimbursement for normal service charges owed to it by the owner of the blocked account.

(b) As used in this section, the term normal service charge shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

Subpart F—Reports

§ 540.601 Records and reports.

For additional provisions relating to required records and reports, see part 501, subpart C, of this chapter.

Subpart G—Penalties

§ 540.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'') (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act.

(1) A civil penalty not to exceed the amount set forth in Section 206 of the Act may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under the Act.

NOTE TO PARAGRAPH (a)(1) OF § 540.701: As of June 10, 2008, the Act provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in the Act are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in the Act are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any materially false, fictitious, or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

[66 FR 38555, July 25, 2001, as amended at 71 FR 29253, May 22, 2006; 73 FR 32653, June 10, 2008]

§ 540.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to make a written presentation within the applicable 30 day period set forth in § 540.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under

terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 540.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30 day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in writing and may be handwritten or typed. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original must also be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response should also set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Default.* If the respondent elects not to submit a written response within the time limit set forth in paragraph (a) of this section, the Office of Foreign Assets Control will conclude that the respondent has decided not to respond to the prepenalty notice. The agency generally will then issue a written penalty notice imposing the penalty proposed in the prepenalty notice.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the

prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Representation*. A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 540.704 Penalty imposition or withdrawal.

(a) *No violation*. If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and the cancellation of the proposed monetary penalty.

(b) *Violation*. (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in a federal district court.

§ 540.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart H—Procedures

§ 540.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart E of part 501 of this chapter.

[66 FR 38555, July 25, 2001, as ameded at 68 FR 53658, Sept. 11, 2003]

§ 540.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13159 of June 21, 2000 (65 FR 39279, June 26, 2000) and any further executive orders relating to the national emergency declared in Executive Order 13159 may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 540.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 541—ZIMBABWE SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
541.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

541.201 Prohibited transactions involving blocked property.
541.202 Effect of transfers violating the provisions of this part.
541.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
541.204 Evasions; attempts; conspiracies.
541.205 Expenses of maintaining blocked property; liquidation of blocked account.
541.206 Exempt transactions.

Subpart C—General Definitions

541.301 Blocked account; blocked property.
541.302 Effective date.
541.303 Entity.
541.304 Information or informational materials.
541.305 Interest.
541.306 Licenses; general and specific.
541.307 Person.
541.308 Property; property interest.
541.309 Transfer.
541.310 United States.
541.311 U.S. financial institution.
541.312 United States person; U.S. person.

Subpart D—Interpretations

541.401 Reference to amended sections.
541.402 Effect of amendment.
541.403 Termination and acquisition of an interest in blocked property.
541.404 Transactions incidental to a licensed transaction authorized.
541.405 Provision of services.
541.406 Offshore transactions.
541.407 Payments from blocked accounts to satisfy obligations prohibited.
541.408 Credit extended and cards issued by U.S. financial institutions.
541.409 Setoffs prohibited.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

541.501 General and specific licensing procedures.
541.502 Effect of license or authorization.
541.503 Exclusion from licenses.
541.504 Payments and transfers to blocked accounts in U.S. financial institutions.
541.505 Entries in certain accounts for normal service charges authorized.
541.506 Investment and reinvestment of certain funds.
541.507 Provision of certain legal services authorized.
541.508 Authorization of emergency medical services.

Subpart F—Reports

541.601 Records and reports.

Subpart G—Penalties

541.701 Penalties.
541.702 Prepenalty notice.
541.703 Response to prepenalty notice; informal settlement.
541.704 Penalty imposition or withdrawal.
541.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

541.801 Procedures.
541.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

541.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13288, 68 FR 11457, 3 CFR, 2003 Comp., p. 186.

SOURCE: 69 FR 45248, July 29, 2004, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 541.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the record keeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 541.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, property or interests in property of the following persons that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13288 of March 6, 2003 (68 FR 11457, March 10, 2003); and

(2) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or acting or purporting to act directly or indirectly for or on behalf of, any person listed in the Annex to Executive Order 13288.

NOTE 1 TO PARAGRAPH (a) OF § 541.201: The names of persons whose property and interests in property are blocked pursuant to paragraph (a) of this section are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[ZIMBABWE].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter.

NOTE 2 TO PARAGRAPH (a) OF § 541.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–ZIMBABWE].''

NOTE 3 TO PARAGRAPH (a) OF § 541.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any person whose property or interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or

agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

[69 FR 45248, July 29, 2004, as amended at 76 FR 38537, June 30, 2011]

§ 541.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 541.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 541.201(a), unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 541.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Except to the extent otherwise provided by law or unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is

null and void with respect to any property in which on or since the effective date there existed an interest of a person whose property or interests in property are blocked pursuant to § 541.201(a).

§ 541.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 541.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 541.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 541.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 541.201(a). However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property or interests in property are blocked pursuant to § 541.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use of blocked funds or other assets as collateral.

§ 541.204 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by any U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

§ 541.205 Expenses of maintaining blocked property; liquidation of blocked account.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted before 12:01 eastern standard time, March 7, 2003,

all expenses incident to the maintenance of physical property blocked pursuant to § 541.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 541.201(a) may, in the discretion of the Director, Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 541.206 Exempt transactions.

(a) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(b) *Information or informational materials.* (1) The importation from any country and the exportation to any country of information or informational materials, as defined in § 541.304, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions of this part.

(2) This section does not exempt from regulation or authorize transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include, but are not limited to, payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for widely-circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and, with respect to information or informational materials imported from persons whose property or interests in property are blocked pursuant to § 541.201(a), payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt from regulation or authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730–774, or to the exportation of goods, technology or software, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person whose property or interests in property are blocked pursuant to § 541.201(a) are prohibited.

(c) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including exportation or importation of accompanied baggage for personal use, maintenance within any country, including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel, including nonscheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 541.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 541.201 held in the name of a person whose property or interests in property are blocked pursuant to § 541.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

§ 541.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person whose property or interests in property are blocked pursuant to § 541.201(a)(1), 12:01 eastern standard time, March 7, 2003;

(b) With respect to a person whose property or interests in property are blocked pursuant to § 541.201(a)(2), the earlier of the date on which either actual notice or constructive notice is received of such person's designation by the Secretary of the Treasury.

§ 541.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 541.304 Information or informational materials.

(a) For purposes of this part, the term *information or informational materials* includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

NOTE TO PARAGRAPH (a) OF § 541.304: To be considered information or informational materials, artworks must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials*, with respect to United States exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the ''EAA''), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 541.305 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (e.g., ''an interest in property'') means an interest of any nature whatsoever, direct or indirect.

§ 541.306 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 541.306: See § 501.801 of this chapter on licensing procedures.

§ 541.307 Person.

The term *person* means an individual or entity.

§ 541.308 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 541.309 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or

alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 541.310 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 541.311 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 541.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 541.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 541.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 541.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 541.201(a), unless

there exists in the property another interest that is blocked pursuant to § 541.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property or interests in property are blocked pursuant to § 541.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 541.404 Transactions incidental to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An incidental transaction, not explicitly authorized within the terms of the license, by or with a person whose property or interests in property are blocked pursuant to § 541.201(a); or

(b) An incidental transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 541.405 Provision of services.

(a) Except as provided in § 541.206, the prohibitions on transactions involving blocked property contained in § 541.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property or interests in property are blocked pursuant to § 541.201(a); or

(2) With respect to property interests subject to § 541.201.

(b) *Example:* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property or interests in property are blocked pursuant to § 541.201(a).

NOTE TO § 541.405: See §§ 541.507 and 541.508 on licensing policy with regard to the provision of, respectively, certain legal or medical services.

§ 541.406 Offshore transactions.

The prohibitions in § 541.201 on transactions involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property that the U.S. person knows, or has reason to know, is held in the name of a person whose property or interests in property are blocked pursuant to § 541.201(a) or in which the U.S. person knows, or has reason to know, a person whose property or interests in property are blocked pursuant to § 541.201(a) has or has had an interest since the effective date.

§ 541.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 541.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized pursuant to this part.

§ 541.408 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 541.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property or interests in property are blocked pursuant to § 541.201(a).

§ 541.409 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 541.201 if effected after the effective date.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 541.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart D, of

this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 541.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 541.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

§ 541.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property or interests in property are blocked pursuant to § 541.201(a) has any interest, that comes within the possession or control of a U.S. financial institution, must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may only be made to another blocked account held in the same name.

NOTE TO § 541.504: Refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 541.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 541.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 541.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 541.203, U.S. financial institutions are

authorized to invest and reinvest assets blocked pursuant to § 541.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount which is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to persons whose property or interests in property are blocked pursuant to § 541.201(a).

§ 541.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property or interests in property are blocked pursuant to § 541.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property or interests in property are blocked pursuant to § 541.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 541.201(a) is prohibited except to the extent otherwise provided by law or unless specifically licensed in accordance with § 541.202(e).

§ 541.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property or interests in property are blocked pursuant to § 541.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 541.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 541.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'') (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act.

(1) A civil penalty not to exceed the amount set forth in Section 206 of the Act may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under the Act.

NOTE TO PARAGRAPH (a)(1) OF § 541.701: As of June 10, 2008, the Act provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in the Act are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in the Act are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

[69 FR 45248, July 29, 2004, as amended at 71 FR 29253, May 22, 2006; 73 FR 32653, June 10, 2008]

§ 541.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of the respondent's right to make a written presentation within the applicable 30 day period set forth in § 541.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 541.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable

30-day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in typewritten form and signed by the respondent or a representative thereof. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Failure to respond.* Where OFAC receives no response to a prepenalty notice within the applicable time period set forth in paragraph (a) of this section, a penalty notice generally will be issued, taking into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written

position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 541.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

§ 541.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart H—Procedures

§ 541.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart D, of this chapter.

§ 541.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13288 of March 6, 2003 (68 FR 11457, March 10, 2003), and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 541.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to record keeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 542—SYRIAN SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
542.101 Relation of this part to other laws and regulations.
542.102 Relation of this part to part 596 of this chapter.

Subpart B—Prohibitions

542.201 Prohibited transactions involving blocked property.
542.202 Effect of transfers violating the provisions of this part.
542.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
542.204 Expenses of maintaining blocked property; liquidation of blocked property.
542.205 Evasions; attempts; conspiracies.
542.206 Exempt transactions.

Subpart C—General Definitions

542.301 Blocked account; blocked property.
542.302 Effective date.
542.303 Entity.
542.304 Information or informational materials.
542.305 Interest.
542.306 Licenses; general and specific.
542.307 Person.
542.308 Property; property interest.
542.309 Transfer.
542.310 United States.
542.311 U.S. financial institution.
542.312 United States person; U.S. person.

Subpart D—Interpretations

542.401 Reference to amended sections.
542.402 Effect of amendment.
542.403 Termination and acquisition of an interest in blocked property.
542.404 Transactions incidental to a licensed transaction.
542.405 Provision of services.
542.406 Offshore transactions.
542.407 Payments from blocked accounts to satisfy obligations prohibited.
542.408 Charitable contributions.
542.409 Credit extended and cards issued by U.S. financial institutions.
542.410 Setoffs prohibited.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

542.501 General and specific licensing procedures.
542.502 Effect of license or authorization.
542.503 Exclusion from licenses.
542.504 Payments and transfers to blocked accounts in U.S. financial institutions.
542.505 Entries in certain accounts for normal service charges authorized.
542.506 Investment and reinvestment of certain funds.
542.507 Provision of certain legal services authorized.
542.508 Authorization of emergency medical services.

Subpart F—Reports

542.601 Records and reports.

Subpart G—Penalties

542.701 Penalties.
542.702 Prepenalty notice.
542.703 Response to prepenalty notice; informal settlement.
542.704 Penalty imposition or withdrawal.
542.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

542.801 Procedures.
542.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

542.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168.

SOURCE: 70 FR 17203, Apr. 5, 2005, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 542.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

§ 542.102 Relation of this part to part 596 of this chapter.

For the purposes of the Terrorism List Government Sanctions Regulations set forth in part 596 of this chapter, the Government of Syria in its entirety is not subject to the regulations set forth in this part. Consequently, 31 CFR 596.503 does not apply to financial transactions with the Government of Syria, while 31 CFR 596.504 and 596.505 continue to apply.

Subpart B—Prohibitions

§ 542.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, all property and interests in property of the following persons that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) [Reserved]

(2) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To be or to have been directing or otherwise significantly contributing to the Government of Syria's provision of safe haven to or other support for any person whose property or interests in property are blocked under United States law for terrorism-related reasons, including, but not limited to, Hamas, Hizballah, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine, the Popular Front for the Liberation of Palestine-General Command, and any persons designated pursuant to Executive Order 13224 of September 23, 2001;

(ii) To be or to have been directing or otherwise significantly contributing to the Government of Syria's military or security presence in Lebanon;

(iii) To be or to have been directing or otherwise significantly contributing to the Government of Syria's pursuit of the development and production of chemical, biological, or nuclear weapons and medium- and long-range surface-to-surface missiles;

(iv) To be or to have been directing or otherwise significantly contributing to any steps taken by the Government of Syria to undermine United States and international efforts with respect to the stabilization and reconstruction of Iraq; or

(v) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property or interests in property are blocked pursuant to this section.

NOTE 1 TO PARAGRAPH (a) OF § 542.201: The names of persons whose property and interests in property are blocked pursuant to paragraph (a) of this section are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SYRIA].'' The SDN List is accessible through the following page on the Office of

Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter.

NOTE 2 TO PARAGRAPH (a) OF § 542.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–SYRIA].''

NOTE 3 TO PARAGRAPH (a) OF § 542.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The blocking of property and interests in property pursuant to § 542.201(a) includes, but is not limited to, the prohibition of:

(1) The making of any contribution of funds, goods, or services by, to, or for the benefit of any person whose property or interests in property are blocked pursuant to this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any such person.

(c) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any person whose property or interests in property are blocked pursuant to § 542.201(a) is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

[70 FR 17203, Apr. 5, 2005, as amended at 76 FR 38357, June 30, 2011]

§ 542.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 542.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in, or right, remedy, power, or privilege with respect to, such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 542.201(a), unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of

this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 542.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Except to the extent otherwise provided by law or unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property or interests in property are blocked pursuant to § 542.201(a).

§ 542.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations subject to § 542.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury Bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 542.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 542.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 542.201(a). However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property or interests in property are blocked pursuant to § 542.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use of blocked funds or other assets as collateral.

NOTE TO § 542.203: See § 542.506 regarding investment and reinvestment of certain funds.

§ 542.204 Expenses of maintaining blocked property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted before 12:01 a.m., eastern daylight time, May 12, 2004, all expenses incident to the maintenance of physical property blocked pursuant to § 542.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 542.201(a) may, in the discretion of the Director, Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 542.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by any U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is prohibited.

§ 542.206 Exempt transactions.

(a) *Personal communications*. The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(b) *Information or informational materials*. (1) The importation from any country and the exportation to any country of information or informational materials, as defined in § 542.304, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions of this part.

(2) This section does not exempt from regulation or authorize transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include, but are not limited to, payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for widely-circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and, with respect to information or informational materials imported from persons whose property or interests in property are blocked pursuant to § 542.201(a), payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt from regulation or authorize transactions incident to the exportation of software subject to the Export Administration

Regulations, 15 CFR parts 730 through 799, or to the exportation of goods, technology or software, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person whose property or interests in property are blocked pursuant to § 542.201(a) are prohibited.

(c) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including exportation or importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 542.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 542.201 held in the name of a person whose property or interests in property are blocked pursuant to § 542.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

§ 542.302 Effective date.

With respect to a person whose property or interests in property are blocked pursuant to a designation under § 542.201(a), the effective date is the earlier of the date on which either actual notice or constructive notice is received of such person's designation.

§ 542.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 542.304 Information or informational materials.

(a) For purposes of this part, the term *information or informational materials* includes, but is not limited to publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

NOTE TO PARAGRAPH (a) OF § 542.304. To be considered information or informational materials, artworks must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials*, with respect to United States exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the ''EAA''), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 542.305 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (e.g., ''an interest in property'') means an interest of any nature whatsoever, direct or indirect.

§ 542.306 Licenses; general and specific.

(a) Except as otherwise specified, the term license means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 542.306: See § 501.801 of this chapter on licensing procedures.

§ 542.307 Person.

The term person means an individual or entity.

§ 542.308 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 542.309 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 542.310 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 542.311 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent, including but not limited to: Depository institutions; banks; savings banks; trust companies; securities brokers and dealers; commodity futures and options brokers and dealers; forward contract and foreign exchange merchants; securities and commodities exchanges; clearing corporations; investment companies; employee benefit plans; and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 542.312 United States person; U.S. person.

The term *United States person* or U.S. person means any United States citizen, permanent resident alien, entity

organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 542.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 542.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 542.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 542.201(a), unless there exists in the property another interest that is blocked pursuant to § 542.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property or interests in property are blocked pursuant to § 542.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 542.404 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An incidental transaction, not explicitly authorized within the terms of the license, by or with a person whose property or interests in property are blocked pursuant to § 542.201(a); or

(b) An incidental transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 542.405 Provision of services.

(a) Except as provided in § 542.206, the prohibitions on transactions involving blocked property contained in § 542.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property or interests in property are blocked pursuant to § 542.201(a); or

(2) With respect to property interests subject to § 542.201.

(b) *Example:* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property or interests in property are blocked pursuant to § 542.201(a).

NOTE TO § 542.405: See §§ 542.507 and 542.508, respectively, on licensing policy with regard to the provision of certain legal or medical services.

§ 542.406 Offshore transactions.

The prohibitions in § 542.201 on transactions involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property that the U.S. person knows, or has reason to know, is held in the name of a person

whose property or interests in property are blocked pursuant to § 542.201(a) or in which the U.S. person knows, or has reason to know, a person whose property or interests in property are blocked pursuant to § 542.201(a) has or has had an interest since the effective date.

§ 542.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 542.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized pursuant to this part.

§ 542.408 Charitable contributions.

Unless otherwise specifically authorized by the Office of Foreign Assets Control by or pursuant to this part, no charitable contribution or donation of funds, goods, services, or technology, including those to relieve human suffering, such as food, clothing or medicine, may be made by, to, or for the benefit of a person whose property or interests in property are blocked pursuant to § 542.201(a). For purposes of this part, a contribution or donation is made by, to, or for the benefit of a person whose property or interests in property are blocked pursuant to § 542.201(a) if made by, to, or in the name of such a person; if made by, to, or in the name of an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions or donations by, to, or for such a person.

§ 542.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 542.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property or interests in property are blocked pursuant to § 542.201(a).

§ 542.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 542.201 if effected after the effective date.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 542.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 542.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such licenses or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which

would not otherwise exist under ordinary principles of law.

§ 542.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

§ 542.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property or interests in property are blocked pursuant to § 542.201(a) has any interest, that comes within the possession or control of a U.S. financial institution, must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may only be made to another blocked account held in the same name.

NOTE TO § 542.504. Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 542.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 542.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term normal service charge shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 542.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 542.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 542.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount which is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to persons whose property or interests in property are blocked pursuant to § 542.201(a).

§ 542.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property or interests in property are blocked pursuant to § 542.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling

is not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any Federal or State agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property or interests in property are blocked pursuant to § 542.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 542.201(a) is prohibited unless specifically licensed in accordance with § 542.202(e).

§ 542.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property or interests in property are blocked pursuant to § 542.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 542.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 542.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'') (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act.

(1) A civil penalty not to exceed the amount set forth in Section 206 of the Act may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under the Act.

NOTE TO PARAGRAPH (a)(1) OF § 542.701: As of June 10, 2008, the Act provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in the Act are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in the Act are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any

false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

[70 FR 17203, Apr. 5, 2005, as amended at 71 FR 29253, May 22, 2006; 73 FR 32653, June 10, 2008]

§ 542.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further civil proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of the respondent's right to make a written presentation within the applicable 30 day period set forth in § 542.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director of the Office of Foreign Assets Control grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 542.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director of the Office of Foreign Assets Control may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a Federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Director of the Office of Foreign Assets Control,

only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in handwritten or typed form and signed by the respondent or a representative thereof. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice and must include the Office of Foreign Assets Control identification number listed on the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Failure to respond.* Where the Office of Foreign Assets Control receives no response to a prepenalty notice within the applicable time period set forth in paragraph (a) of this section, a penalty notice generally will be issued, taking into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 542.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of

the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in Federal District Court.

§ 542.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal District Court.

Subpart H—Procedures

§ 542.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 542.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13338 of May 11, 2004 (69 FR 26751, May 13, 2004), and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 542.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 543—CôTE D'IVOIRE SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

543.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

543.201 Prohibited transactions involving blocked property.
543.202 Effect of transfers violating the provisions of this part.
543.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
543.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
543.205 Evasions; attempts; conspiracies.

Subpart C—General Definitions

543.301 Arms or any related materiel.
543.302 Blocked account; blocked property.
543.303 Effective date.
543.304 Entity.
543.305 Interest.
543.306 Licenses; general and specific.
543.307 Person.
543.308 Property; property interest.
543.309 Transfer.
543.310 United States.
543.311 U.S. financial institution.
543.312 United States person; U.S. person.

Subpart D—Interpretations

543.401 Reference to amended sections.
543.402 Effect of amendment.
543.403 Termination and acquisition of an interest in blocked property.
543.404 Transactions ordinarily incident to a licensed transaction.
543.405 Provision of services.
543.406 Offshore transactions.
543.407 Payments from blocked accounts to satisfy obligations prohibited.
543.408 Charitable contributions.
543.409 Credit extended and cards issued by U.S. financial institutions.
543.410 Setoffs prohibited.
543.411 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

543.501 General and specific licensing procedures.
543.502 Effect of license or authorization.
543.503 Exclusion from licenses.
543.504 Payments and transfers to blocked accounts in U.S. financial institutions.
543.505 Entries in certain accounts for normal service charges authorized.
543.506 Investment and reinvestment of certain funds.
543.507 Provision of certain legal services authorized.
543.508 Authorization of emergency medical services.

Subpart F—Reports

543.601 Records and reports.

Subpart G—Penalties

543.701 Penalties.
543.702 Pre-Penalty Notice; settlement.
543.703 Penalty imposition.
543.704 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

543.801 Procedures.
543.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

543.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13396, 71 FR 7389, 3 CFR, 2006 Comp., p. 209.

SOURCE: 74 FR 16764, Apr. 13, 2009, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 543.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 543.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13396 of February 7, 2006 (71 FR 7389, February 10, 2006); and

(2) Any person determined by the Secretary of the Treasury, after consultation with the Secretary of State:

(i) To constitute a threat to the peace and national reconciliation process in Côte d'Ivoire, such as by blocking the implementation of the Linas-Marcoussis Agreement of January 24, 2003, the Accra III Agreement of July 30, 2004, and the Pretoria Agreement of April 6, 2005;

(ii) To be responsible for serious violations of international law in Côte d'Ivoire;

(iii) To have directly or indirectly supplied, sold, or transferred to Côte d'Ivoire arms or any related materiel or any assistance, advice, or training related to military activities;

(iv) To have publicly incited violence and hatred contributing to the conflict in Côte d'Ivoire;

(v) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in paragraphs (a)(2)(i) through (a)(2)(iv) of this section or any person whose property or interests in property are blocked pursuant to this paragraph (a); or

(vi) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this paragraph (a).

NOTE 1 TO PARAGRAPH (a) OF § 543.201: The names of persons listed in or designated pursuant to Executive Order 13396, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[COTED].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 543.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

NOTE 2 TO PARAGRAPH (a) OF § 543.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–COTED].''

NOTE 3 TO PARAGRAPH (a) OF § 543.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, prohibitions on the following transactions when engaged in by a United States person or within the United States:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence

thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

[74 FR 16764, Apr. 13, 2009, as amended at 76 FR 38537, June 30, 2011]

§ 543.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 543.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 543.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13396, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 543.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 543.201(a).

§ 543.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 543.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 543.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 543.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 543.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 543.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 543.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 543.201(a) may, in the discretion of the Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 543.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

Subpart C—General Definitions

§ 543.301 Arms or any related materiel.

The term *arms or any related materiel* means arms or related materiel of all types, including military aircraft and equipment, but excludes:

(a) Supplies and technical assistance intended solely for the support of or use by the United Nations Operation in Côte d'Ivoire and forces of France who support them;

(b) Supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training;

(c) Supplies of protective clothing, including flak jackets and military helmets, temporarily exported to Côte d'Ivoire for use by United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only;

(d) Supplies temporarily exported to Côte d'Ivoire to the forces of a country that is taking action solely and directly to facilitate the evacuation of its nationals and those for whom it has consular responsibility in Côte d'Ivoire; and

(e) Supplies of arms and related materiel and technical training and assistance intended solely for support of or use in the process of restructuring defense and security forces pursuant to paragraph 3, subparagraph (f) of the Linas-Marcoussis Agreement.

§ 543.302 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 543.201 held in the name of a person whose property and interests in property are blocked pursuant to § 543.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

NOTE TO § 543.302: See § 543.411 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 543.201(a).

§ 543.303 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person whose property and interests in property are blocked pursuant to § 543.201(a)(1), 12:01 a.m. eastern standard time, February 8, 2006;

(b) With respect to a person whose property and interests in property are blocked pursuant to § 543.201(a)(2), the earlier of the date of actual or constructive notice of such person's designation.

§ 543.304 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 543.305 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (e.g., ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 543.306 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 543.306: See § 501.801 of this chapter on licensing procedures.

§ 543.307 Person.

The term *person* means an individual or entity.

§ 543.308 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 543.309 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 543.310 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 543.311 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those

branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 543.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 543.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 543.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 543.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 543.201(a), unless there exists in the property another interest that is blocked pursuant to § 543.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 543.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 543.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 543.201(a); or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(c) *Example.* A license authorizing Company A, whose property and interests in property are blocked pursuant to § 543.201(a), to complete a securities sale also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, broker, transfer agents, banks, etc., provided that such other parties are not themselves persons whose property and interests in property are blocked pursuant to § 543.201(a).

§ 543.405 Provision of services.

(a) The prohibitions on transactions involving blocked property contained in § 543.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 543.201(a); or

(2) With respect to property interests subject to § 543.201.

(b) *Example*. U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 543.201(a).

NOTE TO § 543.405: See §§ 543.507 and 543.508 on licensing policy with regard to the provision of certain legal and medical services.

§ 543.406 Offshore transactions.

The prohibitions in § 543.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of a person whose property and interests in property are blocked pursuant to § 543.201(a), or property in which a person whose property and interests in property are blocked pursuant to § 543.201(a) has or has had an interest since the effective date.

§ 543.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 543.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 543.408 Charitable contributions.

Unless specifically authorized by the Office of Foreign Assets Control pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing or medicine, may be made by, to, or for the benefit of a person whose property and interests in property are blocked pursuant to § 543.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of a person whose property and interests in property are blocked pursuant to § 543.201(a) if made by, to, or in the name of such a person; if made by, to, or in the name of an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person.

§ 543.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 543.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 543.201(a).

§ 543.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 543.201 if effected after the effective date.

§ 543.411 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 543.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 543.201(a), regardless of whether the entity itself is listed in the Annex to Executive Order 13396 or designated pursuant to § 543.201(a).

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 543.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 543.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property that would not otherwise exist under ordinary principles of law.

§ 543.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 543.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 543.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

NOTE TO § 543.504: See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 543.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 543.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 543.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 543.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 543.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to a person whose property and interests in property are blocked pursuant to § 543.201(a).

§ 543.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 543.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 543.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 543.201(a) is prohibited unless specifically licensed in accordance with § 543.202(e).

§ 543.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 543.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 543.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 543.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (''IEEPA''), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation

of any license, order, regulation, or prohibition issued under IEEPA.

NOTE TO PARAGRAPH (a)(1) OF § 543.701: As of the date of publication in the FEDERAL REGISTER of the final rule adding this part to 31 CFR chapter V (April 13, 2009), IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (''UNPA''), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.

(d) Violations involving transactions described at section 203(b)(1),(3), and (4) of IEEPA shall be subject only to the penalties set forth in paragraph (c) of this section.

(e) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry; shall be fined under title 18, United States Code, imprisoned not more than five years, or both.

(f) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 543.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see Appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, see appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to

submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in Appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 543.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a written Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see appendix A to part 501 of this chapter.

The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

§ 543.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart H—Procedures

§ 543.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 543.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13396 of February 7, 2006 (71 FR 7389, February 10, 2006), and any further Executive orders relating to the national emergency declared in Executive Order 13396, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 543.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 544—WEAPONS OF MASS DESTRUCTION PROLIFERATORS SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
544.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

544.201 Prohibited transactions involving blocked property.
544.202 Effect of transfers violating the provisions of this part.
544.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
544.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
544.205 Evasions; attempts; conspiracies.
544.206 Exempt transactions.

Subpart C—General Definitions

544.301 Blocked account; blocked property.
544.302 Effective date.
544.303 Entity.
544.304 Information or informational materials.
544.305 Interest.
544.306 Licenses; general and specific.
544.307 Person.
544.308 Property; property interest.
544.309 Transfer.
544.310 United States.
544.311 U.S. financial institution.
544.312 United States person; U.S. person.

Subpart D—Interpretations

544.401 Reference to amended sections.
544.402 Effect of amendment.
544.403 Termination and acquisition of an interest in blocked property.
544.404 Transactions ordinarily incident to a licensed transaction.
544.405 Provision of services.
544.406 Offshore transactions.
544.407 Payments from blocked accounts to satisfy obligations prohibited.
544.408 Charitable contributions.
544.409 Credit extended and cards issued by U.S. financial institutions.
544.410 Setoffs prohibited.
544.411 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

544.501 General and specific licensing procedures.
544.502 Effect of license or authorization.
544.503 Exclusion from licenses.
544.504 Payments and transfers to blocked accounts in U.S. financial institutions.
544.505 Entries in certain accounts for normal service charges authorized.
544.506 Investment and reinvestment of certain funds.
544.507 Provision of certain legal services authorized.
544.508 Authorization of emergency medical services.

Subpart F—Reports

544.601 Records and reports.

Subpart G—Penalties

544.701 Penalties.
544.702 Pre-Penalty Notice; settlement.
544.703 Penalty imposition.
544.704 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

544.801 Procedures.
544.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

544.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Public Law 110–96, 121 Stat. 1011; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13382, 70 FR 38567, 3 CFR, 2005 Comp., p. 170.

SOURCE: 74 FR 16773, Apr. 13, 2009, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 544.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

NOTE TO § 544.101: The sanctions implemented pursuant to the Weapons of Mass Destruction Trade Control Regulations set forth in part 539 of this chapter are separate and distinct from the sanctions implemented pursuant to this part, even though both programs have been imposed pursuant to the same declaration of national emergency in Executive Order 12938 of November 14, 1994. Accordingly, a ''designated foreign person'' whose goods, technology, or services are prohibited from being imported into the United States under part 539 is not necessarily a person whose property and interests in property are blocked pursuant to § 544.201(a). Consequently, the property and interests in property of a ''designated foreign person'' under part 539 are not blocked, unless the ''designated foreign person'' has separately become a person whose property and interests in property are blocked pursuant to § 544.201(a) or any other part of 31 CFR chapter V. Note, however, that the importation into the United States of goods, technology, or services (other than information or informational materials) produced or provided by a ''designated foreign person'' under part 539 is prohibited by that part.

Subpart B—Prohibitions

§ 544.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13382 of June 28, 2005 (70 FR 38567, July 1, 2005);

(2) Any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of

weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern;

(3) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in paragraph (a)(2) of this section, or any person whose property and interests in property are blocked pursuant to this section; and

(4) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this section.

NOTE 1 TO PARAGRAPH (a) OF § 544.201: The names of persons listed in or designated pursuant to Executive Order 13382, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[NPWMD].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 544.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

NOTE 2 TO PARAGRAPH (a) OF § 544.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–NPWMD].''

NOTE 3 TO PARAGRAPH (a) OF § 544.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, prohibitions on the following transactions when engaged in by a United States person or within the United States:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

[74 FR 16773, Apr. 13, 2009, as amended at 76 FR 38537, June 30, 2011]

§ 544.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 544.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 544.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13382, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 544.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 544.201(a).

§ 544.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 544.201(a) shall hold

or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 544.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 544.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 544.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 544.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 544.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 544.201(a) may, in the discretion of the Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 544.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

§ 544.206 Exempt transactions.

(a) *Personal communications*. The prohibitions contained in this part do not

apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(b) *Information or informational materials.* (1) The importation from any country and the exportation to any country of any information or informational materials, as defined in § 544.304, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions of this part.

(2) This section does not exempt from regulation or authorize transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include, but are not limited to, payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and, with respect to information or informational materials imported from persons whose property and interests in property are blocked pursuant to § 544.201(a), payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt or authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730–774, or to the exportation of goods, technology, or software for use in the transmission of any data, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person whose property and interests in property are blocked pursuant to § 544.201(a) are prohibited.

(c) *Travel.* The prohibitions contained in this part do not apply to any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 544.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 544.201 held in the name of a person whose property and interests in property are blocked pursuant to § 544.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

NOTE TO § 544.301: See § 544.411 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 544.201(a).

§ 544.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person whose property and interests in property are blocked pursuant to § 544.201(a)(1), 12:01 a.m. eastern daylight time, June 29, 2005; and

(b) With respect to a person whose property and interests in property are blocked pursuant to § 544.201(a)(2), (a)(3), or (a)(4), the earlier of the date of actual or constructive notice of such person's designation.

§ 544.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 544.304 Information or informational materials.

(a) For purposes of this part, the term *information or informational materials* includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD–ROMs, artworks, and news wire feeds.

NOTE TO PARAGRAPH (a) OF § 544.304: To be considered information or informational materials, artworks must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials*, with respect to United States exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the ''EAA''), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 544.305 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (e.g., ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 544.306 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 544.306: See § 501.801 of this chapter on licensing procedures.

§ 544.307 Person.

The term *person* means an individual or entity.

§ 544.308 Property; property interest.

The terms *property and property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 544.309 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of

appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 544.310 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 544.311 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 544.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 544.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 544.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 544.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 544.201(a), unless there exists in the property another interest that is blocked pursuant to § 544.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 544.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 544.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 544.201(a); or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(c) *Example.* A license authorizing Company A, whose property and interests in property are blocked pursuant to § 544.201(a), to complete a securities sale also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, broker, transfer agents, banks, etc., provided that such other parties are not themselves persons whose property and interests in property are blocked pursuant to § 544.201(a).

§ 544.405 Provision of services.

(a) Except as provided in § 544.206, the prohibitions on transactions involving blocked property contained in § 544.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 544.201(a); or

(2) With respect to property interests subject to § 544.201.

(b) *Example:* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 544.201(a).

NOTE TO § 544.405: See §§ 544.507 and 544.508 on licensing policy with regard to the provision of certain legal and medical services.

§ 544.406 Offshore transactions.

The prohibitions in § 544.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of a person whose property and interests in property are blocked pursuant to § 544.201(a), or property in which a person whose property and interests in property are blocked pursuant to § 544.201(a) has or has had an interest since the effective date.

§ 544.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 544.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 544.408 Charitable contributions.

Unless specifically authorized by the Office of Foreign Assets Control pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing, or medicine, may be made by, to, or for the benefit of a person whose property and interests in property are blocked pursuant to § 544.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of a person whose property and interests in property are blocked pursuant to § 544.201(a) if made by, to, or in the name of such a person; if made by, to, or in the name of an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person.

§ 544.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 544.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 544.201(a).

§ 544.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 544.201 if effected after the effective date.

§ 544.411 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 544.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 544.201(a), regardless of whether the entity itself is listed in the Annex to Executive Order 13382 or designated pursuant to § 544.201(a).

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 544.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 544.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property that would not otherwise exist under ordinary principles of law.

§ 544.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 544.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 544.201(a) has any

interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

NOTE TO § 544.504: See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 544.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 544.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 544.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 544.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 544.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to persons whose property and interests in property are blocked pursuant to § 544.201(a).

§ 544.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 544.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 544.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien,

judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 544.201(a) is prohibited unless specifically licensed in accordance with § 544.202(e).

§ 544.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 544.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 544.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 544.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (''IEEPA''), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

NOTE TO PARAGRAPH (a)(1) OF § 544.701: As of the date of publication in the FEDERAL REGISTER of the final rule adding this part to 31 CFR chapter V (April 13, 2009), IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under title 18, United States Code, imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 544.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged

violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see Appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, see Appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 544.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see Appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

§ 544.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart H—Procedures

§ 544.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 544.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13382 of June 28, 2005 (70 FR 38567, July 1, 2005), and any further Executive Orders relating to the national emergency declared in Executive Order 12938 of November 14, 1994, as expanded by Executive Order 13094 of July 28, 1998, and with respect to which additional steps were taken in Executive Order 13382 of June 28, 2005, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 544.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 546—DARFUR SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

546.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

546.201 Prohibited transactions involving blocked property.
546.202 Effect of transfers violating the provisions of this part.
546.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
546.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
546.205 Evasions; attempts; conspiracies.

Subpart C—General Definitions

546.301 Arms or any related materiel.
546.302 Blocked account; blocked property.
546.303 Effective date.
546.304 Entity.
546.305 Interest.
546.306 Licenses; general and specific.
546.307 Person.
546.308 Property; property interest.
546.309 Transfer.
546.310 United States.
546.311 U.S. financial institution.
546.312 United States person; U.S. person.

Subpart D—Interpretations

546.401 Reference to amended sections.
546.402 Effect of amendment.
546.403 Termination and acquisition of an interest in blocked property.
546.404 Transactions ordinarily incident to a licensed transaction.
546.405 Provision of services.
546.406 Offshore transactions.
546.407 Payments from blocked accounts to satisfy obligations prohibited.
546.408 Charitable contributions.
546.409 Credit extended and cards issued by U.S. financial institutions.
546.410 Setoffs prohibited.

546.411 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

546.501 General and specific licensing procedures.
546.502 Effect of license or authorization.
546.503 Exclusion from licenses.
546.504 Payments and transfers to blocked accounts in U.S. financial institutions.
546.505 Entries in certain accounts for normal service charges authorized.
546.506 Investment and reinvestment of certain funds.
546.507 Provision of certain legal services authorized.
546.508 Authorization of emergency medical services.

Subpart F—Reports

546.601 Records and reports.

Subpart G—Penalties

546.701 Penalties.
546.702 Pre-Penalty Notice; settlement.
546.703 Penalty imposition.
546.704 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

546.801 Procedures.
546.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

546.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13400, 71 FR 25483, 3 CFR, 2006 Comp., p. 220.

SOURCE: 74 FR 25432, May 28, 2009, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 546.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 546.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13400 of April 26, 2006; and

(2) Any person determined by the Secretary of the Treasury, after consultation with the Secretary of State:

(i) To have constituted a threat to the peace process in Darfur;

(ii) To have constituted a threat to stability in Darfur and the region;

(iii) To be responsible for conduct related to the conflict in Darfur that violates international law;

(iv) To be responsible for heinous conduct with respect to human life or limb related to the conflict in Darfur;

(v) To have directly or indirectly supplied, sold, or transferred arms or any

related materiel, or any assistance, advice, or training related to military activities to:

(A) The Government of Sudan;

(B) The Sudan Liberation Movement/Army;

(C) The Justice and Equality Movement;

(D) The Janjaweed; or

(E) Any person (other than a person listed in paragraph (a)(2)(v)(A) through (a)(2)(v)(D) of this section) operating in the states of North Darfur, South Darfur, or West Darfur that is a belligerent, a nongovernmental entity, or an individual;

(vi) To be responsible for offensive military overflights in and over the Darfur region;

(vii) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in paragraphs (a)(2)(i) through (a)(2)(vi) of this section or any person whose property and interests in property are blocked pursuant to this paragraph (a); or

(viii) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this paragraph (a).

NOTE 1 TO PARAGRAPH (a) OF § 546.201: The names of persons listed in or designated pursuant to Executive Order 13400, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[DARFUR].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 546.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

NOTE 2 TO PARAGRAPH (a) OF § 546.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–DARFUR].''

NOTE 3 TO PARAGRAPH (a) OF § 546.201: Sections 501.806 and 501.807 of this chapter V describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, prohibitions on the following transactions when engaged in by a United States person or within the United States:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

[74 FR 25432, May 28, 2009, as amended at 76 FR 38538, June 30, 2011]

§ 546.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 546.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 546.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13400, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 546.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 546.201(a).

§ 546.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 546.201(a) shall hold

or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 546.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 546.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 546.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 546.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 546.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 546.201(a) may, in the discretion of the Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 546.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

Subpart C—General Definitions

§ 546.301 Arms or any related materiel.

The term *arms or any related materiel* shall mean arms or related materiel of all types, military aircraft, and equipment, but excludes:

(a) Supplies and technical assistance, including training, intended solely for use in authorized monitoring, verification, or peace support operations, including such operations led by regional organizations;

(b) Supplies of non-lethal military equipment intended solely for humanitarian use, human rights monitoring use, or protective use, and related technical assistance, including training;

(c) Supplies of protective clothing, including flak jackets and military helmets, for use by United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only;

(d) Assistance and supplies provided in support of implementation of the Comprehensive Peace Agreement signed January 9, 2005, by the Government of Sudan and the People's Liberation Movement/Army; and

(e) Other movements of military equipment and supplies into the Darfur region by the United States or that are permitted by a rule or decision of the Secretary of State, after consultation with the Secretary of the Treasury.

§ 546.302 Blocked account; blocked property.

The terms *blocked account* and blocked property shall mean any account or property subject to the prohibitions in § 546.201 held in the name of a person whose property and interests in property are blocked pursuant to § 546.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

NOTE TO § 546.302: See § 546.411 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 546.201(a).

§ 546.303 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person whose property and interests in property are blocked pursuant to § 546.201(a)(1), 12:01 a.m. eastern daylight time, April 27, 2006;

(b) With respect to a person whose property and interests in property are blocked pursuant to § 546.201(a)(2), the earlier of the date of actual or constructive notice of such person's designation.

§ 546.304 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 546.305 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (e.g., ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 546.306 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 546.306: See § 501.801 of this chapter on licensing procedures.

§ 546.307 Person.

The term *person* means an individual or entity.

§ 546.308 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank

deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 546.309 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 546.310 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 546.311 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 546.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 546.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 546.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 546.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 546.201(a), unless there exists in the property another interest that is blocked pursuant to § 546.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 546.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 546.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 546.201(a); or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(c) *Example.* A license authorizing Company A, whose property and interests in property are blocked pursuant to § 546.201(a), to complete a securities sale also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, broker, transfer agents, banks, etc., provided that such other parties are not themselves persons whose property and interests in property are blocked pursuant to § 546.201(a).

§ 546.405 Provision of services.

(a) The prohibitions on transactions involving blocked property contained in § 546.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 546.201(a); or

(2) With respect to property interests subject to § 546.201.

(b) *Example.* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 546.201(a).

NOTE TO § 546.405: See §§ 546.507 and 546.508 on licensing policy with regard to the provision of certain legal or medical services.

§ 546.406 Offshore transactions.

The prohibitions in § 546.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of a person whose property and interests in property are blocked pursuant to § 546.201(a), or property in which a person whose property and interests in property are blocked pursuant to § 546.201(a) has or has had an interest since the effective date.

§ 546.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 546.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 546.408 Charitable contributions.

Unless specifically authorized by the Office of Foreign Assets Control pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing, or medicine, may be made by, to, or for the benefit of a person whose property and interests in property are blocked pursuant to § 546.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of a person whose property and interests in property are blocked pursuant to § 546.201(a) if made by, to, or in the name of such a person; if made by, to, or in the name of an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person.

§ 546.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 546.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 546.201(a).

§ 546.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 546.201 if effected after the effective date.

§ 546.411 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 546.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 546.201(a), regardless of whether the entity itself is listed in the Annex to Executive Order 13400 or designated pursuant to § 546.201(a).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 546.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 546.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign

Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 546.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 546.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 546.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

NOTE TO § 546.504: See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 546.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 546.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, Internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 546.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 546.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 546.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to persons whose

property and interests in property are blocked pursuant to § 546.201(a).

§ 546.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 546.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 546.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 546.201(a) is prohibited unless specifically licensed in accordance with § 546.202(e).

§ 546.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 546.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 546.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 546.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (''IEEPA''), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

NOTE TO PARAGRAPH (a)(1) OF § 546.701: As of the date of publication in the FEDERAL REGISTER of the final rule adding this part to 31 CFR chapter V (May 28, 2009), IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA

are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (''UNPA''), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.

(d) Violations involving transactions described at section 203(b)(1), (3), and (4) of IEEPA shall be subject only to the penalties set forth in paragraph (c) of this section.

(e) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under title 18, United States Code, imprisoned not more than five years, or both.

(f) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 546.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, see appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to the Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see Appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 546.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a written Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see Appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in Federal district court.

§ 546.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 546.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 546.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13400, and any further Executive orders relating to the national emergency declared in Executive Order 13067, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 546.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to record keeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 547—DEMOCRATIC REPUBLIC OF THE CONGO SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
547.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

547.201 Prohibited transactions involving blocked property.
547.202 Effect of transfers violating the provisions of this part.
547.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
547.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
547.205 Evasions; attempts; conspiracies.

Subpart C—General Definitions

547.301 Arms or any related materiel.
547.302 Blocked account; blocked property.
547.303 Effective date.
547.304 Entity.
547.305 Interest.
547.306 Licenses; general and specific.
547.307 Person.
547.308 Property; property interest.
547.309 Transfer.
547.310 United States.
547.311 U.S. financial institution.
547.312 United States person; U.S. person.

Subpart D—Interpretations

547.401 Reference to amended sections.
547.402 Effect of amendment.
547.403 Termination and acquisition of an interest in blocked property.
547.404 Transactions ordinarily incident to a licensed transaction.
547.405 Provision of services.
547.406 Offshore transactions.
547.407 Payments from blocked accounts to satisfy obligations prohibited.
547.408 Charitable contributions.
547.409 Credit extended and cards issued by U.S. financial institutions.
547.410 Setoffs prohibited.
547.411 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

547.501 General and specific licensing procedures.
547.502 Effect of license or authorization.
547.503 Exclusion from licenses.
547.504 Payments and transfers to blocked accounts in U.S. financial institutions.
547.505 Entries in certain accounts for normal service charges authorized.
547.506 Investment and reinvestment of certain funds.
547.507 Provision of certain legal services authorized.
547.508 Authorization of emergency medical services.

Subpart F—Reports

547.601 Records and reports.

Subpart G—Penalties

547.701 Penalties.
547.702 Pre-Penalty Notice; settlement.
547.703 Penalty imposition.
547.704 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

547.801 Procedures.
547.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

547.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13413, 71 FR 64105, 3 CFR, 2006 Comp., p. 247.

SOURCE: 74 FR 25441, May 28, 2009, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 547.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 547.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13413 of October 27, 2006; and

(2) Any person determined by the Secretary of the Treasury, after consultation with the Secretary of State:

(i) To be a political or military leader of a foreign armed group operating in the Democratic Republic of the Congo that impedes the disarmament, repatriation, or resettlement of combatants;

(ii) To be a political or military leader of a Congolese armed group that impedes the disarmament, demobilization, or reintegration of combatants;

(iii) To be a political or military leader recruiting or using children in armed conflict in the Democratic Republic of the Congo in violation of applicable international law;

(iv) To have committed serious violations of international law involving the targeting of children in situations of armed conflict in the Democratic Republic of the Congo, including killing and maiming, sexual violence, abduction, and forced displacement;

(v) To have directly or indirectly supplied, sold, or transferred to the Democratic Republic of the Congo, or been the recipient in the territory of the Democratic Republic of the Congo of, arms and related materiel, including military aircraft and equipment, or advice, training, or assistance, including financing and financial assistance, related to military activities;

(vi) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in paragraphs (a)(2)(i) through (a)(2)(v) of this section or any person whose property and interests in property are blocked pursuant to this paragraph (a); or

(vii) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this paragraph (a).

NOTE 1 TO PARAGRAPH (a) OF § 547.201: The names of persons listed in or designated pursuant to Executive Order 13413, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[DRCONGO].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://*

www.treasury.gov/sdn. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 547.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

NOTE 2 TO PARAGRAPH (a) OF § 547.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–DRCONGO].''

NOTE 3 TO PARAGRAPH (a) OF § 547.201. Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, prohibitions on the following transactions when engaged in by a United States person or within the United States:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

[74 FR 25441, May 28, 2009, as amended at 76 FR 38538, June 30, 2011]

§ 547.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 547.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 547.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13413, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to

any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 547.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 547.201(a).

§ 547.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 547.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term blocked interest-bearing account means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 547.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 547.201(a) may continue to be held

in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 547.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 547.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 547.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 547.201(a) may, in the discretion of the Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 547.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

Subpart C—General Definitions

§ 547.301 Arms or any related materiel.

The term *arms or any related materiel* means arms or related materiel of all types, including military aircraft and equipment, but excludes:

(a) Supplies of arms and related materiel, technical training, and assistance intended solely for support of or use by units of the army and police of the Democratic Republic of the Congo, provided that said units:

(1) Have completed the process of their integration; or

(2) Operate under the command, respectively, of the état-major intégré of the Armed Forces or of the National Police of the Democratic Republic of the Congo;

(3) Are in the process of their integration in the territory of the Democratic Republic of the Congo outside the provinces of North and South Kivu and the Ituri district; and

(4) The supplies of arms and related materiel, technical training, and assistance described in paragraphs (a)(1) through (a)(3) of this section are delivered or provided only to receiving sites as designated by the Government of National Unity and Transition, in coordination with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), and advance notification of such delivery or provision is provided to the Secretary of State;

(b) Supplies of arms and related materiel, as well as technical training and assistance intended solely for support of or use by MONUC;

(c) Supplies of non-lethal military equipment, and related technical assistance and training, intended solely for humanitarian or protective use, following advance notification to the Secretary of State; and

(d) Supplies of arms and related materiel, training, and technical assistance intended solely for support of or use by the European Union force deployed to support MONUC.

§ 547.302 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 547.201 held in the name of a person whose property and interests in property are blocked pursuant to § 547.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

NOTE TO § 547.302: See § 547.411 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 547.201(a).

§ 547.303 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person whose property and interests in property are blocked pursuant to § 547.201(a)(1), 12:01 a.m. eastern standard time on October 30, 2006;

(b) With respect to a person whose property and interests in property are blocked pursuant to § 547.201(a)(2), the earlier of the date of actual or constructive notice of such person's designation.

§ 547.304 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 547.305 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (e.g., ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 547.306 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 547.306: See § 501.801 of this chapter on licensing procedures.

§ 547.307 Person.

The term *person* means an individual or entity.

§ 547.308 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers' acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 547.309 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 547.310 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 547.311 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 547.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 547.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 547.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 547.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 547.201(a), unless there exists in the property another interest that is blocked pursuant to § 547.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 547.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 547.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 547.201(a); or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(c) *Example.* A license authorizing Company A, whose property and interests in property are blocked pursuant to § 547.201(a), to complete a securities sale also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, broker, transfer agents, banks, etc., provided that such other parties are not themselves persons whose property and interests in property are blocked pursuant to § 547.201(a).

§ 547.405 Provision of services.

(a) The prohibitions on transactions involving blocked property contained in § 547.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 547.201(a); or

(2) With respect to property interests subject to § 547.201.

(b) *Example.* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 547.201(a).

NOTE TO § 547.405: See §§ 547.507 and 547.508 on licensing policy with regard to the provision of certain legal or medical services.

§ 547.406 Offshore transactions.

The prohibitions in § 547.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of a person whose property and interests in property are blocked pursuant to § 547.201(a), or property in which a person whose property and interests in property are blocked pursuant to § 547.201(a) has or has had an interest since the effective date.

§ 547.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 547.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 547.408 Charitable contributions.

Unless specifically authorized by the Office of Foreign Assets Control pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing or medicine, may be made by,

to, or for the benefit of a person whose property and interests in property are blocked pursuant to § 547.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of a person whose property and interests in property are blocked pursuant to § 547.201(a) if made by, to, or in the name of such a person; if made by, to, or in the name of an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person.

§ 547.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 547.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 547.201(a).

§ 547.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 547.201 if effected after the effective date.

§ 547.411 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 547.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 547.201(a), regardless of whether the entity itself is listed in the Annex to Executive Order 13413 or designated pursuant to § 547.201(a).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 547.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 547.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property that would not otherwise exist under ordinary principles of law.

§ 547.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 547.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 547.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

NOTE TO § 547.504: See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 547.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 547.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 547.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 547.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 547.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to persons whose property and interests in property are blocked pursuant to § 547.201(a).

§ 547.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 547.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made

parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 547.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 547.201(a) is prohibited unless specifically licensed in accordance with § 547.202(e).

§ 547.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 547.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 547.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 547.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (''IEEPA''), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

NOTE TO PARAGRAPH (a)(1) OF § 547.701: As of the date of publication in the FEDERAL REGISTER of the final rule adding this part to 31 CFR chapter V (May 28, 2009), IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (''UNPA''), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10

years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.

(d) Violations involving transactions described at section 203(b)(1), (3), and (4) of IEEPA shall be subject only to the penalties set forth in paragraph (c) of this section.

(e) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry; shall be fined under title 18, United States Code, imprisoned not more than five years, or both.

(f) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 547.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see Appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, see Appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be

sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (b)(2) of this section.

(c) *Settlement*. Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see Appendix A to part 501 of this chapter.

(d) *Guidelines*. Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in appendix A to part 501 of this chapter.

(e) *Representation*. A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 547.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

§ 547.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart H—Procedures

§ 547.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 547.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13413 of October 27, 2006, and any further Executive orders relating to the national emergency declared in Executive Order 13413, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 547.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to record keeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 548—BELARUS SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
548.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

548.201 Prohibited transactions involving blocked property.
548.202 Effect of transfers violating the provisions of this part.
548.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
548.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
548.205 Evasions; attempts; conspiracies.
548.206 Exempt transactions.

Subpart C—General Definitions

548.301 Blocked account; blocked property.
548.302 Effective date.
548.303 Entity.
548.304 Information or informational materials.
548.305 Interest.
548.306 Licenses; general and specific.
548.307 Person.
548.308 Property; property interest.
548.309 Transfer.
548.310 United States.
548.311 U.S. financial institution.
548.312 United States person; U.S. person.
548.313 Financial, material, or technological support.

Subpart D—Interpretations

548.401 Reference to amended sections.
548.402 Effect of amendment.
548.403 Termination and acquisition of an interest in blocked property.
548.404 Transactions ordinarily incident to a licensed transaction.
548.405 Provision of services.
548.406 Offshore transactions.
548.407 Payments from blocked accounts to satisfy obligations prohibited.
548.408 Charitable contributions.
548.409 Credit extended and cards issued by U.S. financial institutions.
548.410 Setoffs prohibited.
548.411 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

548.501 General and specific licensing procedures.
548.502 Effect of license or authorization.
548.503 Exclusion from licenses.
548.504 Payments and transfers to blocked accounts in U.S. financial institutions.
548.505 Entries in certain accounts for normal service charges authorized.
548.506 Investment and reinvestment of certain funds.
548.507 Provision of certain legal services authorized.
548.508 Authorization of emergency medical services.

Subpart F—Reports

548.601 Records and reports.

Subpart G—Penalties

548.701 Penalties.
548.702 Pre-penalty notice; settlement.
548.703 Penalty imposition.
548.704 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

548.801 Procedures.
548.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

548.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13405, 71 FR 35485; 3 CFR, 2007 Comp., p. 231.

SOURCE: 75 FR 5503, Feb. 3, 2010, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§548.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts

authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 548.201 Prohibited transactions involving blocked property.

(a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13405 of June 16, 2006 (71 FR 35485, June 20, 2006); and

(2) Any person determined by the Secretary of the Treasury, after consultation with the Secretary of State:

(i) To be responsible for, or to have participated in, actions or policies that undermine democratic processes or institutions in Belarus;

(ii) To be responsible for, or to have participated in, human rights abuses related to political repression in Belarus;

(iii) To be a senior-level official, a family member of such an official, or a person closely linked to such an official who is responsible for or has engaged in public corruption related to Belarus;

(iv) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in paragraphs (a)(2)(i) through (a)(2)(iii) of this section or any person whose property or interests in property are blocked pursuant to this paragraph (a); or

(v) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property or interests in property are blocked pursuant to this paragraph (a).

NOTE 1 TO PARAGRAPH (a) OF § 548.201: The names of persons listed in or designated pursuant to Executive Order 13405, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[BELARUS].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 548.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

NOTE 2 TO PARAGRAPH (a) OF § 548.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–BELARUS].''

NOTE 3 TO PARAGRAPH (a) OF § 548.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, prohibitions on the following transactions:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence

thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

(d) The prohibitions in paragraph (a) of this section apply except to the extent transactions are authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date.

[75 FR 5503, Feb. 3, 2010, as amended at 76 FR 38538, June 30, 2011]

§ 548.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 548.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 548.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13405, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 548.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 548.201(a).

§ 548.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 548.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 548.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 548.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 548.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 548.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 548.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 548.201(a) may, in the discretion of the Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 548.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

§ 548.206 Exempt transactions.

(a) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(b) *Information or informational materials.* (1) The importation from any country and the exportation to any country of any information or informational materials, as defined in § 548.304, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions of this part.

(2) This section does not exempt from regulation or authorize transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include, but are not limited to, payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and, with respect to information or informational materials imported from persons whose property and interests in property are blocked pursuant to § 548.201(a), payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt or authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730–774, or to the exportation of goods, technology, or software for use in the transmission of any data, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person whose property and interests in property are blocked pursuant to § 548.201(a) are prohibited.

(c) *Travel.* The prohibitions contained in this part do not apply to any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 548.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 548.201 held in the name of a person whose property and interests in property are blocked pursuant to § 548.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations,

withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

NOTE TO § 548.301: See § 548.411 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 548.201(a).

§ 548.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person whose property and interests in property are blocked pursuant to § 548.201(a)(1), 12:01 a.m. eastern daylight time on June 19, 2006; and

(b) With respect to a person whose property and interests in property are otherwise blocked pursuant to § 548.201(a), the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

§ 548.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 548.304 Information or informational materials.

(a) For purposes of this part, the term *information or informational materials* includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD–ROMs, artworks, and news wire feeds.

NOTE TO PARAGRAPH (a) OF § 548.304: To be considered information or informational materials, artworks must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials,* with respect to United States exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the ''EAA''), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 548.305 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (*e.g.*, ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 548.306 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 548.306: See § 501.801 of this chapter on licensing procedures.

§ 548.307 Person.

The term *person* means an individual or entity.

§ 548.308 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other

interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 548.309 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 548.310 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 548.311 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 548.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 548.313 Financial, material, or technological support.

The term *financial, material, or technological support,* as used in § 548.201(a)(2)(iv) of this part, means any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. ''Technologies'' as used in this definition means specific information necessary

for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

Subpart D—Interpretations

§ 548.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 548.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 548.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 548.201(a), unless there exists in the property another interest that is blocked pursuant to § 548.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 548.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 548.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 548.201(a); or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(c) *Example.* A license authorizing Company A, whose property and interests in property are blocked pursuant to § 548.201(a), to complete a securities sale also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, broker, transfer agents, banks, etc., provided that such other parties are not themselves persons whose property and interests in property are blocked pursuant to § 548.201(a).

§ 548.405 Provision of services.

(a) Except as provided in § 548.206, the prohibitions on transactions involving blocked property contained in § 548.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 548.201(a); or

(2) With respect to property interests subject to § 548.201.

(b) *Example.* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or

other services to a person whose property and interests in property are blocked pursuant to § 548.201(a).

NOTE TO § 548.405: See §§ 548.507 and 548.508 on licensing policy with regard to the provision of certain legal and medical services.

§ 548.406 Offshore transactions.

The prohibitions in § 548.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of a person whose property and interests in property are blocked pursuant to § 548.201(a), or property in which a person whose property and interests in property are blocked pursuant to § 548.201(a) has or has had an interest since the effective date.

§ 548.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 548.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 548.408 Charitable contributions.

Unless specifically authorized by the Office of Foreign Assets Control pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing or medicine, may be made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 548.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 548.201(a) if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from any such person.

§ 548.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 548.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 548.201(a).

§ 548.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 548.201 if effected after the effective date.

§ 548.411 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 548.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 548.201(a), regardless of whether the entity itself is listed in the Annex to Executive Order 13405 or designated pursuant to § 548.201(a).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 548.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 548.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by the Office of Foreign Assets

Control, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other part of this chapter unless the regulation, ruling, instruction, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 548.503 Exclusion from licenses.

The Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 548.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 548.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

NOTE TO § 548.504: See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 548.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 548.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 548.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 548.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 548.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount

under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (*e.g.*, through pledging or other use) to a person whose property and interests in property are blocked pursuant to § 548.201(a).

§ 548.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 548.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 548.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 548.201(a) is prohibited unless licensed pursuant to this part.

§ 548.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 548.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 548.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 548.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (''IEEPA''), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

NOTE TO PARAGRAPH (a)(1) OF § 548.701: As of the date of publication in the FEDERAL REGISTER of the final rule adding this part to 31 CFR chapter V (February 3, 2010), IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, imprisoned, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 548.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, see Appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be

sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement*. Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see appendix A to part 501 of this chapter.

(d) *Guidelines*. Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in Appendix A to part 501 of this chapter.

(e) *Representation*. A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 548.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

§ 548.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 548.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 548.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13405 of June 16, 2006 (71 FR 35485, June 20, 2006), and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 548.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned

PART 549—LEBANON SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
549.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

549.201 Prohibited transactions involving blocked property.
549.202 Effect of transfers violating the provisions of this part.
549.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
549.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
549.205 Evasions; attempts; conspiracies.
549.206 Exempt transactions.

Subpart C—General Definitions

549.301 Blocked account; blocked property.
549.302 Effective date.
549.303 Entity.
549.304 Information or informational materials.
549.305 Interest.
549.306 Licenses; general and specific.
549.307 Person.
549.308 Property; property interest.
549.309 Transfer.
549.310 United States.
549.311 U.S. financial institution.
549.312 United States person; U.S. person.
549.313 Financial, material, or technological support.

Subpart D—Interpretations

549.401 Reference to amended sections.
549.402 Effect of amendment.
549.403 Termination and acquisition of an interest in blocked property.
549.404 Transactions ordinarily incident to a licensed transaction.
549.405 Provision of services.
549.406 Offshore transactions.
549.407 Payments from blocked accounts to satisfy obligations prohibited.
549.408 Charitable contributions.
549.409 Credit extended and cards issued by U.S. financial institutions.
549.410 Setoffs prohibited.
549.411 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

549.501 General and specific licensing procedures.
549.502 Effect of license or authorization.
549.503 Exclusion from licenses.
549.504 Payments and transfers to blocked accounts in U.S. financial institutions.
549.505 Entries in certain accounts for normal service charges authorized.
549.506 Investment and reinvestment of certain funds.
549.507 Provision of certain legal services authorized.
549.508 Authorization of emergency medical services.

Subpart F—Reports

549.601 Records and reports.

Subpart G—Penalties

549.701 Penalties.
549.702 Pre-Penalty Notice; settlement.
549.703 Penalty imposition.
549.704 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

549.801 Procedures.
549.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

549.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13441, 72 FR 43499, 3 CFR, 2008 Comp., p. 232.

SOURCE: 75 FR 44909, July 30, 2010, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 549.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts

authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 549.201 Prohibited transactions involving blocked property.

(a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(1) To have taken, or to pose a significant risk of taking, actions, including acts of violence, that have the purpose or effect of undermining Lebanon's democratic processes or institutions, contributing to the breakdown of the rule of law in Lebanon, supporting the reassertion of Syrian control or otherwise contributing to Syrian interference in Lebanon, or infringing upon or undermining Lebanese sovereignty;

(2) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in paragraph (a)(1) of this section, including acts of violence, or any person whose property and interests in property are blocked pursuant to this paragraph (a);

(3) To be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to this paragraph (a); or

(4) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this paragraph (a).

NOTE 1 TO PARAGRAPH (a) OF § 549.201: The names of persons designated pursuant to Executive Order 13441, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[LEBANON].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 549.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

NOTE 2 TO PARAGRAPH (a) OF § 549.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–LEBANON].''

NOTE 3 TO PARAGRAPH (a) OF § 549.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, prohibitions on the following transactions:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or

control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

(d) The prohibitions in paragraph (a) of this section apply except to the extent transactions are authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date.

[75 FR 44909, July 30, 2010, as amended at 76 FR 38538, June 30, 2011]

§ 549.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 549.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 549.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13441, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 549.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 549.201(a).

§ 549.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 549.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a Federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 549.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 549.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 549.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 549.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 549.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 549.201(a) may, in the discretion of the Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 549.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

§ 549.206 Exempt transactions.

(a) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(b) *Information or informational materials.* (1) The importation from any country and the exportation to any country of any information or informational materials, as defined in § 549.304, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions of this part.

(2) This section does not exempt from regulation or authorize transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include, but are not limited to, payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and, with respect to information or informational materials imported from persons whose property and interests in property are blocked pursuant to § 549.201(a), payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt or authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730 through 774, or to the exportation of goods, technology, or software for use in the transmission of any data, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person whose property and interests in property are blocked pursuant to § 549.201(a) are prohibited.

(c) *Travel.* The prohibitions contained in this part do not apply to any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 549.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 549.201 held in the name of a person whose property and interests in property are blocked pursuant to § 549.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations,

withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

NOTE TO § 549.301: *See* § 549.411 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 549.201(a).

§ 549.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part and, with respect to a person whose property and interests in property are blocked pursuant to § 549.201(a), refers to the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

§ 549.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 549.304 Information or informational materials.

(a) For purposes of this part, the term *information* or *informational materials* includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

NOTE TO PARAGRAPH (a) OF § 549.304: To be considered information or informational materials, artworks must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information* or *informational materials*, with respect to United States exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the ''EAA''), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 549.305 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (*e.g.*, ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 549.306 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 549.306: *See* § 501.801 of this chapter on licensing procedures.

§ 549.307 Person.

The term *person* means an individual or entity.

§ 549.308 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or

copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 549.309 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 549.310 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 549.311 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 549.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 549.313 Financial, material, or technological support.

The term *financial, material, or technological support,* as used in § 549.201(a)(2) of this part, means any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. ''Technologies'' as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications,

manuals, or other recorded instructions.

Subpart D—Interpretations

§ 549.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 549.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 549.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 549.201(a), unless there exists in the property another interest that is blocked pursuant to § 549.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 549.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 549.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 549.201(a); or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(c) *Example.* A license authorizing Company A, whose property and interests in property are blocked pursuant to § 549.201(a), to complete a securities sale also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, broker, transfer agents, banks, *etc.*, provided that such other parties are not themselves persons whose property and interests in property are blocked pursuant to § 549.201(a).

§ 549.405 Provision of services.

(a) Except as provided in § 549.206, the prohibitions on transactions involving blocked property contained in § 549.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 549.201(a); or

(2) With respect to property interests subject to § 549.201.

(b) *Example.* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 549.201(a).

NOTE TO § 549.405: *See* §§ 549.507 and 549.508 on licensing policy with regard to the provision of certain legal and medical services.

§ 549.406 Offshore transactions.

The prohibitions in § 549.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of a person whose property and interests in property are blocked pursuant to § 549.201(a), or property in which a person whose property and interests in property are blocked pursuant to § 549.201(a) has or has had an interest since the effective date.

§ 549.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 549.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 549.408 Charitable contributions.

Unless specifically authorized by the Office of Foreign Assets Control pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing or medicine, may be made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 549.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 549.201(a) if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from any such person.

§ 549.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 549.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 549.201(a).

§ 549.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 549.201 if effected after the effective date.

§ 549.411 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 549.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 549.201(a), regardless of whether the entity itself is designated pursuant to § 549.201(a).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 549.501 General and specific licensing procedures.

For provisions relating to licensing procedures, *see* part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 549.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the

regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other part of this chapter unless the regulation, ruling, instruction, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 549.503 Exclusion from licenses.

The Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 549.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 549.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

NOTE TO § 549.504: *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See also* § 549.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 549.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, Internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 549.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 549.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 549.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (*e.g.*, through pledging or other use) to a person

whose property and interests in property are blocked pursuant to § 549.201(a).

§ 549.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 549.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any Federal or State agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 549.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 549.201(a) is prohibited unless licensed pursuant to this part.

§ 549.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 549.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 549.601 Records and reports.

For provisions relating to required records and reports, *see* part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 549.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (''IEEPA''), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

NOTE TO PARAGRAPH (a)(1) OF § 549.701: As of the date of publication in the FEDERAL REGISTER of the final rule adding this part to 31 CFR chapter V (July 30, 2010), IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be

fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that ''whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully:

(1) Falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) Makes any materially false, fictitious, or fraudulent statement or representation; or

(3) Makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry'' shall be fined under title 18, United States Code, imprisoned, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 549.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, *see* Appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, *see* Appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a Federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by

mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement*. Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, *see* appendix A to part 501 of this chapter.

(d) *Guidelines*. Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in Appendix A to part 501 of this chapter.

(e) *Representation*. A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 549.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, *see* Appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in Federal district court.

§ 549.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 549.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), *see* part 501, subpart E, of this chapter.

§ 549.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13441 of August 1, 2007 (72 FR 43499, Aug. 3, 2007), and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 549.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, *see* § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 551—SOMALIA SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
551.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

551.201 Prohibited transactions.
551.202 Effect of transfers violating the provisions of this part.
551.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

Subpart C—General Definitions

551.301 Blocked account; blocked property.
551.302 Effective date.
551.303 Entity.
551.304 Interest.
551.305 Licenses; general and specific.
551.306 Person.
551.307 Property; property interest.
551.308 Transfer.
551.309 United States.
551.310 U.S. financial institution.
551.311 United States person; U.S. person.

Subpart D—Interpretations

551.401 [Reserved]
551.402 Effect of amendment.
551.403 Termination and acquisition of an interest in blocked property.
551.404 Transactions ordinarily incident to a licensed transaction authorized.
551.405 Setoffs prohibited.
551.406 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

551.501—551.502 [Reserved]
551.503 Exclusion from licenses.
551.504 Payments and transfers to blocked accounts in U.S. financial institutions.
551.505 Entries in certain accounts for normal service charges authorized.
551.506 Provision of certain legal services authorized.
551.507 Authorization of emergency medical services.

Subparts F—G [Reserved]

Subpart H—Procedures

551.801 [Reserved]
551.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

551.901 Paperwork Reduction Act notice.
APPENDIX A TO PART 551—EXECUTIVE ORDER 13536

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13536, 75 FR 19869, April 15, 2010.

SOURCE: 75 FR 24395, May. 5, 2010, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§551.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

NOTE TO §551.101: This part has been published in abbreviated form for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

Subpart B—Prohibitions

§ 551.201 Prohibited transactions.

All transactions prohibited pursuant to Executive Order 13536 are also prohibited pursuant to this part.

NOTE 1 TO § 551.201: The names of persons listed in or designated pursuant to Executive Order 13536, whose property and interests in property therefore are blocked pursuant to this section, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SOMALIA].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 551.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

NOTE 2 TO § 551.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–SOMALIA].''

NOTE 3 TO § 551.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

[75 FR 24395, May. 5, 2010, as amended at 76 FR 38538, June 30, 2011]

§ 551.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 551.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 551.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13536, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Office of Foreign Assets Control each of the following paragraphs (d)(1) through (3):

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed

with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 551.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 551.201.

§ 551.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 551.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 551.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 551.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 551.201, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

Subpart C—General Definitions

§ 551.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 551.201 held in the name of a person whose property and interests in property are blocked pursuant to § 551.201, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

NOTE TO § 551.301: *See* § 551.406 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 551.201.

§ 551.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person listed in the Annex to E.O. 13536, 12:01 a.m. eastern daylight time, April 13, 2010; or

(b) With respect to a person whose property and interests in property are otherwise blocked pursuant to E.O. 13536, the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

§ 551.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 551.304 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (*e.g.*, ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 551.305 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 551.305: *See* § 501.801 of this chapter on licensing procedures.

§ 551.306 Person.

The term *person* means an individual or entity.

§ 551.307 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 551.308 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and

whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 551.309 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 551.310 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 551.311 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 551.401 [Reserved]

§ 551.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in this part, any provision in or appendix to this chapter, or any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 551.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 551.201, unless there exists in the property another interest that is blocked pursuant to § 551.201 or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 551.201, such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 551.404 Transactions ordinarily incident to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 551.201; or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 551.405 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 551.201 if effected after the effective date.

§ 551.406 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 551.201 has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 551.201, regardless of whether the entity itself is listed in the Annex or designated pursuant to Executive Order 13536.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§§ 551.501—551.502 [Reserved]

§ 551.503 Exclusion from licenses.

The Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 551.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 551.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

NOTE TO § 551.504: *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 551.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 551.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include

charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 551.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 551.201 is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 551.201, not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 551.201 is prohibited unless licensed pursuant to this part.

§ 551.507 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 551.201 is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subparts F—G [Reserved]

Subpart H—Procedures

§ 551.801 [Reserved]

§ 551.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13536 of April 12, 2010 (75 FR 19869, April 15, 2010), and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 551.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, *see* § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

APPENDIX A TO PART 551—EXECUTIVE ORDER 13536

EXECUTIVE ORDER BLOCKING PROPERTY OF CERTAIN PERSONS CONTRIBUTING TO THE CONFLICT IN SOMALIA

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, find that the deterioration of the security situation and the persistence of violence in Somalia, and acts of piracy and armed robbery at sea off the coast of Somalia, which have repeatedly been the subject of United Nations Security Council resolutions (including Resolution 1844 of November 20, 2008; Resolution 1846 of December 2, 2008; Resolution 1851 of December 16, 2008; and Resolution 1897 of November 30, 2009), and violations of the arms embargo imposed by the United Nations Security Council in Resolution 733 of January 23, 1992, and elaborated upon and amended by subsequent resolutions (including Resolution 1356 of June 19, 2001; Resolution 1725 of December 6, 2006; Resolution 1744 of February 20, 2007; Resolution 1772 of August 20, 2007; Resolution 1816 of June 2, 2008; and Resolution 1872 of May 26, 2009), constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) to have engaged in acts that directly or indirectly threaten the peace, security, or stability of Somalia, including but not limited to:

(1) acts that threaten the Djibouti Agreement of August 18, 2008, or the political process; or

(2) acts that threaten the Transitional Federal Institutions, the African Union Mission in Somalia (AMISOM), or other international peacekeeping operations related to Somalia;

(B) to have obstructed the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia;

(C) to have directly or indirectly supplied, sold, or transferred to Somalia, or to have been the recipient in the territory of Somalia of, arms or any related material, or any technical advice, training, or assistance, including financing and financial assistance, related to military activities;

(D) to have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of, the activities described in subsections (a)(ii)(A), (a)(ii)(B), or (a)(ii)(C) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(E) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) I hereby determine that, among other threats to the peace, security, or stability of Somalia, acts of piracy or armed robbery at sea off the coast of Somalia threaten the peace, security, or stability of Somalia.

(c) I hereby determine that, to the extent section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the type of articles specified in such section by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to subsection (a) of this section would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by subsection (a) of this section.

(d) The prohibitions in subsection (a) of this section include but are not limited to:

(i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

(e) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any 5 jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term ''Transitional Federal Institutions'' means the Transitional Federal Charter of the Somali Republic adopted in February 2004 and the Somali federal institutions established pursuant to such charter, and includes their agencies, instrumentalities, and controlled entities; and

(e) the term ''African Union Mission in Somalia'' means the mission authorized by the United Nations Security Council in Resolution 1744 of February 20, 2007, and reauthorized in subsequent resolutions, and includes its agencies, instrumentalities, and controlled entities.

Sec. 4. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1(a) of this order.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All 6 agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine that circumstances no longer warrant the blocking of the property and interests in property of a person listed in the Annex to this order, and to take necessary action to give effect to that determination.

Sec. 8. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 9. This order is effective at 12:01 a.m. eastern standard time on April 13, 2010.

Barack Obama,
THE WHITE HOUSE,
April 12, 2010.

ANNEX

Individuals

1. Abshir ABDILLAHI [born circa 1966]
2. Hassan Abdullah Hersi AL–TURKI [born circa 1944]
3. Hassan Dahir AWEYS [born 1935]
4. Ahmed Abdi AW–MOHAMED [born 10 July 1977]
5. Yasin Ali BAYNAH [born circa 1966]
6. Mohamed Abdi GARAAD [born circa 1973]
7. Yemane GHEBREAB [born 21 July 1951]
8. Fuad Mohamed KHALAF [born circa 1965]
9. Bashir Mohamed MAHAMOUD [born circa 1979–1982]
10. Fares Mohammed MANA'A [born 8 February 1965]
11. Mohamed SA'ID [born circa 1966]

Entity

1. al-Shabaab

PART 560—IRANIAN TRANSACTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
560.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

560.201 Prohibited importation of goods or services from Iran.
560.202 [Reserved]
560.203 Evasions; attempts.
560.204 Prohibited exportation, reexportation, sale or supply of goods, technology, or services to Iran.
560.205 Prohibited reexportation of goods, technology or services to Iran or the

Government of Iran by persons other than United States persons; exceptions.
560.206 Prohibited trade-related transactions with Iran; goods, technology, or services.
560.207 Prohibited investment.
560.208 Prohibited facilitation by United States persons of transactions by foreign persons.
560.209 Prohibited transactions with respect to the development of Iranian petroleum resources.
560.210 Exempt transactions.

Subpart C—General Definitions

560.301 Effective date.
560.302 [Reserved]
560.303 Iran; Iranian.
560.304 Government of Iran.
560.305 Person; entity.
560.306 Iranian-origin goods or services; goods or services owned or controlled by the Government of Iran.
560.307 United States.
560.308 Importation of goods.
560.309 [Reserved]
560.310 License.
560.311 General license.
560.312 Specific license.
560.313 Entity owned or controlled by the Government of Iran.
560.314 United States person.
560.315 Information and informational materials.
560.316 New investment.
560.317 Credits or loans.
560.318 [Reserved]
560.319 United States depository institution.
560.320 Iranian accounts.
560.321 United States registered broker or dealer in securities.

Subpart D—Interpretations

560.401 Reference to amended sections.
560.402 Effect of amendment.
560.403 Transshipment through Iran.
560.404 [Reserved]
560.405 Transactions incidental to a licensed transaction authorized.
560.406 Transshipment or transit through United States prohibited.
560.407 Transactions related to Iranian-origin goods.
560.408 Importation into and release from a bonded warehouse or foreign trade zone.
560.409 [Reserved]
560.410 Exportation, reexportation, sale or supply of services.
560.411 [Reserved]
560.412 Extensions of credit or loans to Iran.
560.413 Letter of credit payments by Iranian banks in the United States.
560.414 Reexportation of certain U.S.-origin goods exported prior to May 7, 1995.
560.416 Brokering services.
560.417 Facilitation; change of policies and procedures; referral of business opportunities offshore.
560.418 Release of technology or software in the United States or a third country.
560.419 U.S. employment of persons normally located in Iran.
560.420 Reexportation by non-U.S. persons of certain foreign-made products containing U.S.-origin goods or technology.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

560.500 Licensing procedures.
560.501 Effect of license or authorization.
560.502 Exclusion from licenses and authorizations.
560.503–560.504 [Reserved]
560.505 Importation of certain Iranian-origin services authorized; activities related to certain visa categories authorized.
560.506 Importation and exportation of certain gifts authorized.
560.507 Accompanied baggage authorized.
560.508 Telecommunications and mail transactions authorized.
560.509 Certain transactions related to patents, trademarks and copyrights authorized.
560.510 Transactions related to the resolution of disputes between the United States or United States nationals and the Government of Iran.
560.511 Exportation or supply of insubstantial United States content for use in foreign-made products or technology.
560.512 Iranian Government missions in the United States.
560.513 Importation of Iranian-origin oil.
560.514 [Reserved]
560.515 30-day delayed effective date for pre-May 7, 1995 trade contracts involving Iran.
560.516 Payment and United States dollar clearing transactions involving Iran.
560.517 Exportation of services: Iranian accounts at United States depository institutions or United States registered brokers or dealers in securities.
560.518 Transactions in Iranian-origin and Iranian Government property.
560.519 Policy governing news organization offices.
560.520 Exportation of agricultural commodities on contracts entered into prior to May 7, 1995.
560.521 Diplomatic pouches.
560.522 Allowable payments for overflights of Iranian airspace.
560.523 Exportation of equipment and services relating to information and informational materials.
560.524 Household goods and personal effects.
560.525 Exportation of certain legal services.

560.526 Commodities trading and related transactions.
560.527 Rescheduling existing loans.
560.528 Aircraft safety.
560.529 Bunkering and emergency repairs.
560.530 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical equipment.
560.531 [Reserved]
560.532 Payment for and financing of exports and reexports of agricultural commodities, medicine, and medical devices.
560.533 Brokering sales of agricultural commodities, medicine, and medical devices.
560.534—560.535 [Reserved]
560.536 Humanitarian activities in and around Iraq.
560.537 Authorization of certain survey or assessment missions in Iran.
560.538 Authorized transactions necessary and ordinarily incident to publishing.
560.539 Official activities of certain international organizations.
560.540 Exportation of certain services and software incident to Internet-based communications.

Subpart F—Reports

560.601 Records and reports.
560.602 [Reserved]
560.603 Reports on oil transactions engaged in by foreign affiliates.

Subpart G—Penalties

560.701 Penalties.
560.702 Detention of shipments.
560.703 Prepenalty notice.
560.704 Presentation responding to prepenalty notice.
560.705 Penalty notice.
560.706 Referral for administrative collection measures or to United States Department of Justice.

Subpart H—Procedures

560.801 Procedures.
560.802 Delegation by the Secretary of the Treasury.
560.803 Customs procedures: Goods specified in § 560.201.

Subpart I—Paperwork Reduction Act

560.901 Paperwork Reduction Act notice.
APPENDIX A TO PART 560—PERSONS DETERMINED TO BE THE GOVERNMENT OF IRAN, AS DEFINED IN § 560.304 OF THIS PART
APPENDIX B TO PART 560—BULK AGRICULTURAL COMMODITIES
APPENDIX C TO PART 560—ELIGIBLE PROCUREMENT BODIES

AUTHORITY: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 22 U.S.C. 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

SOURCE: 60 FR 47063, Sept. 11, 1995, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 560.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter, including part 535 of this chapter, ''Iranian Assets Control Regulations,'' with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulations authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

[60 FR 47063, Sept. 11, 1995, as amended at 62 FR 45109, Aug. 25, 1997]

Subpart B—Prohibitions

§ 560.201 Prohibited importation of goods or services from Iran.

Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the importation into the United States of any goods or services of Iranian origin or owned or controlled by the Government of Iran, other than information and informational materials within the meaning of section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)), is prohibited.

[64 FR 20170, Apr. 26, 1999]

§ 560.202 [Reserved]

§ 560.203 Evasions; attempts.

Any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions contained in this part is hereby prohibited.

§ 560.204 Prohibited exportation, reexportation, sale or supply of goods, technology, or services to Iran.

Except as otherwise authorized pursuant to this part, including § 560.511, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran is prohibited, including the exportation, reexportation, sale, or supply of any goods, technology, or services to a person in a third country undertaken with knowledge or reason to know that:

(a) Such goods, technology, or services are intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran or the Government of Iran; or

(b) Such goods, technology, or services are intended specifically for use in the production of, for commingling with, or for incorporation into goods, technology, or services to be directly or indirectly supplied, transshipped, or reexported exclusively or predominantly to Iran or the Government of Iran.

[64 FR 20170, Apr. 26, 1999]

§ 560.205 Prohibited reexportation of goods, technology or services to Iran or the Government of Iran by persons other than United States persons; exceptions.

(a) Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the reexportation from a third country, directly or indirectly, by a person other than a United States person, of any goods, technology or services that have been exported from the United States is prohibited, if:

(1) Undertaken with knowledge or reason to know that the reexportation is intended specifically for Iran or the Government of Iran; and

(2) The exportation of such goods, technology, or services from the United States to Iran was subject to export license application requirements under any United States regulations in effect on May 6, 1995, or thereafter is made subject to such requirements imposed independently of this part (see § 560.414).

(b) The prohibitions of paragraph (a) of this section shall not apply to those goods or that technology subject to export license application requirements if such goods or technology have been:

(1) Substantially transformed into a foreign-made product outside the United States; or

(2) Incorporated into a foreign-made product outside the United States if the aggregate value of such goods and technology described in paragraph (a)(2) of this section constitutes less than 10 percent of the total value of the foreign-made product to be exported from a third country (see § 560.420).

(c) Reexportation by United States persons or from the United States is governed by other sections in this part, including §§ 560.204 and 560.206.

NOTE TO § 560.205. The reexportation of U.S.-origin goods or technology, including U.S.-origin goods or technology that have been incorporated or substantially transformed into a foreign-made product, not prohibited by this section, may require authorization by the U.S. Department of Commerce under the Export Administration Regulations (15 CFR parts 740–774) or by the U.S. State Department under the International Traffic in Arms Regulations (22 CFR 123.9).

[64 FR 20170, Apr. 26, 1999]

§ 560.206 Prohibited trade-related transactions with Iran; goods, technology, or services.

(a) Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, no United States person, wherever located, may engage in any transaction or dealing in or related to:

(1) Goods or services of Iranian origin or owned or controlled by the Government of Iran; or

(2) Goods, technology, or services for exportation, reexportation, sale or supply, directly or indirectly, to Iran or the Government of Iran.

(b) For purposes of paragraph (a) of this section, the term *transaction or dealing* includes but is not limited to purchasing, selling, transporting, swapping, brokering, approving, financing, facilitating, or guaranteeing.

[64 FR 20170, Apr. 26, 1999]

§ 560.207 Prohibited investment.

Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, any new investment by a United States person in Iran or in property (including entities) owned or controlled by the Government of Iran is prohibited.

[64 FR 20170, Apr. 26, 1999]

§ 560.208 Prohibited facilitation by United States persons of transactions by foreign persons.

Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, no United States person, wherever located, may approve, finance, facilitate, or guarantee any transaction by a foreign person where the transaction by that foreign person would be prohibited by this part if performed by a United States person or within the United States.

[64 FR 20171, Apr. 26, 1999]

§ 560.209 Prohibited transactions with respect to the development of Iranian petroleum resources.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to March 16, 1995, the following are prohibited:

(a) The entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of:

(1) A contract that includes overall supervision and management responsibility for the development of petroleum resources located in Iran, or

(2) A guaranty of another person's performance under such contract; or

(b) The entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of

(1) A contract for the financing of the development of petroleum resources located in Iran, or

(2) A guaranty of another person's performance under such a contract.

§ 560.210 Exempt transactions.

(a) *Personal communications.* The prohibitions of §§ 560.204 and 560.206 do not apply to any postal, telegraphic, telephonic, or other personal communication, which does not involve the transfer of anything of value.

(b) *Humanitarian donations.* The prohibitions of §§ 560.204 and 560.206 do not apply to donations by United States persons of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering.

(c) *Information and informational materials.* (1) The importation from any country and the exportation to any country of information and informational materials as defined in § 560.315, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part.

(2) This section does not exempt from regulation or authorize transactions related to information and informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Transactions that are prohibited notwithstanding this section include, but are not limited to, payment of advances for information and informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications), and provision of services to market, produce or co-produce, create

or assist in the creation of information and informational materials.

(3) This section does not exempt from regulation or authorize transactions incident to the exportation of software subject to the Export Administration Regulations (15 CFR parts 730–774).

(4) This section does not exempt from regulation or authorize the exportation of goods (including software) or technology or the sale or leasing of telecommunications transmission facilities (such as satellite links or dedicated lines) where such exportation, sale or leasing is for use in the transmission of any data.

(d) *Travel*. The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages. This exemption extends to transactions with Iranian carriers and those involving group tours and payments in Iran made for transactions directly incident to travel.

(e) *Letters of credit*. Letters of credit and other financing agreements with respect to trade contracts in force as of May 6, 1995, may be performed pursuant to their terms with respect to underlying trade transactions occurring prior to 12:01 a.m. EDT, June 6, 1995. See § 560.413.

[60 FR 47063, Sept. 11, 1995, as amended at 64 FR 20171, Apr. 26, 1999; 64 FR 58791, Nov. 1, 1999]

Subpart C—General Definitions

§ 560.301 Effective date.

The effective date of the prohibitions and directives contained in subpart B of this part is 12:01 a.m., Eastern Daylight Time, August 20, 1997. For the effective date of pre-existing regulations and directives, see the Executive orders in the Authority citation for this part and implementing regulations.

[64 FR 20171, Apr. 26, 1999]

§ 560.302 [Reserved]

§ 560.303 Iran; Iranian.

The term *Iran* means the territory of Iran, and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to an international agreement. The term *Iranian* means pertaining to Iran as defined in this section.

§ 560.304 Government of Iran.

The term *Government of Iran* includes:

(a) The state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof;

(b) Any entity owned or controlled directly or indirectly by the foregoing;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the applicable effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(d) Any person or entity designated by the Secretary of the Treasury as included within paragraphs (a) through (c) of this section.

§ 560.305 Person; entity.

(a) The term *person* means an individual or entity.

(b) The term *entity* means a partnership, association, trust, joint venture, corporation or other organization.

§ 560.306 Iranian-origin goods or services; goods or services owned or controlled by the Government of Iran.

(a) The terms *goods of Iranian origin* and *Iranian-origin goods* include:

(1) Goods grown, produced, manufactured, extracted, or processed in Iran; and

(2) Goods which have entered into Iranian commerce.

(b) The terms *services of Iranian origin* and *Iranian-origin services* include:

(1) Services performed in Iran or by an entity organized under the laws of Iran, or a person residing in Iran; and

(2) Services performed outside Iran by a citizen, national or permanent resident of Iran who is ordinarily resident in Iran, or by an entity organized under the laws of Iran.

(c) The term *goods or services owned or controlled by the Government of Iran* includes:

(1) Goods grown, produced, manufactured, extracted or processed by the Government of Iran or goods in its possession or control; and

(2) Services performed by the Government of Iran.

(d) The terms *services of Iranian-origin*, *Iranian-origin services*, and *services owned or controlled by the Government of Iran* do not include:

(1) Diplomatic and consular services performed by or on behalf of the Government of Iran;

(2) Diplomatic and consular services performed by or on behalf of the Government of the United States; or

(3) Services performed outside Iran by an Iranian citizen or national who is resident in the United States or a third country, provided such services are not performed by or on behalf of the Government of Iran (other than diplomatic and consular services), an entity organized under the laws of Iran, or a person located in Iran.

[64 FR 20171, Apr. 26, 1999]

§ 560.307 United States.

The term *United States* means the United States, including its territories and possessions.

§ 560.308 Importation of goods.

With respect to goods (including software), the term *importation* means the bringing of any goods into the United States, except that in the case of goods transported by vessel, *importation* means the bringing of any goods into the United States with the intent to unlade them.

[64 FR 20171, Apr. 26, 1999]

§ 560.309 [Reserved]

§ 560.310 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 560.311 General license.

The term *general license* means any license or authorization the terms of which are set forth in this part.

§ 560.312 Specific license.

The term *specific license* means any license or authorization not set forth in this part but issued pursuant to this part.

§ 560.313 Entity owned or controlled by the Government of Iran.

The term *entity owned or controlled by the Government of Iran* includes any corporation, partnership, association, or other entity in which the Government of Iran owns a majority or controlling interest, and any entity which is otherwise controlled by that government.

§ 560.314 United States person.

The term *United States person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States.

§ 560.315 Information and informational materials.

(a) The term *information and informational materials* includes:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

(2) To be considered *information* or *informational materials, artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States*.

(b) The term *information and informational materials*, with respect to exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2401-2420, the ''EAA''), or

section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

[60 FR 47063, Sept. 11, 1995, as amended at 64 FR 20171, Apr. 26, 1999]

§ 560.316 New investment.

The term *new investment* means a transaction after 12:01 EDT, May 7, 1995, that constitutes:

(a) A commitment or contribution of funds or other assets; or

(b) A loan or other extension of credit, as defined in § 560.317.

§ 560.317 Credits or loans.

The term *credits* or *loans* means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including but not limited to: overdrafts; currency swaps; purchases of debt securities issued by the Government of Iran; purchases of a loan made by another person; sales of financial assets subject to an agreement to repurchase; renewals or refinancings whereby funds or credits are transferred to or extended to a prohibited borrower or prohibited recipient; the issuance of standby letters of credit; and drawdowns on existing lines of credit.

§ 560.318 [Reserved]

§ 560.319 United States depository institution.

The term *United States depository institution* means any entity (including its foreign branches) organized under the laws of any jurisdiction within the United States, or any agency, office or branch located in the United States of a foreign entity, that is engaged primarily in the business of banking (for example, banks, savings banks, savings associations, credit unions, trust companies and United States bank holding companies).

[64 FR 20171, Apr. 26, 1999]

§ 560.320 Iranian accounts.

The term *Iranian accounts* means accounts of persons who are ordinarily resident in Iran, except when such persons are not located in Iran, or of the Government of Iran maintained on the books of either a United States depository institution or a United States registered broker or dealer in securities.

[74 FR 36398, July 23, 2009]

§ 560.321 United States registered broker or dealer in securities.

The term *United States registered broker or dealer in securities* means any U.S. citizen, permanent resident alien, or entity organized under the laws of the United States or of any jurisdiction within the United States, including its foreign branches, or any agency, office or branch of a foreign entity located in the United States, that:

(a) Is a ''broker'' or ''dealer'' in securities within the meanings set forth in the Securities Exchange Act of 1934;

(b) Holds or clears customer accounts; and

(c) Is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

[70 FR 15584, Mar. 28, 2005]

Subpart D—Interpretations

§ 560.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 560.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not, unless otherwise specifically provided, affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction,

or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 560.403 Transshipment through Iran.

The prohibitions in §§ 560.204, 560.206 and 560.208 apply to export, reexport or supply transactions which require a transshipment or transit of goods or technology through Iran to third countries.

[64 FR 20172, Apr. 26, 1999]

§ 560.404 [Reserved]

§ 560.405 Transactions incidental to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) A transaction by an unlicensed Iranian governmental entity or involving a debit or credit to an Iranian account not explicitly authorized within the terms of the license;

(b) Provision of any transportation services to or from Iran not explicitly authorized in or pursuant to this part other than loading, transporting, and discharging licensed or exempt cargo there;

(c) Distribution or leasing in Iran of any containers or similar goods owned or controlled by United States persons after the performance of transportation services to Iran;

(d) Financing of licensed sales for exportation or reexportation of agricultural commodities or products, medicine or medical equipment to Iran or the Government of Iran (see § 560.532); and

(e) Letter of credit services relating to transactions authorized in § 560.534. See § 560.535(a).

[73 FR 66542, Nov. 10, 2008]

§ 560.406 Transshipment or transit through United States prohibited.

(a) The prohibitions in § 560.201 apply to the importation into the United States, for transshipment or transit, of Iranian-origin goods or goods owned or controlled by the Government of Iran which are intended or destined for third countries.

(b) The prohibitions in § 560.204 apply to the transshipment or transit of foreign goods through the United States which are intended or destined for Iran or the Government of Iran, including entities owned or controlled by the Government of Iran.

[64 FR 20172, Apr. 26, 1999]

§ 560.407 Transactions related to Iranian-origin goods.

(a) Importation into the United States from third countries of goods containing Iranian-origin raw materials or components is not prohibited if those raw materials or components have been incorporated into manufactured products or substantially transformed in a third country by a person other than a United States person.

(b) Transactions relating to Iranian-origin goods that have not been incorporated into manufactured products or substantially transformed in a third country are prohibited.

(c) Transactions relating to goods containing Iranian-origin raw materials or components are not prohibited if those raw materials or components have been incorporated into manufactured products or substantially transformed in a third country by a person other than a United States person.

§ 560.408 Importation into and release from a bonded warehouse or foreign trade zone.

The prohibitions in § 560.201 apply to importation into a bonded warehouse or a foreign trade zone of the United States. However, § 560.201 does not prohibit the release from a bonded warehouse or a foreign trade zone of Iranian-origin goods imported into a bonded warehouse or a foreign trade zone prior to October 29, 1987.

§ 560.409 [Reserved]

§ 560.410 Exportation, reexportation, sale or supply of services.

(a) The prohibition on the exportation, reexportation, sale or supply of services contained in § 560.204 applies to services performed on behalf of a person in Iran or the Government of Iran or where the benefit of such services is otherwise received in Iran, if such services are performed:

(1) In the United States, or

(2) Outside the United States by a United States person, including by an overseas branch of an entity located in the United States.

(b) The benefit of services performed anywhere in the world on behalf of the Government of Iran is presumed to be received in Iran.

(c) *Example*. A United States person is engaged in a prohibited exportation of services to Iran when it extends credit to a third-country firm specifically to enable that firm to manufacture goods for sale to Iran or for an entity of the Government of Iran. See also § 560.416.

[64 FR 20172, Apr. 26, 1999]

§ 560.411 [Reserved]

§ 560.412 Extensions of credit or loans to Iran.

(a) The prohibitions contained in §§ 560.204 and 560.207 apply to but are not limited to the unauthorized renewal or rescheduling of credits or loans in existence as of May 6, 1995, such as the extension of a standby letter of credit.

(b) The prohibitions contained in § 560.209 apply, among other things, to the unauthorized renewal or rescheduling of credits or loans in existence as of March 15, 1995.

(c) The prohibitions contained in §§ 560.204, 560.207 and 560.209 apply to, among other things, credits or loans in any currency.

[64 FR 20172, Apr. 26, 1999]

§ 560.413 Letter of credit payments by Iranian banks in the United States.

(a) For purposes of the exemption in § 560.210(e), payment of letters of credit and other financing agreements according to their terms includes, in the case of payments made by an Iranian bank's branch or agency located in the United States, payments that such branch or agency is:

(1) Legally obligated to make pursuant to the terms of letters of credit and other financing agreements relating to pre-May 7, 1995 trade contracts; or

(2) Licensed to make by the Office of Foreign Assets Control with respect to pre-May 7, 1995 trade contracts.

(b) Payments that are not binding legal obligations of an Iranian bank's branch or agency pursuant to the terms of the letter of credit or other financing agreement are not covered by this exemption.

§ 560.414 Reexportation of certain U.S.-origin goods exported prior to May 7, 1995.

The prohibitions on reexportation in § 560.205 do not apply to United States-origin goods or technology that were exported from the United States prior to 12:01 a.m., Eastern Daylight Time, May 7, 1995, if:

(a) Such goods or technology were not the property of a United States person as of 12:01 a.m. Eastern Daylight Time, May 7, 1995; and

(b) The reexportation of the U.S.-origin goods or technology to Iran or the Government of Iran was not subject to reexport (as opposed to export) license application requirements under U.S. regulations in effect prior to May 6, 1995.

NOTES TO § 560.414. 1. The exclusion in this section applies, among other things, to goods that were as of May 6, 1995, classified under the U.S. Department of Commerce's Export Administration Regulations (15 CFR parts 730–774) as ECCNs 2A994; 3A993; 5A992; 5A995; 6A990; 6A994; 7A994; 8A992; 8A994; 9A990; 9A992; and 9A994, that were exported from the United States prior to 12:01 a.m. Eastern Daylight Time, May 7, 1995, and were not the property of a United States person as of 12:01 a.m. Eastern Daylight Time, May 7, 1995. As of April 26, 1999, items covered by this note are classified under ECCNs 2A994; 3A992.a; 5A991.f; 5A992; 6A991; 6A998; 7A994; 8A992.d, .e, .f and .g; 9A990.a and .b; and 9A991.d and .e.

2. A reexportation of U.S.-origin goods or technology which meets the conditions of paragraph (a) of this section, or which is not within the scope of § 560.205, nevertheless may require specific authorization by other agencies of the U.S. Government for reexportation to Iran or the Government of Iran. For example, items which meet the conditions of paragraph (a) may nevertheless require an export license under the Enhanced Proliferation Control Initiative provisions of the Export Administration Regulations (15 CFR part 744).

[64 FR 20172, Apr. 26, 1999]

§ 560.416 Brokering services.

(a) For purposes of the prohibitions in §§ 560.201, 560.204, 560.205, 560.206 and

560.208, the term *services* includes performing a brokering function.

(b) *Examples*. A person within the United States, or a United States person, wherever located, may not:

(1) Act as broker for the provision of goods, services or technology, from whatever source, to or from Iran or the Government of Iran;

(2) Act as broker for the purchase or swap of crude oil of Iranian origin or owned or controlled by the Government of Iran;

(3) Act as broker for the provision of financing, a financial guarantee or an extension of credit by any person to Iran or the Government of Iran;

(4) Act as a broker for the provision of financing, a financial guarantee or an extension of credit to any person specifically to enable that person to construct or operate a facility in Iran or owned or controlled by the Government of Iran; or

(5) Act as a broker for the provision of financing, a financial guarantee, or an extension of credit to any person specifically to enable that person to provide goods, services, or technology intended for Iran or the Government of Iran.

[64 FR 20172, Apr. 26, 1999]

§ 560.417 Facilitation; change of policies and procedures; referral of business opportunities offshore.

With respect to § 560.208, a prohibited facilitation or approval of a transaction by a foreign person occurs, among other instances, when a United States person:

(a) Alters its operating policies or procedures, or those of a foreign affiliate, to permit a foreign affiliate to accept or perform a specific contract, engagement or transaction involving Iran or the Government of Iran without the approval of the United States person, where such transaction previously required approval by the United States person and such transaction by the foreign affiliate would be prohibited by this part if performed directly by a United States person or from the United States;

(b) Refers to a foreign person purchase orders, requests for bids, or similar business opportunities involving Iran or the Government of Iran to which the United States person could not directly respond as a result of the prohibitions contained in this part; or

(c) Changes the operating policies and procedures of a particular affiliate with the specific purpose of facilitating transactions that would be prohibited by this part if performed by a United States person or from the United States.

[64 FR 20172, Apr. 26, 1999]

§ 560.418 Release of technology or software in the United States or a third country.

The release of technology or software in the United States, or by a United States person wherever located, to any person violates the prohibitions of this part if made with knowledge or reason to know the technology is intended for Iran or the Government of Iran, unless that technology or software meets the definition of *information and informational materials* in § 560.315. See § 560.511.

NOTES TO § 560.418. 1. The U.S. Department of Commerce's Bureau of Export Administration requires a license for the release in the United States (or in a third country) to a foreign national of technology if both of the following conditions are met:

(a) That technology would require a license for exportation (or reexportation) to the home country of the foreign national; and

(b) The foreign national is not a citizen or permanent resident of the United States (or of the third country) or is not a protected individual under the Immigration and Naturalization Act (8 U.S.C. § 1324(b)(a)(3)). See 15 CFR 734.2(b)(2)(ii) and 734.2(b)(5).

2. The transfer to a foreign national of technology subject to regulations administered by the U.S. Department of State or other agencies of the U.S. Government may require authorization by those agencies.

[64 FR 20173, Apr. 26, 1999]

§ 560.419 U.S. employment of persons normally located in Iran.

The prohibitions in § 560.201 make it unlawful to hire an Iranian national normally located in Iran to come to the United States solely or for the principal purpose of engaging in employment on behalf of an entity in Iran or as the employee of a U.S. person, unless that employment is authorized pursuant to a visa issued by the U.S. State Department or by § 560.505. See

also § 560.418 with respect to the release of technology and software.

[64 FR 20173, Apr. 26, 1999]

§ 560.420 Reexportation by non-U.S. persons of certain foreign-made products containing U.S.-origin goods or technology.

For purposes of satisfying the de minimis content rule in § 560.205(b)(2):

(a) U.S.-origin goods (excluding software) falling within the definition in § 560.205 must comprise less than 10 percent of the foreign-made good (excluding software);

(b) U.S.-origin software falling within the definition in § 560.205 must comprise less than 10 percent of the foreign-made software;

(c) U.S.-origin technology falling within the definition in § 560.205 must comprise less than 10 percent of the foreign-made technology; and,

(d) In cases involving a complex product made of a combination of U.S.-origin goods (including software) and technology falling within the definition in § 560.205, the aggregate value of all such U.S.-origin goods (including software) and such technology contained in the foreign-made product must be less than 10 percent of the total value of the foreign-made product.

NOTES TO § 560.420. 1. Notwithstanding the exceptions contained in § 560.205(b)(1) and (b)(2) and this section, a reexportation to Iran or the Government of Iran of U.S.-origin items falling within the definition in § 560.205 is prohibited if those U.S.-origin goods (including software) or that technology have been substantially transformed or incorporated into a foreign-made end product which is destined to end uses or end users prohibited under regulations administered by other U.S. Government agencies. See, e.g., the Export Administration Regulations (31 CFR 736.2(b)(5), 744.2, 744.3, 744.4, 744.7, and 744.10); International Traffic in Arms Regulations (22 CFR 123.9).

2. A reexportation not prohibited by § 560.205 may nevertheless require authorization by the U.S. Department of Commerce, the U.S. Department of State or other agencies of the U.S. Government.

3. The provisions of § 560.205 and this section apply only to persons other than United States persons.

[64 FR 20173, Apr. 26, 1999]

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 560.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[68 FR 53659, Sept. 11, 2003]

§ 560.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such license or other authorization.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part authorizes any transactions prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

(d) Specific licenses issued prior to 12:01 a.m., Eastern Daylight Time, August 20, 1997, continue in effect in accordance with their terms except to

the extent specifically revoked, amended, or modified by the Office of Foreign Assets Control.

(e) Nothing contained in this part shall be construed to supersede the requirements established under any other provision of law or to relieve a person from any requirement to obtain a license or other authorization from another department or agency of the U.S. Government in compliance with applicable laws and regulations subject to the jurisdiction of that department or agency. For example, exports of goods, services, or technical data which are not prohibited by this part or which do not require a license by the Office of Foreign Assets Control, nevertheless may require authorization by the U.S. Department of Commerce, the U.S. Department of State or other agencies of the U.S. Government. See also § 560.701(d).

[60 FR 47063, Sept. 11, 1995, as amended at 64 FR 20173, Apr. 26, 1999]

§ 560.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action is binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§§ 560.503–560.504 [Reserved]

§ 560.505 Importation of certain Iranian-origin services authorized; activities related to certain visa categories authorized.

(a) The importation of Iranian-origin services into the United States or other dealing in such services is authorized where such services are performed in the United States by an Iranian citizen or national for the purpose of, or which directly relate to, participating in a public conference, performance, exhibition or similar event, and such services are consistent with that purpose.

(b) Persons otherwise qualified for a non-immigrant visa under categories A–3 and G–5 (attendants, servants and personal employees of aliens in the United States on diplomatic status), D (crewmen), F (students), I (information media representatives), J (exchange visitors), M (non-academic students), O and P (aliens with extraordinary ability, athletes, artists and entertainers), Q (international cultural exchange visitors), R (religious workers), or S (witnesses) are authorized to carry out in the United States those activities for which such a visa has been granted by the U.S. State Department.

(c) Persons otherwise qualified for a visa under categories E–2 (treaty investor), H (temporary worker), or L (intracompany transferee) and all immigrant visa categories are authorized to carry out in the United States those activities for which such a visa has been granted by the U.S. State Department, provided that the persons are not coming to the United States to work as an agent, employee or contractor of the Government of Iran or a business entity or other organization in Iran.

[64 FR 20173, Apr. 26, 1999, as amended at 64 FR 58791, Nov. 1, 1999]

§ 560.506 Importation and exportation of certain gifts authorized.

The importation into the United States of Iranian-origin goods from Iran or a third country, and the exportation from the United States to Iran of goods, are authorized for goods sent as gifts to persons provided that the value of the gift is not more than $100; the goods are of a type and in quantities normally given as gifts between individuals; and the goods are not controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), or nuclear proliferation (NP). See Commerce Control List, Export Administration Regulations (15 CFR part 774).

[64 FR 20174, Apr. 26, 1999]

§ 560.507 Accompanied baggage authorized.

(a) Persons entering the United States directly or indirectly from Iran are authorized to import into the

United States Iranian-origin accompanied baggage normally incident to travel.

(b) Persons leaving the United States for Iran are authorized to export from the United States accompanied baggage normally incident to travel.

(c) This authorization applies to accompanied baggage that includes only articles that are necessary for personal use incident to travel, not intended for any other person or for sale, and are not otherwise prohibited from importation or exportation under applicable United States laws.

§ 560.508 Telecommunications and mail transactions authorized.

All transactions of common carriers incident to the receipt or transmission of telecommunications and mail between the United States and Iran are authorized. For purposes of this section, the term *mail* includes parcels only to the extent the parcels contain goods exempted from the prohibitions contained in this part or otherwise eligible for importation from or exportation to Iran under a general or specific license.

§ 560.509 Certain transactions related to patents, trademarks and copyrights authorized.

(a) All of the following transactions in connection with patent, trademark, copyright or other intellectual property protection in the United States or Iran are authorized:

(1) The filing and prosecution of any application to obtain a patent, trademark, copyright or other form of intellectual property protection, including importation of or dealing in Iranian-origin services, payment for such services, and payment to persons in Iran directly connected to such intellectual property protection;

(2) The receipt of a patent, trademark, copyright or other form of intellectual property protection;

(3) The renewal or maintenance of a patent, trademark, copyright or other form of intellectual property protection; and

(4) The filing and prosecution of opposition or infringement proceedings with respect to a patent, trademark, copyright or other form of intellectual property protection, or the entrance of a defense to any such proceedings.

(b) Nothing in this section affects obligations under any other provision of law.

[60 FR 47063, Sept. 11, 1995, as amended at 64 FR 20174, Apr. 26, 1999]

§ 560.510 Transactions related to the resolution of disputes between the United States or United States nationals and the Government of Iran.

(a) Except as otherwise authorized, specific licenses may be issued on a case-by-case basis to authorize transactions in connection with awards, decisions or orders of the Iran-United States Claims Tribunal in The Hague, the International Court of Justice, or other international tribunals (collectively, ''tribunals''); agreements settling claims brought before tribunals; and awards, orders, or decisions of an administrative, judicial or arbitral proceeding in the United States or abroad, where the proceeding involves the enforcement of awards, decisions or orders of tribunals, or is contemplated under an international agreement, or involves claims arising before 12:01 a.m. EDT, May 7, 1995, that resolve disputes between the Government of Iran and the United States or United States nationals, including the following transactions:

(1) Importation into the United States of, or any transaction related to, goods and services of Iranian origin or owned or controlled by the Government of Iran;

(2) Exportation or reexportation to Iran or the Government of Iran of any goods, technology, or services, except to the extent that such exportation or reexportation is also subject to export licensing application requirements of another agency of the United States Government and the granting of such a license by that agency would be prohibited by law;

(3) Financial transactions related to the resolution of disputes at tribunals, including transactions related to the funding of proceedings or of accounts related to proceedings or to a tribunal; participation, representation, or testimony before a tribunal; and the payment of awards of a tribunal; and

(4) Other transactions otherwise prohibited by this part which are necessary to permit implementation of the foregoing awards, decisions, orders, or agreements.

(b) Specific licenses may be issued on a case-by-case basis to authorize payment of costs related to the storage or maintenance of goods in which the Government of Iran has title, and to authorize the transfer of title to such goods, provided that such goods are in the United States and that such goods are the subject of a proceeding pending before a tribunal.

(c)(1) All transactions are authorized with respect to the importation of Iranian-origin goods and services necessary to the initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals.

(2) Specific licenses may be issued on a case-by-case basis to authorize the exportation to Iran or the Government of Iran of goods, and of services not otherwise authorized by § 560.525, necessary to the initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals, except to the extent that the exportation is also subject to export licensing application requirements of another agency of the United States Government and the granting of such a license by that agency would be prohibited by law.

(3) Representation of United States persons or of third country persons in legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals, against Iran or the Government of Iran is not prohibited by this part. The exportation of certain legal services to a person in Iran or the Government of Iran is authorized in § 560.525.

(d) The following are authorized:

(1) All transactions related to payment of awards of the Iran-United States Claims Tribunal in The Hague against Iran.

(2) All transactions necessary to the payment and implementation of awards (other than exports or reexports subject to export license application requirements of other agencies of the United States Government) in a legal proceeding to which the United States Government is a party, or to payments pursuant to settlement agreements entered into by the United States Government in such a legal proceeding.

[60 FR 47063, Sept. 11, 1995, as amended at 62 FR 41852, Aug. 4, 1997]

§ 560.511 Exportation or supply of insubstantial United States content for use in foreign-made products or technology.

(a) Except as provided in paragraph (b) of this section and notwithstanding the prohibitions in § 560.204, the exportation or supply of goods or technology from the United States, or by a United States person wherever located, for substantial transformation or incorporation into a foreign-made end product in a country other than the United States or Iran, intended specifically or predominantly for Iran or the Government of Iran, is permitted under this part where the exporter has ascertained that all of the following are the case:

(1) The U.S.-origin goods or technology being exported for substantial transformation or incorporation abroad were not subject to export license application requirements under any United States regulations in effect on May 6, 1995, or were not thereafter made subject to such regulations imposed independently of this part;

(2) With respect to the foreign-made end product:

(i) U.S.-origin goods (excluding software) comprise less than 10 percent of the foreign-made good (excluding software);

(ii) U.S.-origin software comprises less than 10 percent of the foreign-made software;

(iii) U.S.-origin technology comprises less than 10 percent of the foreign-made technology; and

(iv) In cases involving a complex product made of a combination of goods (including software) and technology, the aggregate value of all U.S.-origin goods (including software) and technology contained in the foreign-

made end product is less than 10 percent of the total value of the foreign-made product;

(3) The foreign-made end product is not destined to end uses or end users prohibited under regulations administered by other U.S. Government agencies. See, e.g., the Export Administration Regulations (31 CFR 736.2(b)(5), 744.2, 744.3, 744.4, 744.7, and 744.10); International Traffic in Arms Regulations (22 CFR 123.9);

(4) The foreign-made end product is not intended for use in the Iranian petroleum or petrochemical industry. For this purpose, products intended for use in the Iranian petroleum or petrochemical industry include not only products uniquely suited for use in those industries, such as oilfield services equipment, but also goods and technology for use in products, such as computers, office equipment, construction equipment, or building materials, which are suitable for use in other industries but which are intended specifically for use in the petroleum or petrochemical industries.

(b) The authorization contained in this section is not available if the foreign-made end product is of a type which other U.S. Government agencies make ineligible for de minimis U.S.-origin content. See, e.g., the Export Administration Regulations (15 CFR 734.4(a) and (b)); International Traffic in Arms Regulations (22 CFR 123.9).

NOTE TO § 560.511. An exportation authorized by this section may nevertheless require authorization by the U.S. Department of Commerce, the U.S. Department of State or other agencies of the U.S. Government.

[64 FR 20174, Apr. 26, 1999]

§ 560.512 Iranian Government missions in the United States.

(a) All transactions ordinarily incident to the importation of goods or services into the United States by, the exportation of goods or services from the United States by, or the provision of goods or services in the United States to, the missions of the Government of Iran to international organizations in the United States, and Iranians admitted to the United States under section 101(a)(15)(G) of the Immigration and Nationality Act (''INA''), 8 U.S.C. 1101(a)(15)(G), are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the mission, or for personal use of personnel admitted to the United States under INA section 101(a)(15)(G), and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

(b) All transactions ordinarily incident to the importation of goods or services into the United States by, the exportation of goods or services from the United States by, or the provision of goods or services in the United States to, the Iranian Interests Section of the Embassy of Pakistan (or any successor protecting power) in the United States, are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the Iranian Interests Section, and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

(c) All transactions ordinarily incident to the provision of goods or services in the United States to the employees of Iranian missions to international organizations in the United States, and to employees of the Iranian Interests Section of the Embassy of Pakistan (or any successor protecting power) in the United States, are authorized, provided that the transaction is not otherwise prohibited by law.

§ 560.513 Importation of Iranian-origin oil.

(a) Specific licenses will be issued on a case-by-case basis to permit the importation of Iranian-origin oil in connection with the resolution or settlement of cases before the Iran-United States Claims Tribunal in The Hague, established pursuant to the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran of January 19, 1981, or where the proceeds are otherwise to be deposited in the Tribunal's Security Account.

(b) License applications submitted pursuant to this section must contain

the importer's certification that the oil is of Iranian origin with all relevant supporting documentation, including specification of the production site at which the oil was extracted, and that the sale or transfer of the oil is by or for the account of the Government of Iran. Licenses will not be issued for importations of Iranian-origin oil which is not sold or transferred by or for the account of the Government of Iran. In cases where the oil is being imported either in whole or in part in resolution or settlement of a case pending before the Tribunal, applicants are required to identify the case and submit a copy of the settlement agreement and the Award on Agreed Terms issued by the Tribunal. In cases where any proceeds are generated for the account of the Government of Iran from the importation of Iranian-origin oil, the importer must demonstrate that irrevocable arrangements are in place that will ensure that the proceeds will be deposited in the Tribunal's Security Account.

§ 560.514 [Reserved]

§ 560.515 30-day delayed effective date for pre-May 7, 1995 trade contracts involving Iran.

(a) All transactions necessary to complete performance of a trade contract entered into prior to May 7, 1995, and involving Iran (a *pre-existing trade contract*), including the exportation of goods, services (including financial services), or technology from the United States that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995, or performance under a pre-existing trade contract for transactions in Iranian-origin or Government of Iran-owned or controlled goods or services that do not involve importation into the United States, are authorized without specific licensing by the Office of Foreign Assets Control if the conditions in paragraph (a)(1) or (a)(2) of this section are met:

(1) If the pre-existing trade contract is for an exportation of goods or technology from the United States that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995, the goods or technology must be exported from the United States prior to 12:01 a.m. Eastern Daylight Time, June 6, 1995, and all other activity by U.S. persons that is necessary and incidental to the performance of the pre-existing trade contract (other than payment under a financing contract) must be completed prior to 12:01 a.m. Eastern Daylight Time, August 6, 1995; or

(2) All obligations under a pre-existing trade contract (other than payment under a financing contract) must be fully completed prior to 12:01 a.m. Eastern Daylight Time, June 6, 1995, if the pre-existing trade contract is for one of the following:

(i) The exportation of services from the United States benefitting a person in Iran or the Government of Iran;

(ii) The reexportation of goods or technology to Iran, the Government of Iran, or an entity owned or controlled by the Government of Iran that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995; or

(iii) Transactions relating to goods or services of Iranian origin or owned or controlled by the Government of Iran other than transactions relating to importation into the United States of such goods or services.

(b) In order to complete performance of a pre-existing trade contract, the arrangement or renegotiation of contracts for transactions necessary and incidental to performance of the pre-existing trade contract is authorized. Such incidental transactions may include, for example, financing, shipping and insurance arrangements. Amendments to a pre-existing trade contract for the purpose of accelerating a previously-specified delivery schedule under a contract for a fixed quantity or value of goods, technology or services, or curtailing or canceling required performance, are authorized without specific licensing. Any other alteration of the trade contract must be specifically licensed by the Office of Foreign Assets Control.

(c) The existence of a contract will be determined with reference to the principles contained in Article 2 of the Uniform Commercial Code.

[60 FR 47063, Sept. 11, 1995, as amended at 64 FR 20174, Apr. 26, 1999]

§ 560.516 Payment and United States dollar clearing transactions involving Iran.

(a) United States depository institutions are authorized to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer is covered in full by any of the following conditions and does not involve debiting or crediting an Iranian account:

(1) The transfer arises from an underlying transaction that has been authorized by a specific or general license issued pursuant to this part;

(2) The transfer arises from an underlying transaction that is not prohibited by this part, such as a non-commercial remittance to or from Iran (e.g., a family remittance not related to a family-owned enterprise); or

(3) The transfer arises from an underlying transaction that is exempted from regulation pursuant to § 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)), such as an exportation to Iran or importation from Iran of information and informational materials, a travel-related remittance, or payment for the shipment of a donation of articles to relieve human suffering.

(b) United States registered brokers or dealers in securities are authorized to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer is covered in full by any of the conditions set forth in paragraph (a) of this section and does not involve the debiting or crediting of an Iranian account.

(c) Before a United States depository institution or a United States registered broker or dealer in securities initiates a payment on behalf of any customer, or credits a transfer to the account on its books of the ultimate beneficiary, the United States depository institution or United States registered broker or dealer in securities must determine that the underlying transaction is not prohibited by this part.

(d) Pursuant to the prohibitions contained in § 560.208, a United States depository institution or a United States registered broker or dealer in securities may not make transfers to or for the benefit of a foreign-organized entity owned or controlled by it if the underlying transaction would be prohibited if engaged in directly by the U.S. depository institution or U.S. registered broker or dealer in securities.

(e) This section does not authorize transactions with respect to property blocked pursuant to part 535.

[73 FR 66542, Nov. 10, 2008]

§ 560.517 Exportation of services: Iranian accounts at United States depository institutions or United States registered brokers or dealers in securities.

(a) United States depository institutions are prohibited from performing services with respect to Iranian accounts, as defined in § 560.320, except that United States depository institutions are authorized to provide and be compensated for services and incidental transactions with respect to:

(1) The maintenance of Iranian accounts, including the payment of interest and the debiting of service charges;

(2) The processing of transfers arising from underlying transactions that are exempted from regulation pursuant to section 203(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1702(b), such as an exportation of information or informational materials to Iran, a travel-related remittance, or payment for the shipment of a donation of articles to relieve human suffering; and

(3) At the request of the account party, the closing of Iranian accounts and the lump sum transfer only to the account party of all remaining funds and other assets in the account.

(b) United States registered brokers or dealers in securities are prohibited from performing services with respect to Iranian accounts, as defined in § 560.320, except that United States registered brokers or dealers in securities are authorized to provide and be compensated for services and incidental transactions with respect to:

(1) The limited maintenance of an Iranian account, including only the payment into such account of interest, cash dividends, and stock dividends; the debiting of service charges; and the

execution of stock splits and dividend reinvestment plans; and

(2) At the request of the account party, the closing of Iranian accounts through the one-time liquidation of all assets in the account at fair market value and the lump sum transfer only to the account party of all proceeds derived therefrom and all remaining funds in the account.

(c) Specific licenses may be issued with respect to the operation of Iranian accounts that constitute accounts of:

(1) Foreign government missions and their personnel in Iran; or

(2) Missions of the Government of Iran in the United States.

[60 FR 47063, Sept. 11, 1995, as amended at 70 FR 15584, Mar. 28, 2005; 74 FR 36398, July 23, 2009]

§ 560.518 Transactions in Iranian-origin and Iranian Government property.

(a) Except for transactions involving the Government of Iran, all domestic transactions with respect to Iranian-origin goods located in the United States are authorized, provided that this paragraph (a) does not affect the status of property blocked pursuant to part 535 or detained or seized, or subject to detention or seizure, pursuant to this part.

(b) All transactions necessary and incidental to a United States person's sale or other disposition of goods or services of Iranian origin or owned or controlled by the Government of Iran that are located or to be performed outside the United States and were acquired by that United States person in transactions not prohibited by part 535 or this part are authorized, provided:

(1) The sale or other disposition does not result in the importation of such goods or services into the United States, and

(2) The sale or other disposition is completed no later than 12:01 a.m. EDT, August 6, 1995.

(c) Except as provided in paragraphs (a) and (b) of this section, United States persons may not deal in goods or services of Iranian origin or owned or controlled by the Government of Iran, except that the following transactions are authorized:

(1) Transactions by a United States person with third-country nationals incidental to the storage and maintenance in third countries of Iranian-origin goods owned prior to May 7, 1995, by that United States person or acquired thereafter by that United States person consistent with the provisions of this part;

(2) Exportation of Iranian-origin household and personal effects from the United States incident to the relocation of United States persons outside the United States; and

(3) Purchase for personal use or consumption in Iran of Iranian-origin goods or services.

(d) In addition to transactions authorized by paragraph (c)(1) of this section, a United States person is authorized after 12:01 a.m. EDT, May 7, 1995, to use or dispose of Iranian-origin household and personal effects that are located outside the United States and that have been acquired by the United States person in transactions not prohibited by part 535 or this part.

§ 560.519 Policy governing news organization offices.

(a) Specific licenses may be issued on a case-by-case basis authorizing transactions necessary for the establishment and operation of news bureaus in Iran by United States organizations whose primary purpose is the gathering and dissemination of news to the general public.

(b) Transactions that may be authorized include but are not limited to those incident to the following:

(1) Leasing office space and securing related goods and services;

(2) Hiring support staff;

(3) Purchasing Iranian-origin goods for use in the operation of the office; and

(4) Paying fees related to the operation of the office in Iran.

(c) Specific licenses may be issued on a case-by-case basis authorizing transactions necessary for the establishment and operation of news bureaus in the United States by Iranian organizations whose primary purpose is the gathering and dissemination of news to the general public.

(d) The number assigned to such specific licenses should be referenced in

all import and export documents and in all funds transfers and other banking transactions through banking institutions organized or located in the United States in connection with the licensed transactions to avoid disruption of the trade and financial transactions.

§ 560.520 Exportation of agricultural commodities on contracts entered into prior to May 7, 1995.

(a) All transactions by United States persons in connection with the exportation from the United States to Iran of any agricultural commodity under an export sales contract are authorized, provided:

(1) Such contract was entered into prior to 12:01 a.m. EDT, May 7, 1995; and

(2) The terms of such contract require delivery of the commodity prior to February 2, 1996.

(b) The performance of letters of credit and other financing agreements with respect to exports authorized by this section is authorized pursuant to their terms.

(c) For purposes of this section, the term *agricultural commodity* means feed grains, rice, wheat, cotton, peanuts, tobacco, dairy products, and oilseeds (including vegetable oil).

(d) Specific licenses may be granted on a case-by-case basis for transactions by United States persons in connection with the exportation of other agricultural articles from the United States to Iran that do not fall within the definition of ''agricultural commodity'' contained in paragraph (c) of this section, provided such exportation is pursuant to an export sales contract and the conditions contained in paragraphs (a)(1) and (a)(2) of this section are met.

§ 560.521 Diplomatic pouches.

The following transactions are authorized:

(a) The importation into the United States from Iran, or the exportation from the United States to Iran, of diplomatic pouches and their contents; and

(b) The exportation, reexportation, sale, or supply, directly or indirectly, from the United States or by a U.S. person, wherever located, of any goods or technology to a third-country government, or to its contractors or agents, for shipment to Iran via a diplomatic pouch. To the extent necessary, this section also authorizes the shipment of such goods or technology by the third-country government to Iran via a diplomatic pouch.

NOTE TO PARAGRAPH (b) OF § 560.521: The exportation or reexportation of certain U.S.-origin goods or technology to a third-country government, or to its contractors or agents, may require authorization by the U.S. Department of Commerce under the Export Administration Regulations (15 CFR parts 730 et seq.).

[72 FR 15832, Apr. 3, 2007]

§ 560.522 Allowable payments for overflights of Iranian airspace.

Payments to Iran of charges for services rendered by the Government of Iran in connection with the overflight of Iran or emergency landing in Iran of aircraft owned by a United States person or registered in the United States are authorized.

§ 560.523 Exportation of equipment and services relating to information and informational materials.

Specific licenses may be issued on a case-by-case basis for the exportation of equipment and services necessary for the establishment of news wire feeds or other transmissions of information and informational materials.

[64 FR 20175, Apr. 26, 1999]

§ 560.524 Household goods and personal effects.

(a) The exportation from the United States to Iran of household and personal effects, including baggage and articles for family use, of persons departing the United States to relocate in Iran is authorized provided the articles included in such effects have been actually used by such persons or by family members accompanying them, are not intended for any other person or for sale, and are not otherwise prohibited from exportation. See also, § 560.518(c)(2).

(b) The importation of Iranian-origin household and personal effects, including baggage and articles for family use, of persons arriving in the United

States is authorized; to qualify, articles included in such effects must have been actually used abroad by such persons or by other family members arriving from the same foreign household, must not be intended for any other person or for sale, and must not be otherwise prohibited from importation. For purposes of this paragraph, household and personal effects include all articles meeting the criteria stated in this paragraph regardless of the time elapsed since the importer's arrival in the United States from Iran.

[60 FR 47063, Sept. 11, 1995, as amended at 65 FR 25643, May 3, 2000]

§ 560.525 Exportation of certain legal services.

(a) The provision of the following legal services to the Government of Iran or to a person in Iran, and receipt of payment of professional fees and reimbursement of incurred expenses, are authorized:

(1) Provision of legal advice and counselling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counselling is not provided to facilitate transactions that would violate any of the prohibitions contained in this part;

(2) Representation when a person in Iran or the Government of Iran has been named as a defendant in or otherwise made a party to domestic United States legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic United States legal, arbitration, or administrative proceedings on behalf of the Government of Iran or a person in Iran;

(4) Representation before any federal or state agency with respect to the imposition, administration, or enforcement of United States sanctions against Iran;

(5) Initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before international tribunals (including the Iran-United States Claims Tribunal in The Hague and the International Court of Justice):

(i) To resolve disputes between the Government of Iran or an Iranian national and the United States or a United States national;

(ii) Where the proceeding is contemplated under an international agreement; or

(iii) Where the proceeding involves the enforcement of awards, decisions, or orders resulting from legal proceedings within the scope of paragraph (a)(5)(i) or (a)(5)(ii) of this section, provided that any transaction, unrelated to the provision of legal services or the payment therefor, that is necessary or related to the execution of an award, decision or order resulting from such legal proceeding, or otherwise necessary for the conduct of such proceeding, and which would otherwise be prohibited by this part requires a specific license in accordance with §§ 560.510 and 560.801;

(6) Provision of legal advice and counselling in connection with settlement or other resolution of matters described in paragraph (a)(5) of this section; and

(7) Provision of legal services in any other context in which prevailing United States law requires access to legal counsel at public expense.

(b) The provision of any other legal services to a person in Iran or the Government of Iran, not otherwise authorized in or exempted by this part, requires the issuance of a specific license.

[60 FR 47063, Sept. 11, 1995, as amended at 62 FR 41852, Aug. 4, 1997]

§ 560.526 Commodities trading and related transactions.

(a) *Trading in Iranian-origin commodities.* With respect to § 560.206, specific licenses may be issued on a case-by-case basis to authorize certain commodities trading by a United States person in Iranian-origin goods, or transactions incidental to such trading, where:

(1) No party to the transaction with the United States person is a person in Iran or the Government of Iran, and

(2) It was impossible for the United States person to determine at the time of entry into the transaction, given all circumstances of the transaction, that the goods would be of Iranian origin or would be owned or controlled by the Government of Iran.

(b) *Trading in commodities destined for Iran or the Government of Iran.* With respect to § 560.204, specific licenses may be issued on a case-by-case basis to authorize certain trading by United States persons in commodities of U.S. or third-country origin destined for Iran or the Government of Iran, or transactions incidental to such trading, where:

(1) It was impossible for the United States person to determine at the time of entry into the transaction, given all circumstances of the transaction, that the goods would be for delivery to Iran or to the Government of Iran;

(2) The United States person did not contract with a person in Iran or the Government of Iran; and

(3) The United States person did not initiate the nomination of the commodity's destination as Iran or the Government of Iran.

§ 560.527 Rescheduling existing loans.

Specific licenses may be issued on a case-by-case basis for rescheduling loans or otherwise extending the maturities of existing loans, and for charging fees or interest at commercially reasonable rates, in connection therewith, provided that no new funds or credits are thereby transferred or extended to Iran or the Government of Iran.

§ 560.528 Aircraft safety.

Specific licenses may be issued on a case-by-case basis for the exportation and reexportation of goods, services, and technology to insure the safety of civil aviation and safe operation of U.S.-origin commercial passenger aircraft.

§ 560.529 Bunkering and emergency repairs.

Goods or services provided in the United States to a non-Iranian carrier transporting passengers or goods to or from Iran are permissible if they are:

(a) Bunkers or bunkering services;

(b) Supplied or performed in the course of emergency repairs; or

(c) Supplied or performed under circumstances which could not be anticipated prior to the carrier's departure for the United States.

[64 FR 20175, Apr. 26, 1999]

§ 560.530 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.

(a) *One-year license requirement.* The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix B to this part 560), medicine, or medical devices to the Government of Iran, any entity in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, shall only be made pursuant to a one-year license issued by the United States Department of the Treasury, Office of Foreign Assets Control, for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No license will be granted for the exportation or reexportation of agricultural commodities, medicine, or medical equipment to any entity or individual in Iran promoting international terrorism. Executory contracts entered into pursuant to paragraph (b)(2) of this section prior to the issuance of the one-year license described in this paragraph shall be deemed to have been signed on the date of issuance of that one-year license (and, therefore, the exporter is authorized to make shipments under that contract within the 12-month period beginning on the date of issuance of the one-year license).

(b) *General license for arrangement of exportation and reexportation of covered products.* (1) The making of shipping arrangements, cargo inspections, obtaining of insurance, and arrangement of financing (consistent with § 560.532) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Iran, entities in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized.

(2) If desired, entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to

the Government of Iran, entities in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized, provided that performance of an executory contract is expressly made contingent upon the prior issuance of the one-year license described in paragraph (a) of this section.

(c) *Instructions for obtaining one-year licenses.* In order to obtain the one-year license described in paragraph (a), the exporter must provide to the Office of Foreign Assets Control:

(1) The applicant's full legal name (if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business).

(2) The applicant's mailing and street address (so that OFAC may reach a responsible point of contact, the applicant should also include the name of the individual(s) responsible for the application and related commercial transactions along with their telephone and fax numbers and, if available, e-mail addresses).

(3) The names, mailing addresses, and, if available, fax and telephone numbers of all parties with an interest in the transaction. If the goods are being exported or reexported to a purchasing agent in Iran, the exporter must identify the agent's principals at the wholesale level for whom the purchase is being made. If the goods are being exported or reexported to an individual, the exporter must identify any organizations or entities with which the individual is affiliated that have an interest in the transaction.

(4) A description of all items to be exported or reexported pursuant to the requested one-year license, including a statement that the item is classified as EAR 99, and, if necessary, documentation sufficient to verify that the items to be exported or reexported are classified as EAR 99 and do not fall within any of the limitations contained in paragraph (d) of this section.

(5) An Official Commodity Classification of EAR 99 issued by the Department of Commerce, Bureau of Industry and Security (''BIS''), certifying that the product is EAR 99, is required to be submitted to OFAC with the request for a license authorizing the exportation or reexportation of all fertilizers, live horses, western red cedar, and medical devices other than basic medical supplies, such as syringes, bandages, gauze and similar items, that are specifically listed on BIS's Web site, *http://www.bis.doc.gov/policiesandregulations/tradesanctionsreformexportenhancementact.html.* Medical supplies that are specifically listed on BIS's Web site may not require an Official Commodity Classification of EAR 99 from BIS. BIS will also provide a list on its Web site of medicines that are ineligible for a one-year license under these procedures. Exporters should seek an Official Commodity Classification of EAR 99 from BIS for medicines and submit a copy to OFAC. See 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BIS.

(d) *Limitations.* (1) Nothing in this section or in any license issued pursuant to paragraph (a) of this section relieves the exporter from compliance with the export license application requirements of another Federal agency.

(2) Nothing in this section or in any license issued pursuant to paragraph (a) of this section authorizes the exportation or reexportation of any agricultural commodity, medicine, or medical device controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 *et seq.*); or used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.

(3) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects prohibitions on the sale or supply of U.S. technology or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices.

(4) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

(5) This section does not apply to any transaction or dealing involving property blocked pursuant to this chapter or any other activity prohibited by this chapter not otherwise authorized in this part.

(e) *Covered items.* For the purposes of this part, agricultural commodities, medicine, and medical devices are defined below.

(1) *Agricultural commodities.* For the purposes of this section, agricultural commodities are:

(i) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, and that fall within the term ''agricultural commodity'' as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that are intended for ultimate use in Iran as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this section, the term medicine has the same meaning given the term ''drug'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this section, the term medical device has the meaning given the term ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

[74 FR 61034, Nov. 23, 2009]

§ 560.531 [Reserved]

§ 560.532 Payment for and financing of exports and reexports of agricultural commodities, medicine, and medical devices.

(a) *General license for payment terms.* The following payment terms for sales of agricultural commodities and products, medicine, and medical equipment pursuant to §§ 560.530 and 560.531 are authorized:

(1) Payment of cash in advance;

(2) Sales on open account, provided that the account receivable may not be transferred by the person extending the credit; or

(3) Financing by third-country financial institutions that are neither United States persons nor Government of Iran entities. Such financing may be confirmed or advised by U.S. financial institutions.

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to § 560.530. See § 501.801(b) of this chapter for specific licensing procedures.

(c) *No debits or credits to Iranian accounts on the books of U.S. depository institutions.* Nothing in this section authorizes payment terms or trade financing involving debits or credits to Iranian accounts, as defined in § 560.320.

(d) *Transfers through the U.S. financial system.* Any payment relating to a transaction authorized in or pursuant to § 560.530 or § 560.533 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the rejection of the transfer. See § 560.516(c).

(e) Notwithstanding any other provision of this part, no commercial exportation to Iran may be made with United States Government assistance, including United States foreign assistance, United States export assistance,

and any United States credit or guarantees absent a Presidential waiver.

[74 FR 61035, Nov. 23, 2009]

§ 560.533 Brokering sales of agricultural commodities, medicine, and medical devices.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sale and exportation or reexportation by United States persons of agricultural commodities, medicine, and medical devices, provided that the sale and exportation or reexportation is authorized by a one-year license issued pursuant to § 560.530.

(b) *Specific licensing for brokering sales by non-U.S. persons of bulk agricultural commodities.* Specific licenses may be issued on a case-by-case basis to permit United States persons to provide brokerage services on behalf of non-United States, non-Iranian persons for the sale and exportation or reexportation of bulk agricultural commodities to the Government of Iran, entities in Iran or individuals in Iran. Specific licenses issued pursuant to this section will authorize the brokering only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix B to this part 560;

(2) Are to purchasers permitted pursuant to § 560.530; and

NOTE TO § 560.533(b)(2): Requests for specific licenses to provide brokerage services under this paragraph must include all of the information described in § 560.530(c).

(3) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, items classified EAR 99 under the Export Administration Regulations, 15 CFR parts 730 through 774, may in certain instances require a license from the Department of Commerce, Bureau of Industry and Security. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9.)

(c) *No debits or credits to Iranian accounts on the books of U.S. depository institutions.* Payment for any brokerage fee earned pursuant to this section may not involve debits or credits to Iranian accounts, as defined in § 560.320.

(d) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

[74 FR 61035, Nov. 23, 2009]

§§ 560.534—560.535 [Reserved]

§ 560.536 Humanitarian activities in and around Iraq.

(a) A nongovernmental organization specifically licensed pursuant to 31 CFR part 575 or otherwise authorized pursuant to 31 CFR 575.527 to conduct certain humanitarian activities in and around Iraq is authorized to conduct activities in Iran that are directly incidental and essential to its authorized humanitarian activities in and around Iraq, subject to all conditions and restrictions imposed on the organization pursuant to 31 CFR 575.527 and the terms of its license or registration. This section does not authorize the actual provision of humanitarian support in Iran.

(b) No exportations or re-exportations of goods or technology, whether U.S. or foreign origin, to Iran are permitted pursuant to this section, except for articles, such as food, clothing, and medicine, intended to be used to relieve human suffering or items intended for temporary use, as personal baggage, by representatives of the authorized nongovernmental organization, provided that:

(1) Any such goods or technology are not of the type controlled under the Department of Commerce's Export Administration Regulations for exportation or re-exportation to Iran or controlled on the United States Munitions List, and

(2) Any such personal items are either consumed by representatives of that organization during the visit or removed from Iran at the end of each visit.

(c) This section does not authorize the shipment or transshipment of goods or technology, whether U.S. or foreign origin, from Iran to any other

country, including Iraq, except for the shipment or transshipment to Iraq of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering. Nongovernmental organizations that wish to transport other types of goods or technology from Iran to Iraq must apply for specific authorization from the Office of Foreign Assets Control pursuant to § 501.801(b), 31 CFR chapter V.

(d) U.S. financial institutions are authorized to engage in funds transfers in connection with transactions authorized pursuant to this section consistent with the provisions of 31 CFR 560.516.

(e) Nongovernmental organizations conducting transactions under this section based on a specific license or a registration issued pursuant to 31 CFR part 575 must reference their license or registration number on all payments and funds transfers and on all related documentation.

[68 FR 11742, Mar. 12, 2003]

§ 560.537 Authorization of certain survey or assessment missions in Iran.

(a) Subject to the conditions of paragraphs (b), (c), and (d) of this section, nongovernmental organizations are authorized to conduct survey or assessment missions in Iran related to the planning or preparation for the provision of humanitarian support to the Iraqi people. This section does not authorize the actual provision of such humanitarian support in Iran.

(b) The authorization of paragraph (a) of this section is available only to the following types of nongovernmental organizations:

(1) Nongovernmental organizations registered pursuant to 31 CFR 575.527; or

(2) Nongovernmental organizations that have been issued specific licenses under 31 CFR part 575 to carry out humanitarian activities in Iraq, but not including organizations that have been issued specific licenses solely to export goods to Iraq.

(c) This section does not authorize nongovernmental organizations to open offices or to establish permanent facilities of any kind or to purchase any goods, services, or technology in Iran of any kind, except those described in paragraph (d)(3) of this section.

(d) The authorization of this section is subject to the following conditions:

(1) U.S. financial institutions are authorized to engage in funds transfers in connection with transactions authorized pursuant to this section consistent with the provisions of 31 CFR 560.516.

(2) Nongovernmental organizations conducting transactions under this section based on a specific license or a registration issued pursuant to 31 CFR part 575 must reference their license or registration number on all payments and funds transfers and on all related documentation.

(3) Any funds transferred to Iran pursuant to this section may be used only for the purchase of services and goods necessary and essential to the conduct of the assessment mission and, whether U.S. or foreign origin, not of the type controlled under the Department of Commerce's Export Administration Regulations for exportation or re-exportation to Iran or controlled on the United States Munitions List.

(4)(i) No exportations or re-exportations of goods or technology, whether U.S. or foreign origin, to Iran are permitted pursuant to this section, except for those items intended for temporary use, as personal baggage, by mission representatives, provided that such items are either consumed by mission representatives during the visit or removed from Iran at the end of each visit, and further provided that any such personal items are not of the type controlled under the Department of Commerce's Export Administration Regulations for exportation or re-exportation to Iran or controlled on the United States Munitions List.

(ii) Nongovernmental organizations that wish to export or re-export goods or technology to Iran, beyond personal baggage items described in paragraph (d)(4)(i) of this section, as part of a survey or assessment mission must apply for specific authorization from the Office of Foreign Assets Control pursuant to § 501.801(b), 31 CFR chapter V.

(5) Nongovernmental organizations acting under this section shall take adequate measures to prevent any items authorized for exportation, re-exportation, or local purchase from being

obtained or acquired by the Government of Iran.

[68 FR 11743, Mar. 12, 2003]

§ 560.538 Authorized transactions necessary and ordinarily incident to publishing.

(a) To the extent that such activities are not exempt from this part, and subject to the restrictions set forth in paragraphs (b) through (d) of this section, U.S. persons are authorized to engage in all transactions necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals, and newspapers in paper or electronic format (collectively, ''written publications''). This section does not apply if the parties to the transactions described in this paragraph include the Government of Iran. For the purposes of this section, the term ''Government of Iran'' includes the state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof, which includes the Central Bank of Islamic Republic of Iran, and any person acting or purporting to act directly or indirectly on behalf of any of the foregoing with respect to the transactions described in this paragraph. For the purposes of this section, the term ''Government of Iran'' does not include any academic and research institutions and their personnel. Pursuant to this section, the following activities are authorized, provided that U.S. persons ensure that they are not engaging, without separate authorization, in the activities identified in paragraphs (b) through (d) of this section:

(1) Commissioning and making advance payments for identifiable written publications not yet in existence, to the extent consistent with industry practice;

(2) Collaborating on the creation and enhancement of written publications;

(3)(i) Augmenting written publications through the addition of items such as photographs, artwork, translation, explanatory text, and, for a written publication in electronic format, the addition of embedded software necessary for reading, browsing, navigating, or searching the written publication;

(ii) Exporting embedded software necessary for reading, browsing, navigating, or searching a written publication in electronic format, provided that the software is classified as ''EAR 99'' under the Export Administration Regulations, 15 CFR parts 730 through 774 (the ''EAR''), or is not subject to the EAR;

(4) Substantive editing of written publications;

(5) Payment of royalties for written publications;

(6) Creating or undertaking a marketing campaign to promote a written publication; and

(7) Other transactions necessary and ordinarily incident to the publishing and marketing of written publications as described in this paragraph (a).

(b) This section does not authorize transactions involving the provision of goods or services not necessary and ordinarily incident to the publishing and marketing of written publications as described in paragraph (a) of this section. For example, this section does not authorize U.S. persons:

(1) To provide or receive individualized or customized services (including, but not limited to, accounting, legal, design, or consulting services), other than those necessary and ordinarily incident to the publishing and marketing of written publications, even though such individualized or customized services are delivered through the use of information and informational materials;

(2) To create or undertake for any person a marketing campaign with respect to any service or product other than a written publication, or to create or undertake a marketing campaign of any kind for the benefit of the Government of Iran;

(3) To engage in the exportation or importation of goods to or from Iran other than the exportation of embedded software described in paragraph (a)(3)(ii); or

(4) To operate a publishing house, sales outlet, or other office in Iran.

NOTE TO PARAGRAPH (b): The importation from Iran and the exportation to Iran of information or informational materials, as defined in § 560.315, whether commercial or otherwise, regardless of format or medium of

transmission, are exempt from the prohibitions and regulations of this part. See § 560.210(c).

(c) This section does not authorize U.S. persons to engage the services of publishing houses or translators in Iran unless such activity is primarily for the dissemination of written publications in Iran.

(d) This section does not authorize:

(1) The exportation from or importation into the United States of services for the development, production, or design of software;

(2) Transactions for the development, production, design, or marketing of technology specifically controlled by the International Traffic in Arms Regulations, 22 CFR parts 120 through 130 (the ''ITAR''), the EAR, or the Department of Energy Regulations set forth at 10 CFR part 810.

(3) The exportation of information or technology subject to the authorization requirements of 10 CFR part 810, or Restricted Data as defined in section 11 y. of the Atomic Energy Act of 1954, as amended, or of other information, data, or technology the release of which is controlled under the Atomic Energy Act and regulations therein;

(4) The exportation of any item (including information) subject to the EAR where a U.S. person knows or has reason to know that the item will be used, directly or indirectly, with respect to certain nuclear, missile, chemical, or biological weapons or nuclear-maritime end-uses as set forth in part 744 of the EAR. In addition, U.S. persons are precluded from exporting any item subject to the EAR to certain restricted end-users, as set forth in part 744 of the EAR, as well as certain persons whose export privileges have been denied pursuant to parts 764 or 766 of the EAR, without authorization from the Department of Commerce; or

(5) The exportation of information subject to licensing requirements under the ITAR or exchanges of information that are subject to regulation by other government agencies.

[72 FR 50051, Aug. 30, 2007]

§ 560.539 Official activities of certain international organizations.

(a) *General license.* Except as provided in paragraph (b) of this section, the performance of transactions for the conduct of the official business of the United Nations, the World Bank, the International Monetary Fund, the International Atomic Energy Agency, the International Labor Organization or the World Health Organization in or involving Iran by U.S. persons who are employees or contractors thereof is hereby authorized. Authorized transactions include, but are not limited to:

(1) The provision of services involving Iran necessary for carrying out the official business;

(2) Purchasing Iranian-origin goods and services for use in carrying out the official business;

(3) Leasing office space and securing related goods and services;

(4) Funds transfers to or from accounts of the international organizations covered in this paragraph, provided that funds transfers to or from Iran are not routed through an account of an Iranian bank on the books of a U.S. financial institution; and

(5) The operation of accounts for employees and contractors located in Iran who are described in this paragraph. Transactions conducted through these accounts must be solely for the employee's or contractor's personal use and not for any commercial purposes in or involving Iran. Any funds transfers to or from an Iranian bank must be routed through a third-country bank that is not a U.S. person.

(b) *Limitations.* This section does not authorize:

(1) the exportation from the United States to Iran of any goods or technology listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement No. 1 (CCL);

(2) the reexportation to Iran of any U.S.-origin goods or technology listed on the CCL; or

(3) the exportation or reexportation from the United States or by a U.S. person, wherever located, to Iran of any services not necessary and ordinarily incident to the official business in Iran. Such transactions require separate authorization from OFAC.

NOTE TO PARAGRAPH (b): The CCL includes items such as laptops, personal computers, cell phones, personal digital assistants and other wireless handheld devices/blackberries,

and other similar items. The exportation of these items to Iran, even on a temporary basis, is prohibited, unless specifically authorized in a license issued pursuant to this part in a manner consistent with the Iran-Iraq Arms Nonproliferation Act of 1992 and other relevant law.

(c) *Other requirements.* The general license set forth in this section shall not operate to relieve any persons authorized hereunder from compliance with any other U.S. legal requirements applicable to the transactions authorized pursuant to paragraph (a) of this section.

[71 FR 48796, Aug. 22, 2006]

§ 560.540 Exportation of certain services and software incident to Internet-based communications.

(a) To the extent that such transactions are not exempt from the prohibitions of this part and subject to the restrictions set forth in paragraph (b) of this section, the following transactions are authorized:

(1) The exportation from the United States or by U.S. persons, wherever located, to persons in Iran of services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, provided that such services are publicly available at no cost to the user.

(2) The exportation from the United States or by U.S. persons, wherever located, to persons in Iran of software necessary to enable the services described in paragraph (a)(1) of this section, provided that such software is classified as ''EAR99'' under the Export Administration Regulations, 15 CFR parts 730 through 774 (the ''EAR''), is not subject to the EAR, or is classified by the U.S. Department of Commerce (''Commerce'') as mass market software under export control classification number (''ECCN'') 5D992 of the EAR, and provided further that such software is publicly available at no cost to the user.

(b) This section does not authorize:

(1) The direct or indirect exportation of services or software with knowledge or reason to know that such services or software are intended for the Government of Iran.

(2) The direct or indirect exportation of any goods or technology listed on the Commerce Control List in the EAR, 15 CFR part 774, supplement No. 1 (''CCL''), except for software necessary to enable the services described in paragraph (a)(1) of this section that is classified by Commerce as mass market software under ECCN 5D992 of the EAR.

(3) The direct or indirect exportation of Internet connectivity services or telecommunications transmission facilities (such as satellite links or dedicated lines).

(4) The direct or indirect exportation of web-hosting services that are for purposes other than personal communications (e.g., web-hosting services for commercial endeavors) or of domain name registration services.

(c) Specific licenses may be issued on a case-by-case basis for the exportation of other services and software incident to the sharing of information over the Internet, provided the software is classified as ''EAR99,'' not subject to the EAR, or classified by Commerce as mass market software under ECCN 5D992 of the EAR.

[75 FR 11000, Mar. 10, 2010]

Subpart F—Reports

§ 560.601 Records and reports.

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

[62 FR 45109, Aug. 25, 1997]

§ 560.602 [Reserved]

§ 560.603 Reports on oil transactions engaged in by foreign affiliates.

(a) *Requirement for reports.* A report must be filed with the Office of Foreign Assets Control with respect to each foreign affiliate of a United States person that engaged in a reportable transaction, as defined in paragraph (b) of this section, during the calendar quarter. Reports are due within 60 days after the end of each calendar quarter.

(b) *Definitions.* For purposes of this section:

(1) The term *reportable transaction* means any purchase, sale, or swap of Iranian-origin crude oil or natural gas. For purposes of this paragraph (b), a purchase, sale, or swap is deemed to have occurred as of the date of the bill of lading used in connection with such transaction.

(2) The term *foreign affiliate* means a person or entity other than a United States person (see § 560.314) which is organized or located outside the United States and which is owned or controlled by a United States person or persons.

(c) *Who must report.* A United States person must file a report with respect to each foreign affiliate owned or controlled by it which engaged in a reportable transaction or transactions during the calendar quarter. For the calendar quarter beginning October 1, 1996, and all subsequent quarters, a United States person must file a report only as to each foreign affiliate owned or controlled by it which engaged in a reportable transaction or transactions totaling $1,000,000 or more during the calendar quarter. A single United States entity within a consolidated or affiliated group may be designated to report on each foreign affiliate of the United States members of the group. Such centralized reporting may be done by the United States person who owns or controls, or has been delegated authority to file on behalf of, the remaining United States persons in the group.

(d) *What must be reported.* (1) Part I of the report must provide the name, address, and principal place of business of the United States person; its place of incorporation or organization if an entity; and the name, title, and telephone number of the individual to contact concerning the report.

(2) Part II of the report must provide, with respect to the foreign affiliate, its name and address; the type of entity, e.g, corporation, partnership, limited liability company; the country of its incorporation or organization; and its principal place of business.

(3) Part III of the report must include the following information with respect to each reportable transaction (a separate Part III must be submitted for each reportable transaction):

(i) The nature of the transaction, e.g., purchase, sale, swap;

(ii) A description of the product involved;

(iii) The name of the Iranian or third country party or parties involved in the transaction;

(iv) The currency and amount of the transaction, and corresponding United States dollar value of the transaction if not denominated in United States dollars.

(e) *Where to report.* Reports must be filed with the Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220. Reports may be submitted by facsimile transmission at 202/622–1657. A copy must be retained for the reporter's records.

(f) *Whom to contact.* Blocked Assets Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220; telephone: 202/622–2440.

[63 FR 62941, Nov. 10, 1998]

Subpart G—Penalties

§ 560.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'') (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act.

(1) A civil penalty not to exceed the amount set forth in Section 206 of the Act may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under the Act.

NOTE TO PARAGRAPH (a)(1) OF § 560.701: As of June 10, 2008, the Act provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in the Act are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in the Act are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Attention is directed to 18 U.S.C. 2332d, as added by Public Law 104–132, section 321, which provides that, except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, a U.S. person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act, 50 U.S.C. App. 2405, as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under title 18, United States Code, or imprisoned for not more than 10 years, or both.

(e) Violations of this part may also be subject to relevant provisions of the Customs laws and other applicable laws.

[60 FR 47063, Sept. 11, 1995, as amended at 61 FR 43461, Aug. 23, 1996; 61 FR 54939, Oct. 23, 1996; 62 FR 45109, Aug. 25, 1997; 71 FR 29253, May 22, 2006; 73 FR 32654, June 10, 2008]

§ 560.702 Detention of shipments.

Import shipments into the United States of Iranian-origin goods in violation of § 560.201 and export shipments from the United States of goods destined for Iran in violation of § 560.202 or 560.204 shall be detained. No such import, export, or reexport will be permitted to proceed, except as specifically authorized by the Secretary of the Treasury. Unless licensed, such shipments are subject to penalty or seizure and forfeiture action, under the Customs laws or other applicable provisions of law, depending on the circumstances.

§ 560.703 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he may issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice may be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice will describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within 30 days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 560.704 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty

notice to make a written presentation to the Director.

(b) *Form and contents of the written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

§ 560.705 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, the Director determines that there was no violation by the person named in the prepenalty notice, he shall promptly notify the person in writing of the determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he may issue a written notice of the imposition of the monetary penalty to that person.

§ 560.706 Referral for administrative collection measures or to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director within 30 days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 560.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

[62 FR 45109, Aug. 25, 1997, as amended at 68 FR 53659, Sept. 11, 2003]

§ 560.802 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12613, Executive Order 12957, Executive Order 12959, and any further Executive orders relating to the national emergency declared in Executive Order 12957 may be taken by the Director, Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

[60 FR 47063, Sept. 11, 1995. Redesignated at 62 FR 45109, Aug. 25, 1997]

§ 560.803 Customs procedures: Goods specified in § 560.201.

(a) With respect to goods specified in § 560.201, and not otherwise licensed or excepted from the scope of that section, appropriate Customs officers shall not accept or allow any:

(1) Entry for consumption or warehouse (including any appraisement entry, any entry of goods imported in the mails, regardless of value, and any informal entries);

(2) Entry for immediate exportation;

(3) Entry for transportation and exportation;

(4) Withdrawal from warehouse;

(5) Admission, entry, transfer or withdrawal to or from a foreign trade zone; or

(6) Manipulation or manufacture in a warehouse or in a foreign trade zone.

(b) Customs officers may accept or allow the importation of Iranian-origin goods under the procedures listed in paragraph (a) if:

(1) A specific license pursuant to this part is presented; or

(2) Instructions authorizing the transaction are received from the Office of Foreign Assets Control.

(c) Whenever a specific license is presented to an appropriate Customs officer in accordance with this section, one additional legible copy of the entry, withdrawal or other appropriate document with respect to the merchandise

involved must be filed with the appropriate Customs officers at the port where the transaction is to take place. Each copy of any such entry, withdrawal or other appropriate document, including the additional copy, must bear plainly on its face the number of the license pursuant to which it is filed. The original copy of the specific license must be presented to the appropriate Customs officers in respect of each such transaction and must bear a notation in ink by the licensee or person presenting the license showing the description, quantity and value of the merchandise to be entered, withdrawn or otherwise dealt with. This notation must be so placed and so written that there will exist no possibility of confusing it with anything placed on the license at the time of its issuance. If the license in fact authorizes the entry, withdrawal, or other transaction with regard to the merchandise, the appropriate Customs officer, or other authorized Customs employee, shall verify the notation by signing or initialing it after first assuring himself that it accurately describes the merchandise it purports to represent. The license shall thereafter be returned to the person presenting it and the additional copy of the entry, withdrawal or other appropriate document shall be forwarded by the appropriate Customs officer to the Office of Foreign Assets Control.

(d) If it is unclear whether an entry, withdrawal or other action affected by this section requires a specific license from the Office of Foreign Assets Control, the appropriate Customs officer may withhold any action thereon and shall advise such person to communicate directly with the Office of Foreign Assets Control to request that instructions be sent to the Customs officer to authorize him to take action with regard thereto.

[60 FR 47063, Sept. 11, 1995. Redesignated at 62 FR 45109, Aug. 25, 1997]

Subpart I—Paperwork Reduction Act

§ 560.901 Paperwork Reduction Act notice.

The specific information collection requirements in § 560.603 have been approved by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act (44 U.S.C. 3507(j)) and assigned control number 1505–0106. For approval by OMB under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

[62 FR 45109, Aug. 25, 1997]

APPENDIX A TO PART 560—PERSONS DETERMINED TO BE THE GOVERNMENT OF IRAN, AS DEFINED IN § 560.304 OF THIS PART

This non-exhaustive appendix lists persons determined by the Office of Foreign Assets Control (''OFAC'') to be the *Government of Iran,* as defined in § 560.304 of this part. The persons listed below are considered to be the *Government of Iran* not only when they operate from the locations listed below, but also when they operate from any other location. The names and addresses are subject to change. This part 560 contains prohibitions against engaging in most transactions with persons that meet the definition of the *Government of Iran,* whether such persons are located or incorporated inside or outside of Iran. Moreover, regardless of whether a person is listed below, if the person comes within the definition of *Government of Iran* in § 560.304, the prohibitions on engaging in transactions with the person, wherever located worldwide, apply to the same extent they would apply if the person were listed in this appendix. Note that the prohibitions in this part 560 also apply to most transactions with persons located in Iran that are not the Government of Iran.

The names of persons listed in this appendix also are included on OFAC's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[IRAN].'' Although there is no requirement to block the property and interests of property of persons listed in this appendix, U.S. persons are cautioned that entities identified as owned or controlled by the Government of Iran also may be designated or blocked pursuant to additional sanctions programs administered by OFAC. The entry for a person's name in this appendix and on the SDN List may include—in addition to the identifier ''[IRAN]''—identifier(s) for the other sanctions program(s) pursuant to which the

person is listed on the SDN List (*e.g.*, ''[IRAN] [NPWMD]'' or ''[IRAN] [SDGT]'').

NOTES TO APPENDIX A TO PART 560: 1.The alphabetical list below provides the following information concerning persons determined by OFAC to be the Government of Iran: The name (including known former or alternate names), address, the identifier ''[IRAN]'', and, if applicable, the identifier(s) denoting other sanctions program(s) pursuant to which the person is blocked.

2. The abbreviations used in this appendix are ''a.k.a.'' (also known as) and ''f.k.a.'' (formerly known as).

3. The references to sanctions programs in 31 CFR chapter V include: [IRAN] (Iranian Transactions Regulations, part 560); [IFSR] (Iranian Financial Sanctions Regulations, part 561); [ISA] (Executive Order 13574, 76 FR 30505, May 25, 2011; Iran Sanctions Act of 1996 (Pub. L. 104–172) (50 U.S.C. 1701 note), as amended by, *inter alia,* the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195)); [NPWMD] (Weapons of Mass Destruction Proliferators Sanctions Regulations, part 544); and [SDGT] (Global Terrorism Sanctions Regulations, part 594).

4. The names of persons listed in Appendix A to part 560 are published in the FEDERAL REGISTER and included on the SDN List. The SDN List is accessible through the following page on OFAC's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. New names of persons determined to be the Government of Iran and changes to existing listings also are published in the FEDERAL REGISTER.

This document and additional information concerning OFAC are available from OFAC's Web site: *http://www.treasury.gov/ofac*. Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077. Please consult OFAC's Web site prior to engaging in transactions that may be subject to the prohibitions contained in part 560. If you have further questions, please contact OFAC's Sanctions Compliance & Evaluation Division at 202/622–2490 or 800/540–6322 (toll-free).

ASCOTEC HOLDING GMBH (f.k.a. AHWAZ STEEL COMMERCIAL & TECHNICAL SERVICE GMBH ASCOTEC; f.k.a. AHWAZ STEEL COMMERCIAL AND TECHNICAL SERVICE GMBH ASCOTEC; a.k.a. ASCOTEC GMBH), Tersteegen Strasse 10, Dusseldorf 40474, Germany; Registration ID HRB 26136 (Germany); all offices worldwide [IRAN]

ASCOTEC JAPAN K.K., 8th Floor, Shiba East Building, 2–3–9 Shiba, Minato-ku, Tokyo 105–0014, Japan; all offices worldwide [IRAN]

ASCOTEC MINERAL & MACHINERY GMBH (a.k.a. ASCOTEC MINERAL AND MACHINERY GMBH; f.k.a. BREYELLER KALTBAND GMBH), Tersteegenstr. 10, Dusseldorf 40474, Germany; Registration ID HRB 55668 (Germany); all offices worldwide [IRAN]

ASCOTEC SCIENCE & TECHNOLOGY GMBH (a.k.a. ASCOTEC SCIENCE AND TECHNOLOGY GMBH), Tersteegenstrasse 10, Dusseldorf D 40474, Germany; Registration ID HRB 58745 (Germany); all offices worldwide [IRAN]

ASCOTEC STEEL TRADING GMBH (a.k.a. ASCOTEC STEEL), Tersteegenstr. 10, Dusseldorf 40474, Germany; Georg-Glock-Str. 3, Dusseldorf 40474, Germany; Registration ID HRB 48319 (Germany); all offices worldwide [IRAN]

BANK KESHAVARZI IRAN (a.k.a. AGRICULTURAL BANK OF IRAN; a.k.a. BANK KESHAVARZI), PO Box 14155–6395, 129 Patrice Lumumba St, Jalal-al-Ahmad Expressway, Tehran 14454, Iran; all offices worldwide [IRAN]

BANK MARKAZI JOMHOURI ISLAMI IRAN (a.k.a. BANK MARKAZI IRAN; a.k.a. CENTRAL BANK OF IRAN; a.k.a. CENTRAL BANK OF THE ISLAMIC REPUBLIC OF IRAN), 213 Ferdowsi Avenue, Tehran 11365, Iran; PO Box 15875/7177, 144 Mirdamad Blvd, Tehran, Iran [IRAN]

BANK MASKAN (a.k.a. HOUSING BANK (OF IRAN)), PO Box 11365/5699, No 247 3rd Floor Fedowsi Ave, Cross Sarhang Sakhaei St, Tehran, Iran; all offices worldwide [IRAN]

BANK MELLAT, Cumhuriyet Bulvari No 88/A, PK 7103521, Konak, Izmir, Turkey; PO Box 375010, Amiryan Str #6, P/N–24, Yerevan, Armenia; PO Box 79106425, Ziya Gokalp Bulvari No 12, Kizilay, Ankara, Ankara, Turkey; 327 Forsat and Taleghani Avenue, Tehran 15817, Iran; Buyukdere Cad, Cicek Sokak No 1—1 Levent, Levent, Istanbul, Turkey; Keumkang Tower—13th & 14th Floor, 889–13 Daechi-Dong, Gangnam-Ku, Seoul 135–280, Korea, South; Head Office Bldg, 327 Taleghani Ave, Tehran 15817, Iran; all offices worldwide [IRAN] [NPWMD] [IFSR]

BANK MELLI IRAN (a.k.a. BANK MELLI; a.k.a. NATIONAL BANK OF IRAN), PO Box 2656, Liva Street, Abu Dhabi, United Arab Emirates; PO Box 459, Al Borj St, Sharjah, United Arab Emirates; Room 704–6, Wheelock Hse, 20 Pedder St, Central, Hong Kong; PO Box 1894, Baniyas St, Deira, Dubai City, United Arab Emirates; PO Box 1894, Al Wasl Rd, Jumeirah, Dubai, United Arab Emirates; 43 Avenue Montaigne, Paris 75008, France; PO Box 1888, Clock Tower, Industrial Rd, Al Ain Club Bldg, Al Ain, Abu Dhabi, United Arab Emirates; Postfach 112 129, Holzbruecke 2, D–20459, Hamburg, Germany; PO Box 2643, Ruwi, Muscat 112, Oman; Unit 1703–4, 17th Floor, Hong Kong Club Building, 3 A Chater Road Central, Hong Kong; PO Box 11365–171, Ferdowsi Avenue, Tehran, Iran;

Bank Melli Iran Bldg, 111 St 24, 929 Arasat, Baghdad, Iraq; PO Box 248, Hamad Bin Abdulla St, Fujairah, United Arab Emirates; PO Box 5270, Oman Street Al Nakheel, Ras Al-Khaimah, United Arab Emirates; PO Box 3093, Ahmed Seddiqui Bldg, Khalid Bin El-Walid St, Bur-Dubai, Dubai City 3093, United Arab Emirates; Nobel Ave. 14, Baku, Azerbaijan; all offices worldwide [IRAN] [NPWMD] [IFSR]

BANK OF INDUSTRY AND MINE (OF IRAN) (a.k.a. BANK SANAD VA MADAN; a.k.a. ''BIM''), No 1655, Firouzeh Building, Mahmoudiye Street, Valiasr Ave, Tehran, Iran; PO Box 15875–4456, Firouzeh Tower, No 1655 Vali-Asr Ave after Chamran Crossroads, Tehran 1965643511, Iran; all offices worldwide [IRAN] [NPWMD] [IFSR]

BANK REFAH KARGARAN (a.k.a. BANK REFAH; a.k.a. WORKERS' WELFARE BANK (OF IRAN)), No. 40 North Shiraz Street, Mollasadra Ave, Vanak Sq, Tehran 19917, Iran; all offices worldwide [IRAN] [NPWMD] [IFSR]

BANK SADERAT IRAN (a.k.a. IRAN EXPORT BANK), PO Box 4308, 25–29 Venizelou St, Athens, Attica GR 105 64, Greece; 1st Floor, Alrose Bldg, Verdun—Rashid Karame St, Beirut, Lebanon; PO Box 700, Abu Dhabi, United Arab Emirates; Bur Dubai, Khaled Bin Al Walid St, Dubai City, United Arab Emirates; Sheikh Zayed Rd, Dubai City, United Arab Emirates; PO Box 316, Bank Saderat Bldg, Alaroda St, Borj Ave, Sharjah, United Arab Emirates; 16 rue de la Paix, Paris 75002, France; Alghobeiri Branch—Aljawhara Bldg, Ghobeiry Blvd, Beirut, Lebanon; PO Box 4425, Salwa Rd, Doha, Qatar; PO Box 1140, Al-Am Road, Al-Ein, Al Ain, Abu Dhabi, United Arab Emirates; Postfach 112227, Deichstrasse 11, 20459, Hamburg, Germany; PO Box 5126, Beirut, Lebanon; PO Box 1269, Muscat 112, Oman; PO Box 4182, Murshid Bazar Branch, Dubai City, United Arab Emirates; 5 Lothbury, London EC2R 7HD, United Kingdom; Postfach 160151, Friedenstr 4, D–60311, Frankfurt am Main, Germany; 3rd Floor, Aliktisad Bldg, Ras El Ein Street Baalbak, Baalbak, Lebanon; Saida Branch, Sida Riad Elsoleh St, Martyrs Sq, Saida, Lebanon; Borj Albarajneh Branch—20 Alholom Bldg, Sahat Mreijeh, Kafaat St, Beirut, Lebanon; PO Box 16, Liwara Street, Ajman, United Arab Emirates; Ground Floor Business Room, Building Banke Khoon Road, Harat, Afghanistan; No. 56, Opposite of Security Department, Toraboz Khan Str., Kabul, Afghanistan; 3rd Floor, Mteco Centre, Mar Elias, Facing Al Hellow Barrak, POB 5126, Beirut, Lebanon; 2nd Floor, No 181 Makhtoomgholi Ave, Ashgabat, Turkmenistan; PO Box 4182, Almaktoum Rd, Dubai City, United Arab Emirates; PO Box 15745–631, Bank Saderat Tower, 43 Somayeh Avenue, Tehran, Iran; PO Box 2256, Doha, Qatar; all offices worldwide [SDGT] [IRAN] [IFSR]

BANK SADERAT PLC (f.k.a. IRAN OVERSEAS INVESTMENT BANK LIMITED; f.k.a. IRAN OVERSEAS INVESTMENT BANK PLC; f.k.a. IRAN OVERSEAS INVESTMENT CORPORATION LIMITED), 5 Lothbury, London EC2R 7HD, United Kingdom; PO Box 15175/584, 6th Floor, Sadaf Bldg, 1137 Vali Asr Ave, Tehran 15119–43885, Iran; UK Company Number 01126618 (United Kingdom); all offices worldwide [SDGT] [IRAN] [IFSR]

BANK SEPAH, Imam Khomeini Square, Tehran 1136953412, Iran; Hafenstrasse 54, D–60327, Frankfurt am Main, Germany; 64 Rue de Miromesnil, Paris 75008, France; Via Barberini 50, Rome, RM 00187, Italy; 17 Place Vendome, Paris 75008, France; all offices worldwide [IRAN] [NPWMD] [IFSR]

BANK TEJARAT, PO Box 734001, Rudaki Ave 88, Dushanbe 734001, Tajikistan; c/o Persia International Bank, 6 Lothbury, London EC2R 7HH, United Kingdom; c/o Europaisch-Iranische Handelsbank AG, Depenau 2, D–20095, Hamburg, Germany; PO Box 119871, 4th Floor, c/o Persia International Bank PLC, The Gate Bldg, Dubai City, United Arab Emirates; PO Box 11365–5416, 152 Taleghani Avenue, Tehran 15994, Iran; 124–126 Rue de Provence, Angle 76 bd Haussman, Paris 75008, France; 130, Zandi Alley, Taleghani Avenue, No 152, Ostad Nejat Ollahi Cross, Tehran 14567, Iran; Office C208, Beijing Lufthansa Center No 50, Liangmaqiao Rd, Chaoyang District, Beijing 100016, China; all offices worldwide [IRAN]

BANK TORGOVOY KAPITAL ZAO (a.k.a. TC BANK; a.k.a. TK BANK; a.k.a. TK BANK ZAO; a.k.a. TORGOVY KAPITAL (TK BANK); a.k.a. TRADE CAPITAL BANK; a.k.a. TRADE CAPITAL BANK (TC BANK); a.k.a. ZAO BANK TORGOVY KAPITAL), 3 Kozlova Street, Minsk 220005, Belarus; Registration ID 30 (Belarus); all offices worldwide [IRAN]

BIMEH IRAN INSURANCE COMPANY (U.K.) LIMITED (a.k.a. BIUK), 4/5 Fenchurch Buildings, London EC3M 5HN, United Kingdom; UK Company Number 01223433 (United Kingdom); all offices worldwide [IRAN]

BREYELLER STAHL TECHNOLOGY GMBH & CO. KG (a.k.a. BREYELLER STAHL TECHNOLOGY GMBH AND CO. KG; f.k.a. ROETZEL-STAHL GMBH & CO. KG; f.k.a. ROETZEL-STAHL GMBH AND CO. KG), Josefstrasse 82, Nettetal 41334, Germany; Registration ID HRA 4528 (Germany); all offices worldwide [IRAN]

EUROPAISCH-IRANISCHE HANDELSBANK AG (f.k.a. DEUTSCH-IRANISCHE HANDELSBANK AG; a.k.a. EUROPAEISCH–IRANISCHE HANDELSBANK; a.k.a. EUROPAESCH-

IRANISCHE HANDELSBANK AKTIENGESELLSCHAFT; a.k.a. GERMAN-IRANIAN TRADE BANK), Tehran Branch, No. 1655/1, Valiasr Avenue, PO Box 19656 43 511, Tehran, Iran; Kish Branch, Sanaee Avenue, PO Box 79415/148, Kish Island 79415, Iran; Hamburg Head Office, Depenau 2, D–20095 Hamburg, P.O. Box 101304, D–20008 Hamburg, Hamburg, Germany; all offices worldwide [IRAN] [NPWMD] [IFSR]

EXPORT DEVELOPMENT BANK OF IRAN (a.k.a. BANK TOSEH SADERAT IRAN; a.k.a. BANK TOWSEEH SADERAT IRAN; a.k.a. BANK TOWSEH SADERAT IRAN; a.k.a. EDBI), No. 129, 21's Khaled Eslamboli, No. 1 Building, Tehran, Iran; Export Development Building, Next to the 15th Alley, Bokharest Street, Argentina Square, Tehran, Iran; No. 26, Tosee Tower, Arzhantine Square, P.O. Box 15875–5964, Tehran 15139, Iran; No. 4, Gandi Ave., Tehran 1516747913, Iran; Tose'e Tower, Corner of 15th St., Ahmed Qasir Ave., Argentine Square, Tehran, Iran; Registration ID 86936 (Iran) issued 10 Jul 1991; all offices worldwide [IRAN] [NPWMD] [IFSR]

IFIC HOLDING AG (a.k.a. IHAG), Koenigsallee 60 D, Dusseldorf 40212, Germany; Registration ID HRB 48032 (Germany); all offices worldwide [IRAN]

IHAG TRADING GMBH, Koenigsallee 60 D, Dusseldorf 40212, Germany; Registration ID HRB 37918 (Germany); all offices worldwide [IRAN]

INDUSTRIAL DEVELOPMENT AND RENOVATION ORGANIZATION OF IRAN (a.k.a. IDRO; a.k.a. IRAN DEVELOPMENT & RENOVATION ORGANIZATION COMPANY; a.k.a. IRAN DEVELOPMENT AND RENOVATION ORGANIZATION COMPANY; a.k.a. SAWZEMANE GOSTARESH VA NOWSAZI SANAYE IRAN), Vali Asr Building, Jam e Jam Street, Vali Asr Avenue, Tehran 15815–3377, Iran; all offices worldwide [IRAN]

INTRA CHEM TRADING GMBH (a.k.a. INTRA-CHEM TRADING CO. (GMBH)), Schottweg 3, Hamburg 22087, Germany; Registration ID HRB48416 (Germany); all offices worldwide [IRAN]

IRAN FOREIGN INVESTMENT COMPANY (a.k.a. IFIC), No. 4, Saba Blvd., Africa Blvd., Tehran 19177, Iran; P.O. Box 19395–6947, Tehran, Iran; all offices worldwide [IRAN]

IRAN INSURANCE COMPANY (a.k.a. BIMEH IRAN), P.O. Box 1867, Al Ain, Abu Dhabi, United Arab Emirates; P.O. Box 3281, Abu Dhabi, United Arab Emirates; P.O. Box 849, Ras-Al-Khaimah, United Arab Emirates; P.O. Box 417, Muscat 113, Oman; Al Alia Center, Salaheddine Rd., Al Malaz, P.O. Box 21944, Riyadh 11485, Saudi Arabia; Al-Lami Center, Ali-Bin-Abi Taleb St. Sharafia, P.O. Box 11210, Jeddah 21453, Saudi Arabia; Abdolaziz-Al-Masaeed Building, Sheikh Maktoom St., Deira, P.O. Box 2004, Dubai, United Arab Emirates; 107 Dr Fatemi Avenue, Tehran 14155/6363, Iran; P.O. Box 995, Manama, Bahrain; P.O. Box 1666, Sharjah, United Arab Emirates; P.O. Box 676, Salalah 211, Oman; Al Rajhi Bldg., 3rd Floor, Suite 23, Dhahran St., P.O. Box 1305, Dammam 31431, Saudi Arabia; all offices worldwide [IRAN]

IRAN PETROCHEMICAL COMMERCIAL COMPANY (a.k.a. PETROCHEMICAL COMMERCIAL COMPANY; a.k.a. SHERKATE BASARGANI PETROCHEMIE (SAHAMI KHASS); a.k.a. SHERKATE BAZARGANI PETRCHEMIE; a.k.a. ''IPCC''; a.k.a. ''PCC''), Topcu Ibrahim Sokak No: 13 D: 7 Icerenkoy-Kadikoy, Istanbul, Turkey; No. 1014, Doosan We've Pavilion, 58, Soosong-Dong, Jongno-Gu, Seoul, Korea, South; 99–A, Maker Tower F, 9th Floor, Cuffe Parade, Colabe, Mumbai 400 005, India; No. 1339, Vali Nejad Alley, Vali-e-Asr St., Vanak Sq., Tehran, Iran; Office No. 707, No. 10, Chao Waidajie, Chao Tang District, Beijing 100020, China; INONU CAD. SUMER Sok., Zitas Bloklari C.2 Bloc D.H, Kozyatagi, Kadikoy, Istanbul, Turkey; all offices worldwide [IRAN]

IRANIAN MINES AND MINING INDUSTRIES DEVELOPMENT AND RENOVATION ORGANIZATION (a.k.a. IMIDRO; a.k.a. IRAN MINING INDUSTRIES DEVELOPMENT AND RENOVATION ORGANIZATION; a.k.a. IRANIAN MINES AND MINERAL INDUSTRIES DEVELOPMENT AND RENOVATION), No. 39, Sepahbod Gharani Avenue, Ferdousi Square, Tehran, Iran; all offices worldwide [IRAN]

IRANIAN OIL COMPANY (U.K.) LIMITED (a.k.a. IOC UK LTD), Riverside House, Riverside Drive, Aberdeen AB11 7LH, United Kingdom; UK Company Number 01019769 (United Kingdom); all offices worldwide [IRAN]

IRASCO S.R.L. (a.k.a. IRASCO ITALY), Via Di Francia 3, Genoa 16149, Italy; Registration ID GE 348075 (Italy); all offices worldwide [IRAN]

KALA LIMITED (a.k.a. KALA NAFT LONDON LTD), NIOC House, 4 Victoria Street, Westminster, London SW1H 0NE, United Kingdom; UK Company Number 01517853 (United Kingdom); all offices worldwide [IRAN]

KALA PENSION TRUST LIMITED, C/O Kala Limited, N.I.O.C. House, 4 Victoria Street, London SW1H 0NE, United Kingdom; UK Company Number 01573317 (United Kingdom); all offices worldwide [IRAN]

MACHINE SAZI ARAK CO. LTD. (a.k.a. MACHINE SAZI ARAK COMPANY P J S C; a.k.a. MACHINE SAZI ARAK SSA; a.k.a. MASHIN SAZI ARAK; a.k.a. ''MSA''), P.O. Box 148, Arak 351138, Iran; Arak, Km 4 Tehran Road, Arak, Markazi Province, Iran; No. 1, Northern Kargar Street,

Tehran 14136, Iran; all offices worldwide [IRAN]

MAHAB GHODSS CONSULTING ENGINEERING COMPANY (a.k.a. MAHAB GHODSS CONSULTING ENGINEERING CO.; a.k.a. MAHAB GHODSS CONSULTING ENGINEERS SSK; a.k.a. MAHAB QODS ENGINEERING CONSULTING CO.), 16 Takharestan Alley, Dastgerdy Avenue, P.O. Box 19395–6875, Tehran 19187 81185, Iran; No. 17, Dastgerdy Avenue, Takharestan Alley, 19395–6875, Tehran 1918781185, Iran; Registration ID 48962 (Iran) issued 1983; all offices worldwide [IRAN]

METAL & MINERAL TRADE S.A.R.L. (a.k.a. METAL & MINERAL TRADE (MMT); a.k.a. METAL AND MINERAL TRADE (MMT); a.k.a. METAL AND MINERAL TRADE S.A.R.L.; a.k.a. MMT LUXEMBURG; a.k.a. MMT SARL), 11b, Boulevard Joseph II L–1840, Luxembourg; Registration ID B 59411 (Luxembourg); all offices worldwide [IRAN]

MINES AND METALS ENGINEERING GMBH (M.M.E.), Georg-Glock-Str. 3, Dusseldorf 40474, Germany; Registration ID HRB 34095 (Germany); all offices worldwide [IRAN]

MSP KALA NAFT CO. TEHRAN (a.k.a. KALA NAFT CO SSK; a.k.a. KALA NAFT COMPANY LTD; a.k.a. KALA NAFT TEHRAN; a.k.a. KALA NAFT TEHRAN COMPANY; a.k.a. KALAYEH NAFT CO; a.k.a. M.S.P.-KALA; a.k.a. MANUFACTURING SUPPORT & PROCUREMENT CO.-KALA NAFT; a.k.a. MANUFACTURING SUPPORT AND PROCUREMENT (M.S.P.) KALA NAFT CO. TEHRAN; a.k.a. MANUFACTURING, SUPPORT AND PROCUREMENT KALA NAFT COMPANY; a.k.a. MSP KALA NAFT TEHRAN COMPANY; a.k.a. MSP KALANAFT; a.k.a. MSP-KALANAFT COMPANY; a.k.a. SHERKAT SAHAMI KHASS KALA NAFT; a.k.a. SHERKAT SAHAMI KHASS POSHTIBANI VA TEHIYEH KALAYE NAFT TEHRAN; a.k.a. SHERKATE POSHTIBANI SAKHT VA TAHEIH KALAIE NAFTE TEHRAN), Head Office Tehran, Sepahbod Gharani Ave., P.O. Box 15815/1775 15815/3446, Tehran, Iran; Chekhov St., 24.2, AP 57, Moscow, Russia; Sanaee Ave., P.O. Box 79417–76349, N.I.O.C., Kish, Iran; 10th Floor, Sadaf Tower, Kish Island, Iran; 242 Sepahbod Gharani Street, Karim Khan Zand Bridge, Corner Kalantari Street, 8th Floor, P.O. Box 15815–1775/15815–3446, Tehran 15988, Iran; Building No. 226, Corner of Shahid Kalantari Street, Sepahbod Gharani Avenue, Karimkhan Avenue, Tehran 1598844815, Iran; No. 242, Shahid Kalantari St., Near Karimkhan Bridge, Sepahbod Gharani Avenue, Tehran, Iran; 333 7th Ave SW #1102, Calgary, AB T2P 2Z1, Canada; Room No. 704—No. 10 Chao Waidajie Chao Yang District, Beijing 10020, China; P.O. Box 2965, Sharjah, United Arab Emirates; all offices worldwide [IRAN]

NAFTIRAN INTERTRADE CO. (NICO) LIMITED (a.k.a. NAFT IRAN INTERTRADE COMPANY LTD; a.k.a. NAFTIRAN INTERTRADE COMPANY (NICO); a.k.a. NAFTIRAN INTERTRADE COMPANY LTD; a.k.a. NICO), Petro Pars Building, Saadat Abad Ave, No. 35, Farhang Blvd, Tehran, Iran; 41, 1st Floor, International House, The Parade, St Helier JE2 3QQ, Jersey; all offices worldwide [IRAN]

NAFTIRAN INTERTRADE CO. (NICO) SARL (a.k.a. NICO), 6, Avenue de la Tour-Haldimand, Pully, VD 1009, Switzerland; all offices worldwide [IRAN]

NAFTIRAN TRADING SERVICES CO. (NTS) LIMITED, 47 Queen Anne Street, London W1G 9JG, United Kingdom; 6th Floor NIOC Ho, 4 Victoria St, London SW1H 0NE, United Kingdom; UK Company Number 02600121 (United Kingdom); all offices worldwide [IRAN]

NATIONAL IRANIAN OIL COMPANY (a.k.a. NIOC), Hafez Crossing, Taleghani Avenue, P.O. Box 1863 and 2501, Tehran, Iran; all offices worldwide [IRAN]

NATIONAL IRANIAN OIL COMPANY PTE LTD, 7 Temasek Boulevard #07–02, Suntec Tower One 038987, Singapore; Registration ID 199004388C (Singapore); all offices worldwide [IRAN]

NATIONAL PETROCHEMICAL COMPANY (a.k.a. ''NPC''), No. 104, North Sheikh Bahaei Blvd., Molla Sadra Ave., Tehran, Iran; all offices worldwide [IRAN]

NICO ENGINEERING LIMITED, 41, 1st Floor, International House, The Parade, St. Helier JE2 3QQ, Jersey; Registration ID 75797 (Jersey); all offices worldwide [IRAN]

NIOC INTERNATIONAL AFFAIRS (LONDON) LIMITED, NIOC House, 4 Victoria Street, London SW1H ONE, United Kingdom; UK Company Number 02772297 (United Kingdom); all offices worldwide [IRAN]

NPC INTERNATIONAL LIMITED (a.k.a. N P C INTERNATIONAL LTD; a.k.a. NPC INTERNATIONAL COMPANY), 5th Floor NIOC House, 4 Victoria Street, London SW1H ONE, United Kingdom; UK Company Number 02696754 (United Kingdom); all offices worldwide [IRAN]

ONERBANK ZAO (a.k.a. EFTEKHAR BANK; a.k.a. HONOR BANK; a.k.a. HONORBANK; a.k.a. HONORBANK ZAO; a.k.a. ONER BANK; a.k.a. ONERBANK; a.k.a. ONER–BANK), Ulitsa Klary Tsetkin 51, Minsk 220004, Belarus; Registration ID 807000227 (Belarus) issued 16 Oct 2009; SWIFT/BIC HNRBBY2X (Belarus); all offices worldwide [IRAN]

P.C.C. (SINGAPORE) PRIVATE LIMITED (a.k.a. P.C.C. SINGAPORE BRANCH; a.k.a. PCC SINGAPORE PTE LTD), 78 Shenton Way, #08–02 079120, Singapore; 78 Shenton

Way, 26–02A Lippo Centre 079120, Singapore; Registration ID 199708410K (Singapore); all offices worldwide [IRAN]

PARS OIL AND GAS COMPANY (a.k.a. POGC), No. 1 Parvin Etesami Street, Fatemi Avenue, Tehran, Iran; No. 133, Side of Parvin Etesami Alley, opposite Sazman Ab—Dr. Fatemi Avenue, Tehran, Iran [IRAN]

PETROCHEMICAL COMMERCIAL COMPANY (U.K.) LIMITED (a.k.a. PCC (UK); a.k.a. PCC UK; a.k.a. PCC UK LTD), 4 Victoria Street, London SW1H ONE, United Kingdom; UK Company Number 02647333 (United Kingdom); all offices worldwide [IRAN]

PETROCHEMICAL COMMERCIAL COMPANY FZE (a.k.a. PCC FZE), 1703, 17th Floor, Dubai World Trade Center Tower, Sheikh Zayed Road, Dubai, United Arab Emirates; Office No. 99–A, Maker Tower ''F'' 9th Floor Cutte Pavade, Colabe, Bumbai 700005, India; all offices worldwide [IRAN]

PETROCHEMICAL COMMERCIAL COMPANY INTERNATIONAL (a.k.a. PETROCHEMICAL COMMERCIAL COMPANY INTERNATIONAL LIMITED; a.k.a. PETROCHEMICAL COMMERCIAL COMPANY INTERNATIONAL LTD; a.k.a. PETROCHEMICAL TRADING COMPANY LIMITED; a.k.a. ''PCCI''), P.O. Box 261539, Jebel Ali, Dubai, United Arab Emirates; 41, 1st Floor, International House, The Parade, St. Helier JE2 3QQ, Jersey; Ave. 54, Yimpash Business Center, No. 506, 507, Ashkhabad 744036, Turkmenistan; No. 21 End of 9th St, Gandi Ave, Tehran, Iran; 21, Africa Boulevard, Tehran, Iran; Registration ID 77283 (Jersey); all offices worldwide [ISA] [IRAN]

PETROIRAN DEVELOPMENT COMPANY (PEDCO) LIMITED (a.k.a. PETRO IRAN DEVELOPMENT COMPANY; a.k.a. ''PEDCO''), 41, 1st Floor, International House, The Parade, St. Helier JE2 3QQ, Jersey; No. 102, Next to Shahid Amir Soheil Tabrizian Alley, Shahid Dastgerdi (Ex Zafar) Street, Shariati Street, Tehran 19199/45111, Iran; Kish Harbour, Bazargan Ferdos Warehouses, Kish Island, Iran; No. 22, 7th Lane, Khalid Eslamboli Street, Shahid Beheshti Avenue, Tehran, Iran; National Iranian Oil Company—PEDCO, P.O. Box 2965, Al Bathaa Tower, 9th Floor, Apt. 905, Al Buhaira Corniche, Sharjah, United Arab Emirates; P.O. Box 15875–6731, Tehran, Iran; Registration ID 67493 (Jersey); all offices worldwide [IRAN]

PETROPARS INTERNATIONAL FZE (a.k.a. PPI FZE), P.O. Box 72146, Dubai, United Arab Emirates; all offices worldwide [IRAN]

PETROPARS LTD. (a.k.a. PETROPARS LIMITED; a.k.a. ''PPL''), No. 35, Farhang Blvd., Saadat Abad, Tehran, Iran; Calle La Guairita, Centro Profesional Eurobuilding, Piso 8, Oficina 8E, Chuao, Caracas 1060, Venezuela; P.O. Box 3136, Road Town, Tortola, Virgin Islands, British; all offices worldwide [IRAN]

PETROPARS UK LIMITED, 47 Queen Anne Street, London W1G 9JG, United Kingdom; UK Company Number 03503060 (United Kingdom); all offices worldwide [IRAN]

SINA BANK (f.k.a. BFCC; f.k.a. BONYAD FINANCE AND CREDIT COMPANY; f.k.a. SINA FINANCE AND CREDIT COMPANY), 187 Motahhari Avenue, P.O. Box 1587998411, Tehran, Iran; Kish Financial Center, Sahel, Kish Island, Iran; SWIFT/BIC SINAIRTH418 (Iran); alt. SWIFT/BIC SINAIRTH (Iran); all offices worldwide [IRAN]

WEST SUN TRADE GMBH (a.k.a. WEST SUN TRADE), Mundsburger Damm 16, Hamburg 22087, Germany; Arak Machine Mfg. Bldg., 2nd Floor, opp. of College Economy, Northern Kargar Ave., Tehran 14136, Iran; Winterhuder Weg 8, Hamburg 22085, Germany; Registration ID HRB 45757 (Germany); all offices worldwide [IRAN]

[76 FR 38538, June 30, 2011]

APPENDIX B TO PART 560—BULK AGRICULTURAL COMMODITIES

NOTES: 1. Appendix B sets forth those agricultural commodities eligible for the bulk agricultural commodity sales licensing procedures in § 560.531.

2. Commodities are identified by their classification numbers in the Harmonized Tariff Schedule of the United States (see 19 U.S.C. 1202) (''HTS'').

HTS Number	Commodity
1001.10	Durum Wheat
1001.90	Other Wheat and Meslin, including seed, Red Spring Wheat, White Winter Wheat, ''Canadian'' Western Red Winter Wheat, Soft White Spring Wheat, and Wheat not elsewhere specified
1101.00	Wheat or Meslin Flour
1006.10	Rice in the husk (paddy or rough)
1006.20	Husked (brown) Rice
1006.30	Semi-milled or wholly milled Rice, whether or not polished or glazed
1006.40	Broken Rice
1102.30	Rice Flour
1103.14	Rice Groats, Meal and Pellets
1002.00	Rye
1003.00	Barley
1004.00	Oats
1007.00	Grain Sorghum
1005.00	Corn (Maize)
0713.31	Dried Beans including *Vigna mungo (L.), Hepper,* and *Vigna radiata (L.) Wilczek*
0713.32	Small red (adzuki) beans
0713.33	Kidney beans, including white pea beans
0713.39	Beans, other
0713.50	Broad beans and horse beans
0713.10	Dried Peas (*Pisum sativum*)
0713.20	Chickpeas (garbanzos)
0713.40	Lentils

HTS Number	Commodity
0713.90	Dried leguminous vegetables, shelled, not elsewhere specified
1201.00	Soybeans, whether or not broken
2304.00	Soybean cake, meal and pellets
1507.10	Soybean oil, crude
1507.90	Soybean oil, other
1514.10	Rapeseed, colza and mustard oil, crude
1514.90	Rapeseed, colza and mustard oil, other
1515.21	Corn (Maize) oil, crude
1515.29	Corn (Maize) oil, other
1512.21	Cottonseed oil, crude
1512.29	Cottonseed oil, other
1517.90	Cottonseed oil, hydrogenated
1508.10	Peanut (ground-nut) oil, crude
1508.90	Peanut (ground-nut) oil, other
1515.50	Sesame oil
1512.11	Sunflower-seed oil, crude
1512.19	Sunflower-seed oil, other
1212.91	Sugar Beets, fresh, chilled, frozen or dried
1212.92	Sugar Cane, fresh, chilled, frozen or dried
1701.11	Cane Sugar, raw, solid form
1701.12	Beet Sugar, raw, solid form
1701.91	Cane or Beet Sugar, solid form, containing added coloring or flavoring
1701.99	Cane or Beet Sugar, other, not elsewhere specified

[64 FR 41793, Aug. 2, 1999]

APPENDIX C TO PART 560—ELIGIBLE PROCUREMENT BODIES

This appendix C sets forth eligible procurement bodies of the Government of Iran identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state. See §560.531(e).

Government Trading Corporation (a.k.a. GTC).

State Livestock and Logistics Co. (a.k.a. State Livestock Affairs Logistics; a.k.a. SLAL).

[64 FR 58792, Nov. 1, 1999]

PART 561—IRANIAN FINANCIAL SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
561.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

561.201 Prohibitions or strict conditions with respect to correspondent accounts or payable-through accounts of certain foreign financial institutions identified by the Secretary of the Treasury.
561.202 Prohibitions on persons owned or controlled by U.S. financial institutions.

Subpart C—General Definitions

561.301 Effective date.
561.302 UNSC Resolution 1737.
561.303 UNSC Resolution 1747.
561.304 UNSC Resolution 1803.
561.305 UNSC Resolution 1929.
561.306 Correspondent account.
561.307 Payable-through account.
561.308 Foreign financial institution.
561.309 U.S. financial institution.
561.310 Money laundering.
561.311 Agent.
561.312 Act of international terrorism.
561.313 Financial services.
561.314 Knowingly.
561.315 Person.
561.316 Entity.
561.317 Money service businesses.

Subpart D—Interpretations

561.401 Reference to amended sections.
561.402 Effect of amendment.
561.403 Facilitation of certain efforts, activities, or transactions by foreign financial institutions.
561.404 Significant transaction or transactions; significant financial services.
561.405 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

561.501 General and specific licensing procedures.
561.502 Effect of license or authorization.
561.503 Exclusion from licenses.
561.504 Transactions related to closing a correspondent account or payable-through account.

Subpart F—Reports

561.601 Records and reports.

Subpart G—Penalties

561.701 Penalties.
561.702 Pre-Penalty Notice; settlement.
561.703 Penalty imposition.
561.704 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

561.801 Procedures.
561.802 Delegation by the Secretary of the Treasury.
561.803 Consultations.

Subpart I—Paperwork Reduction Act

561.901 Paperwork Reduction Act notice.
APPENDIX A TO PART 561 [RESERVED]

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 111–195, 124 Stat. 1312.

SOURCE: 75 FR 49838, Aug. 16, 2010, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 561.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part or the conditions imposed pursuant to this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 561.201 Prohibitions or strict conditions with respect to correspondent accounts or payable-through accounts of certain foreign financial institutions identified by the Secretary of the Treasury.

Upon a finding by the Secretary of the Treasury that a foreign financial institution knowingly engages in one or more of the activities described in paragraphs (a)(1) through (a)(5) of this section, consistent with the Secretary of the Treasury's authorities under the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195), either the Secretary of the Treasury will issue an order or regulation imposing one or more strict conditions, as set forth in paragraph (b) of this section, on the opening or maintaining of a correspondent account or a payable-through account in the United States for that foreign financial institution, or, as set forth in paragraph (c) of this section, the name of that foreign financial institution will be added to appendix A to this part, and a U.S. financial institution shall be prohibited from opening or maintaining a correspondent account or a payable-through account in the United States for that foreign financial institution.

(a) A foreign financial institution engages in an activity described in this paragraph if, in any location or currency, the foreign financial institution knowingly:

(1) Facilitates the efforts of the Government of Iran (including efforts of Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates)—

(i) To acquire or develop weapons of mass destruction or delivery systems for weapons of mass destruction; or

(ii) To provide support for organizations designated as foreign terrorist organizations under section 219(a) of the Immigration and Nationality Act (8 USC 1189(a)) or support for acts of international terrorism, as defined in section 561.312 of this part;

(2) Facilitates the activities of a person subject to financial sanctions pursuant to United Nations Security Council Resolutions 1737, 1747, 1803, or 1929, or any other resolution adopted by the Security Council that imposes sanctions with respect to Iran;

NOTE TO PARAGRAPH (a)(2) OF § 561.201: Persons subject to financial sanctions pursuant to the United Nations Security Council resolutions listed in paragraph (a)(2) of § 561.201 include individuals and entities listed in the Annex to UNSC Resolution 1737, Annex I of UNSC Resolution 1747, Annexes I and III of UNSC Resolution 1803, and Annexes I, II, and III of UNSC Resolution 1929; and individuals and entities designated by the Security Council or by the Committee established pursuant to UNSC Resolution 1737 (the ''Committee'') as being engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities, or the development of nuclear weapon

delivery systems; and individuals and entities acting on behalf of or at the direction of those so listed or designated; and entities owned or controlled by those so listed or designated; and individuals and entities determined by the Security Council or the Committee to have assisted listed or designated individuals or entities in evading sanctions of, or in violating the provisions of, UNSC Resolutions 1737, 1747, 1803, or 1929.

(3) Engages in money laundering to carry out an activity described in paragraphs (a)(1) or (a)(2) of this section;

(4) Facilitates efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity described in paragraphs (a)(1) or (a)(2) of this section; or

(5) Facilitates a significant transaction or transactions or provides significant financial services for—

(i) Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 USC 1701 *et seq.*); or

(ii) A financial institution whose property and interests in property are blocked pursuant to parts 544 or 594 of this chapter in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran's support for international terrorism.

NOTE TO PARAGRAPH (a)(5) OF §561.201: The names of persons whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA'') are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List''). The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. Agents or affiliates of Iran's Islamic Revolutionary Guard Corps (''IRGC'') whose property and interests in property are blocked pursuant to IEEPA are identified by a special reference to the ''[IRGC]'' at the end of their entries on the SDN List, in addition to the reference to the regulatory part of this chapter pursuant to which their property and interests in property are blocked. For example, an affiliate of the IRGC whose property and interests in property are blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 CFR part 544, will have the identifier ''[NPWMD] [IRGC]'' at the end of its entry on the SDN List. SDN List entries for financial institutions whose property and interests in property are blocked pursuant to parts 544 or 594 of this chapter in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran's support for international terrorism also include identifiers which reference this part in addition to part 544 or part 594, as the case may be, located at the end of their entries on the SDN List (*e.g.*, [NPWMD][IFSR] or [SDGT][IFSR]). In addition, *see* §561.405 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked.

(b) The Secretary of the Treasury by order or regulation may impose one or more strict conditions on the opening or maintaining by a U.S. financial institution of a correspondent account or a payable-through account in the United States for a foreign financial institution that the Secretary finds engages in one or more of the activities described in paragraph (a) of this section. The prohibition in paragraph (c) of this section on the opening or maintaining of a correspondent account or a payable-through account in the United States for a foreign financial institution shall not apply if the Secretary of the Treasury has imposed one or more strict conditions pursuant to this paragraph on the opening or maintaining of a correspondent account or payable-through account for that foreign financial institution, and such condition or conditions remain in effect. Such conditions may include, but are not limited to, the following:

(1) Prohibiting any provision of trade finance through the correspondent account or payable-through account of the foreign financial institution;

(2) Restricting the transactions that may be processed through the correspondent account or payable-through account of the foreign financial institution to certain types of transactions, such as personal remittances;

(3) Placing monetary limits on the transactions that may be processed through the correspondent account or payable-through account of the foreign financial institution; or

(4) Requiring pre-approval from the U.S. financial institution for all transactions processed through the correspondent account or payable-through account of the foreign financial institution.

NOTE TO PARAGRAPH (b) OF § 561.201: The actual condition(s) to be imposed will be specified upon the identification of the foreign financial institution in the order or regulation issued by the Secretary of the Treasury.

(c) Except to the extent paragraph (b) of this section applies, and except as otherwise authorized pursuant to this part, a U.S. financial institution shall not open or maintain a correspondent account or a payable-through account in the United States for a foreign financial institution that the Secretary of the Treasury finds engages in one or more of the activities described in paragraph (a) of this section. The names of foreign financial institutions that are found by the Secretary of the Treasury to engage in one or more of the activities described in paragraph (a) of this section, and for which U.S. financial institutions may not open or maintain correspondent accounts or payable-through accounts as provided in this paragraph, will be listed in appendix A to this part.

[75 FR 49838, Aug. 16, 2010, as amended at 76 FR 38542, June 30, 2011]

§ 561.202 Prohibitions on persons owned or controlled by U.S. financial institutions.

Except as otherwise authorized pursuant to this part, any person that is owned or controlled by a U.S. financial institution is prohibited from knowingly engaging in any transaction with or benefitting Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 USC 1701 *et seq.*).

NOTE 1 TO § 561.202: The names of persons whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA'') are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (the ''SDN List''). The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. Agents or affiliates of Iran's Islamic Revolutionary Guard Corps (''IRGC'') whose property and interests in property are blocked pursuant to IEEPA are identified by a special reference to the ''[IRGC]'' at the end of their entries on the SDN List, in addition to the reference to the regulatory part of this chapter pursuant to which their property and interests in property are blocked. For example, an affiliate of the IRGC whose property and interests in property are blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 CFR part 544, will have the identifier ''[NPWMD][IRGC]'' at the end of its entry on the SDN List. In addition, *see* § 561.405 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked.

NOTE 2 TO § 561.202: A U.S. financial institution is subject to the civil penalties provided for in section 206(b) of the International Emergency Economic Powers Act (50 U.S.C. 1705(b)) if any person that it owns or controls violates the prohibition set forth in this section and the U.S. financial institution knew or should have known of such violation. *See* § 561.701(a)(2).

[75 FR 49838, Aug. 16, 2010, as amended at 76 FR 38542, June 30, 2011]

Subpart C—General Definitions

§ 561.301 Effective date.

(a) The effective date of a prohibition or condition imposed pursuant to § 561.201 on the opening or maintaining of a correspondent account or a payable-through account in the United States by a U.S. financial institution for a particular foreign financial institution is the earlier of the date the U.S. financial institution receives actual or constructive notice of such prohibition or condition.

(b) The effective date of the prohibition contained in § 561.202 with respect to Iran's Islamic Revolutionary Guard Corps and any of its agents or affiliates whose property and interests in property are blocked as of August 16, 2010 is August 16, 2010;

(c) The effective date of the prohibition contained in § 561.202 with respect to an agent or affiliate of Iran's Islamic Revolutionary Guard Corps

whose property and interests in property become blocked after August 16, 2010 is the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

§ 561.302 UNSC Resolution 1737.

The term *UNSC Resolution 1737* means United Nations Security Council Resolution 1737, adopted December 23, 2006.

§ 561.303 UNSC Resolution 1747.

The term *UNSC Resolution 1747* means United Nations Security Council Resolution 1747, adopted March 24, 2007.

§ 561.304 UNSC Resolution 1803.

The term *UNSC Resolution 1803* means United Nations Security Council Resolution 1803, adopted March 3, 2008.

§ 561.305 UNSC Resolution 1929.

The term *UNSC Resolution 1929* means United Nations Security Council Resolution 1929, adopted June 9, 2010.

§ 561.306 Correspondent account.

For purposes of this part, the term *correspondent account* means an account established by a U.S. financial institution for a foreign financial institution to receive deposits from, or to make payments on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution.

§ 561.307 Payable-through account.

For purposes of this part, the term *payable-through account* means a correspondent account maintained by a U.S. financial institution for a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

§ 561.308 Foreign financial institution.

For purposes of this part, the term *foreign financial institution* means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, money service businesses, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and holding companies, affiliates, or subsidiaries of any of the foregoing. The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, or the North American Development Bank.

§ 561.309 U.S. financial institution.

For purposes of this part, the term *U.S. financial institution* means any U.S. entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, money service businesses, trust companies, insurance companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 561.310 Money laundering.

For purposes of this part, the term *money laundering* means engaging in deceptive practices to obscure the nature of transactions involving the movement of illicit cash or illicit cash equivalent proceeds into, out of, or

through a country, or into, out of, or through a financial institution, such that the transactions are made to appear legitimate.

§ 561.311 Agent.

For purposes of this part, the term *agent* includes an entity established by a person for purposes of conducting transactions on behalf of the person in order to conceal the identity of the person.

§ 561.312 Act of international terrorism.

For purposes of this part, the term *act of international terrorism* has the same definition as that provided under section 14 of the Iran Sanctions Act of 1996 (50 U.S.C. 1701 note). As of the date of publication in the FEDERAL REGISTER of the final rule adding this part to 31 CFR chapter V, August 16, 2010, the term *act of international terrorism* means an act which is violent or dangerous to human life and that is a violation of the criminal laws of the United States or of any state or that would be a criminal violation if committed within the jurisdiction of the United States or any state and which appears to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by assassination or kidnapping.

§ 561.313 Financial services.

For purposes of paragraph (a)(5) of § 561.201, the term *financial services* includes loans, transfers, accounts, insurance, investments, securities, guarantees, foreign exchange, letters of credit, and commodity futures or options.

§ 561.314 Knowingly.

For purposes of this part, the term *knowingly*, with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.

§ 561.315 Person.

The term *person* means an individual or entity.

§ 561.316 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, or other organization.

§ 561.317 Money service businesses.

For purposes of this part, the term *money service businesses* means any agent, agency, branch, or office of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in 31 CFR 103.11(uu)(1) through (uu)(5). The term does not include a bank or a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

Subpart D—Interpretations

§ 561.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 561.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 561.403 Facilitation of certain efforts, activities, or transactions by foreign financial institutions.

For purposes of § 561.201, the term *facilitate* used with respect to certain efforts, activities, or transactions refers

to the provision of assistance by a foreign financial institution for those efforts, activities, or transactions, including, but not limited to, the provision of currency, financial instruments, securities, or any other transmission of value; purchasing; selling; transporting; swapping; brokering; financing; approving; guaranteeing; or the provision of other services of any kind; or the provision of personnel; or the provision of software, technology, or goods of any kind.

§ 561.404 Significant transaction or transactions; significant financial services.

In determining, for purposes of paragraph (a)(5) of § 561.201, whether a transaction is significant, whether transactions are significant, or whether financial services are significant, the Secretary of the Treasury may consider the totality of the facts and circumstances. As a general matter, the Secretary may consider some or all of the following factors:

(a) *Size, number, and frequency*. The size, number, and frequency of transactions or financial services performed over a period of time, including whether the transactions or financial services are increasing or decreasing over time and the rate of increase or decrease.

(b) *Nature*. The nature of the transaction(s) or financial services, including the type, complexity, and commercial purpose of the transaction(s) or financial services.

(c) *Level of awareness; pattern of conduct*. (1) Whether the transaction(s) or financial service(s) are performed with the involvement or approval of management or only by clerical personnel; and

(2) Whether the transaction(s) or financial services are part of a pattern of conduct or the result of a business development strategy.

(d) *Nexus*. The proximity between the party to the transaction or transactions or the provider of the financial services and a blocked person described in paragraph (a)(5)(i) or (ii) of § 561.201. For example, a transaction or financial service in which a foreign financial institution provides brokerage or clearing services to such a blocked person in a direct customer relationship generally would be of greater significance than a transaction or financial service a foreign financial institution provides to such a blocked person in an indirect or tertiary relationship.

(e) *Impact*. The impact of the transaction(s) or financial services on the objectives of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, including:

(1) The economic or other benefit conferred or attempted to be conferred on a blocked person described in paragraph (a)(5)(i) or (ii) of § 561.201;

(2) Whether and how the transaction(s) or financial services contribute to the proliferation of weapons of mass destruction or delivery systems for such weapons, to support for international terrorism, or to the suppression of human rights; and

(3) Whether the transaction(s) or financial services support humanitarian activity or involve the payment of basic expenses as specified in and authorized pursuant to UNSC Resolution 1737 or the payment of extraordinary expenses that have been authorized by the Sanctions Committee established pursuant to UNSC Resolution 1737.

(f) *Deceptive practices*. Whether the transaction(s) or financial services involve an attempt to obscure or conceal the actual parties or true nature of the transaction(s) or financial service(s).

(g) *Other Relevant factors*. Such other factors that the Secretary deems relevant on a case-by-case basis in determining the significance of a transaction, transactions, or financial services.

§ 561.405 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (''IEEPA'') has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to

IEEPA, regardless of whether the entity itself is listed on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List.

[76 FR 38542, June 30, 2011]

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 561.501 General and specific licensing procedures.

For provisions relating to licensing procedures, *see* part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part or conditions imposed pursuant to this part are considered actions taken pursuant to this part.

§ 561.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other part of this chapter unless the regulation, ruling, instruction, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 561.503 Exclusion from licenses.

The Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 561.504 Transactions related to closing a correspondent account or payable-through account.

(a) During the 10-day period beginning on the effective date of the prohibition in § 561.201(c) on the opening or maintaining of a correspondent account or a payable-through account for a foreign financial institution listed in appendix A to this part, U.S. financial institutions that maintain correspondent accounts or payable-through accounts for the foreign financial institution are authorized to:

(1) Process only those transactions through the account, or permit the foreign financial institution to execute only those transactions through the account, that are for the purpose of, and necessary for, closing the account; and

(2) Transfer the funds remaining in the correspondent account or the payable-through account to an account of the foreign financial institution located outside of the United States and close the correspondent account or the payable-through account.

(b) Specific licenses may be issued on a case-by-case basis to authorize transactions by a U.S. financial institution with respect to a correspondent account or a payable-through account maintained by the U.S. financial institution for a foreign financial institution listed in Appendix A to this part that are outside the scope of the transactions authorized in paragraph (a) of this section and/or that occur beyond the [10-day] period authorized in that paragraph.

(c) Nothing in this section authorizes the opening of a correspondent account or payable-through account for a foreign financial institution listed in Appendix A to this part.

NOTE TO § 561.504: This section does not authorize a U.S. financial institution to unblock property or interests in property, or to engage in any transaction or dealing in property or interests in property, blocked pursuant to any other part of this chapter in the process of closing a correspondent account or a payable-through account for a foreign financial institution listed in appendix A to this part. *See* § 561.101.

Subpart F—Reports

§ 561.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter.

Subpart G—Penalties

§ 561.701 Penalties.

(a) *Civil Penalties.* (1) As set forth in section 104(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195) (''CISADA''), a civil penalty not to exceed the amount set forth in section 206(b) of the International Emergency Economic Powers Act (''IEEPA'')(50 U.S.C. 1705(b)) may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any order or regulation issued pursuant to § 561.201(b) or of the prohibition in § 561.201(c) or of any license set forth in or issued pursuant to this part concerning such order, regulation, or prohibition.

(2) As set forth in section 104(d) of CISADA, a civil penalty not to exceed the amount set forth in section 206(b) of IEEPA may be imposed on a U.S. financial institution if:

(i) A person owned or controlled by the U.S. financial institution violates, attempts to violate, conspires to violate, or causes a violation of the prohibition in § 561.202 or of any order, regulation, or license set forth in or issued pursuant to this part concerning such prohibition; and

(ii) The U.S. financial institution knew or should have known that the person violated, attempted to violate, conspired to violate, or caused a violation of such prohibition.

NOTE TO PARAGRAPH (a) OF § 561.701: As of the date of publication in the FEDERAL REGISTER of the final rule adding this part to 31 CFR chapter V, August 16, 2010, IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(b) *Criminal penalty.* As set forth in section 104(c) of CISADA, a person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any order or regulation issued pursuant to § 561.201(b) or of the prohibition in § 561.201(c) shall, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(c) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(d) Attention is also directed to 18 U.S.C. 1001, which provides that ''whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry'' shall be fined under title 18, United States Code, imprisoned, or both.

(e) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 561.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a

violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty may be warranted, the Office of Foreign Assets Control may issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, see appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within 30 days of the date of service of the Pre-Penalty Notice. The failure to submit a response within the applicable time period set forth in this paragraph (b) shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Enforcement Penalties Division by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in Appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 561.703 Penalty imposition.

If, after considering any timely written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a

Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see Appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

§ 561.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart G—Procedures

§ 561.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), *see* part 501, subpart E, of this chapter.

§ 561.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to section 104(c), (d), or (i) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195), and any action of the Secretary of the Treasury described in this part, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 561.803 Consultations.

In implementing section 104 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195) and this part, the Secretary of the Treasury shall consult with the Secretary of State and may, in the sole discretion of the Secretary of the Treasury, consult with such other agencies and departments and such other interested parties as the Secretary considers appropriate.

Subpart I—Paperwork Reduction Act

§ 561.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, *see* § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

APPENDIX A TO PART 561 [RESERVED]

PART 562—IRANIAN HUMAN RIGHTS ABUSES SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
562.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

562.201 Prohibited transactions.
562.202 Effect of transfers violating the provisions of this part.
562.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

Subpart C—General Definitions

562.301 Blocked account; blocked property.
562.302 Effective date.
562.303 Entity.
562.304 Interest.
562.305 Licenses; general and specific.
562.306 Person.
562.307 Property; property interest.
562.308 Transfer.
562.309 United States.
562.310 U.S. financial institution.
562.311 United States person; U.S. person.

Subpart D—Interpretations

562.401 [Reserved]
562.402 Effect of amendment.
562.403 Termination and acquisition of an interest in blocked property.
562.404 Transactions ordinarily incident to a licensed transaction authorized.
562.405 Setoffs prohibited.
562.406 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

562.501–562.502 [Reserved]
562.503 Exclusion from licenses.
562.504 Payments and transfers to blocked accounts in U.S. financial institutions.
562.505 Entries in certain accounts for normal service charges authorized.
562.506 Provision of certain legal services authorized.
562.507 Authorization of emergency medical services.

Subparts F–G [Reserved]

Subpart H—Procedures

562.801 [Reserved]
562.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

562.901 Paperwork Reduction Act notice.
APPENDIX A TO PART 562—EXECUTIVE ORDER 13553 OF SEPTEMBER 28, 2010

AUTHORITY: 3 U.S.C. 301; 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 13553, 75 FR 60567, October 1, 2010.

SOURCE: 76 FR 7695, Feb. 11, 2011, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 562.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

NOTE TO § 562.101: This part has been published in abbreviated form for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

Subpart B—Prohibitions

§ 562.201 Prohibited transactions.

All transactions prohibited pursuant to Executive Order 13553 are also prohibited pursuant to this part.

NOTE 1 TO § 562.201: The names of persons listed in or designated pursuant to Executive Order 13553, whose property and interests in property therefore are blocked pursuant to this section, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[IRAN–HR].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 562.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

NOTE 2 TO § 562.201: The International Emergency Economic Powers Act (50 U.S.C.

1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–IRAN–HR].''

NOTE 3 TO § 562.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

[76 FR 7695, Feb. 11, 2011, as amended at 76 FR 38542, June 30, 2011]

§ 562.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 562.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 562.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13553, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 562.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or

other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 562.201.

§ 562.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 562.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a Federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account described in paragraph (b) of this section may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or sub-account, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 562.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account as described in paragraphs (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 562.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 562.201, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

Subpart C—General Definitions

§ 562.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 562.201 held in the name of a person whose property and interests in property are blocked pursuant to § 562.201, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

NOTE TO § 562.301: *See* § 562.406 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 562.201.

§ 562.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person listed in the Annex to Executive Order 13553,

12:01 a.m. eastern daylight time, September 29, 2010; or

(b) With respect to a person whose property and interests in property are otherwise blocked pursuant to Executive Order 13553, the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

§ 562.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 562.304 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (*e.g.*, ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 562.305 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 562.305: *See* § 501.801 of this chapter on licensing procedures.

§ 562.306 Person.

The term *person* means an individual or entity.

§ 562.307 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 562.308 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 562.309 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 562.310 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 562.311 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 562.401 [Reserved]

§ 562.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in this part, any provision in or appendix to this chapter, or any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 562.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 562.201, unless there exists in the property another interest that is blocked pursuant to § 562.201 or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 562.201, such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 562.404 Transactions ordinarily incident to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 562.201; or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 562.405 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by

a U.S. bank or other U.S. person, is a prohibited transfer under § 562.201 if effected after the effective date.

§ 562.406 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 562.201 has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 562.201, regardless of whether the entity itself is listed in the Annex or designated pursuant to Executive Order 13553.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§§ 562.501–562.502 [Reserved]

§ 562.503 Exclusion from licenses.

The Office of Foreign Assets Control reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. The Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 562.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 562.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

NOTE TO § 562.504: *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See* also § 562.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 562.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, Internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 562.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 562.201 is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any Federal or State agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 562.201, not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 562.201 is prohibited unless licensed pursuant to this part.

§ 562.507 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 562.201 is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subparts F–G [Reserved]

Subpart H—Procedures

§ 562.801 [Reserved]

§ 562.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13553 of September 28, 2010 (75 FR 60567, October 1, 2010), and any further Executive orders relating to the national emergency declared in Executive Order 12957, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 562.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, *see* § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

APPENDIX A TO PART 562—EXECUTIVE ORDER 13553 OF SEPTEMBER 28, 2010

EXECUTIVE ORDER

BLOCKING PROPERTY OF CERTAIN PERSONS WITH RESPECT TO SERIOUS HUMAN RIGHTS ABUSES BY THE GOVERNMENT OF IRAN AND TAKING CERTAIN OTHER ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195) (CISADA), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995,

I, BARACK OBAMA, President of the United States of America, hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) any person determined by the Secretary of the Treasury, in consultation with

or at the recommendation of the Secretary of State:

(A) to be an official of the Government of Iran or a person acting on behalf of the Government of Iran (including members of paramilitary organizations) who is responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in Iran or Iranian citizens or residents, or the family members of the foregoing, on or after June 12, 2009, regardless of whether such abuses occurred in Iran;

(B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the activities described in subsection (a)(ii)(A) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to subsection (a) of this section would seriously impair my ability to deal with the national emergency declared in Executive Order 12957, and I hereby prohibit such donations as provided by subsection (a) of this section.

(c) The prohibitions in subsection (a) of this section include but are not limited to:

(i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

(d) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For the purposes of this order:

(a) the term ''*person*'' means an individual or entity;

(b) the term ''*entity*'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''*United States person*'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term ''*Government of Iran*'' includes the Government of Iran, any political subdivision, agency, or instrumentality thereof, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran; and

(e) the term ''*family member*'' means, with respect to an individual, a spouse, child, parent, sibling, grandchild, or grandparent of the individual.

Sec. 4. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 12957, there need be no prior notice of a listing or determination made pursuant to section 1(a) of this order.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and sections 105(a)–(c) of CISADA (22 U.S.C. 8514(a)–(c)), other than as described in sections 6 and 7 of this order, as may be necessary to carry out the purposes of this order other than the purposes of sections 6 and 7. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby further authorized to exercise the functions and waiver authorities conferred upon the President by section 401(b) of CISADA (22 U.S.C. 8551(b)) with respect to the requirement to impose or maintain sanctions pursuant to IEEPA under section 105(a) of CISADA (22 U.S.C. 8514(a)) and to redelegate these functions and waiver authorities consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. The Secretary of State is hereby authorized to exercise the functions and authorities conferred upon the President by section 105(a) of CISADA (22 U.S.C. 8514(a))

with respect to imposition of the visa sanctions described in section 105(c) of CISADA (22 U.S.C. 8514(c)) and to redelegate these functions and authorities consistent with applicable law. The Secretary of State is hereby further authorized to exercise the functions and authorities conferred upon the President by section 105(c) of CISADA (22 U.S.C. 8514(c)) with respect to the promulgation of rules and regulations related to the visa sanctions described therein and to redelegate these functions and authorities consistent with applicable law. The Secretary of State is hereby further authorized to exercise the functions and waiver authorities conferred upon the President by section 401(b) of CISADA (22 U.S.C. 8551(b)) with respect to the requirement to impose or maintain visa sanctions under section 105(a) of CISADA (22 U.S.C. 8514(a)) and to redelegate these functions and waiver authorities consistent with applicable law. In exercising the functions and authorities in the previous sentence, the Secretary of State shall consult the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security.

Sec. 7. The Secretary of State, in consultation with the Secretary of the Treasury, is hereby authorized to submit the initial and updated lists of persons who are subject to visa sanctions and whose property and interests in property are blocked pursuant to this order to the appropriate congressional committees as required by section 105(b) of CISADA (22 U.S.C. 8514(b)) and to redelegate these functions consistent with applicable law. The Secretary of State, in consultation with the Secretary of the Treasury, is hereby further authorized to exercise the functions and waiver authorities conferred upon the President by section 401(b) of CISADA (22 U.S.C. 8551(b)) with respect to the requirement to include a person on the list required by section 105(b) of CISADA (22 U.S.C. 8514(b)) and to redelegate these functions and waiver authorities consistent with applicable law.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out section 104 of CISADA (22 U.S.C. 8513). The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine that circumstances no longer warrant the blocking of the property and interests in property of a person listed in the Annex to this order, and to take necessary action to give effect to that determination.

Sec. 10. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 11. The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as response to those later actions.

Sec. 12. This order is effective at 12:01 a.m. eastern daylight time on September 29, 2010.

ANNEX

Individuals

1. Mohammad Ali JAFARI [Commander of the Islamic Revolutionary Guard Corps, born September 1, 1957]
2. Sadeq MAHSOULI [Minister of Welfare and Social Security, former Minister of the Interior and Deputy Commander-in-Chief of the Armed Forces for Law Enforcement, born 1959]
3. Qolam-Hossein MOHSENI-EJEI [Prosecutor-General of Iran, former Minister of Intelligence, born circa 1956]
4. Saeed MORTAZAVI [Head of Iranian Anti-Smuggling Task Force, former Prosecutor-General of Tehran, born 1967]
5. Heydar MOSLEHI [Minister of Intelligence, born 1956]
6. Mostafa Mohammad NAJJAR [Minister of the Interior and Deputy Commander-in-Chief of the Armed Forces for Law Enforcement, born 1956]
7. Ahmad-Reza RADAN [Deputy Chief of the National Police, born 1963 or 1964]
8. Hossein TAEB [Deputy Islamic Revolutionary Guard Corps Commander for Intelligence, former Commander of the Basij Forces, born 1963]

PART 570—LIBYAN SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
570.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

570.201 Prohibited transactions.
570.202 Effect of transfers violating the provisions of this part.
570.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

Subpart C—General Definitions

570.301 Blocked account; blocked property.
570.302 Effective date.
570.303 Entity.
570.304 Government of Libya.
570.305 [Reserved]
570.306 Interest.
570.307 Licenses; general and specific.
570.308 Person.
570.309 Property; property interest.
570.310 Transfer.
570.311 United States.
570.312 U.S. financial institution.
570.313 United States person; U.S. person.

Subpart D—Interpretations

570.401 [Reserved]
570.402 Effect of amendment.
570.403 Termination and acquisition of an interest in blocked property.
570.404 Transactions ordinarily incident to a licensed transaction authorized.
570.405 Setoffs prohibited.
570.406 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

570.501 General and specific licensing procedures.
570.502 [Reserved]
570.503 Exclusion from licenses.
570.504 Payments and transfers to blocked accounts in U.S. financial institutions.
570.505 Entries in certain accounts for normal service charges authorized.
570.506 Provision of certain legal services authorized.
570.507 Authorization of emergency medical services.
570.508 Libyan diplomatic missions in the United States.

Subparts F–G [Reserved]

Subpart H—Procedures

570.801 [Reserved]
570.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

570.901 Paperwork Reduction Act notice.
APPENDIX A TO PART 570—EXECUTIVE ORDER 13566

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13566, 76 FR 11315, March 2, 2011.

SOURCE: 76 FR 38562, July 1, 2011, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 570.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

NOTE TO § 570.101: This part has been published in abbreviated form for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

Subpart B—Prohibitions

§ 570.201 Prohibited transactions.

All transactions prohibited pursuant to Executive Order 13566 of February 25, 2011 (76 FR 11315, March 2, 2011), are also prohibited pursuant to this part.

NOTE 1 TO § 570.201: The names of persons listed in or designated pursuant to Executive Order 13566, whose property and interests in property therefore are blocked pursuant to this section, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[LIBYA2].'' The SDN List is accessible through the following page on the Office of

Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 570.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section. Executive Order 13566 also blocks the property and interests in property of the *Government of Libya*. *See* § 570.304 of this part for the definition of the term *Government of Libya*. The property and interests in property of persons falling within the definition of the term *Government of Libya* are blocked pursuant to this section regardless of whether the names of such persons are published in the FEDERAL REGISTER or incorporated into the SDN List.

NOTE 2 TO § 570.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–LIBYA2].''

NOTE 3 TO § 570.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as the Government of Libya or persons whose property and interests in property are blocked pursuant to this section.

§ 570.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 570.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 570.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, Executive Order 13566, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 570.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 570.201.

§ 570.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (e) or (f) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 570.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a Federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 570.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 570.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 570.201, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

Subpart C—General Definitions

§ 570.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 570.201 held in the name of the Government of Libya or any other person whose property and interests in property are blocked pursuant to § 570.201, or in which the Government of Libya or such person has an interest, and

with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

NOTE TO § 570.301: See § 570.406 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 570.201.

§ 570.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to the Government of Libya, as defined in § 570.304, or a person listed in the Annex to Executive Order 13566, 8 p.m. eastern standard time, February 25, 2011; or

(b) With respect to a person whose property and interests in property are otherwise blocked pursuant to Executive Order 13566, the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

§ 570.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 570.304 Government of Libya.

The term *Government of Libya* includes:

(a) The state and the Government of Libya, as well as any political subdivision, agency, or instrumentality thereof, and the Central Bank of Libya;

(b) Any entity owned or controlled, directly or indirectly, by the foregoing;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(d) Any other person determined by the Office of Foreign Assets Control to be included within paragraphs (a) through (c) of this section.

NOTE 1 TO § 570.304: The names of some of the persons that fall within this definition are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[LIBYA2].'' The SDN List is accessible through the following page on OFAC's Web site: *http://www.treasury.gov/sdn*. However, the property and interests in property of persons falling within the definition of the term *Government of Libya* are blocked pursuant to § 570.201 regardless of whether the names of such persons are published in the FEDERAL REGISTER or incorporated into the SDN List.

NOTE 2 TO § 570.304: Section 501.807 of this chapter describes the procedures to be followed by persons seeking administrative reconsideration of their status as the Government of Libya.

§ 570.305 [Reserved]

§ 570.306 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (e.g., ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 570.307 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 570.307: See § 501.801 of this chapter on licensing procedures.

§ 570.308 Person.

The term *person* means an individual or entity.

§ 570.309 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages,

pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 570.310 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, or filing of, or levy of or under, any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 570.311 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 570.312 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, or commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 570.313 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 570.401 [Reserved]

§ 570.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in this part, any provision in or appendix to this chapter, or any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 570.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from the Government of Libya or a person, such property shall no longer be deemed to be property blocked pursuant to § 570.201, unless there exists in the property another interest that is blocked pursuant to § 570.201, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to the Government of Libya or any other person whose property and interests in property are blocked pursuant to § 570.201, such property shall be deemed to be property in which the Government of Libya or that person has an interest and therefore blocked.

§ 570.404 Transactions ordinarily incident to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with the Government of Libya or any other person whose property and interests in property are blocked pursuant to § 570.201; or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 570.405 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 570.201 if effected after the effective date.

§ 570.406 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 570.201 has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 570.201, regardless of whether the entity itself is listed in the Annex or designated pursuant to Executive Order 13566.

NOTE TO § 570.406: This section, which deals with the consequences of ownership of entities, in no way limits section 570.304's definition of the term *Government of Libya*.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 570.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Additional general licenses and statements of licensing policy relating to this part may be available through the following page on OFAC's Web site: *http://www.treasury.gov/resource-center/sanctions/programs/pages/libya.aspx*.

§ 570.502 [Reserved]

§ 570.503 Exclusion from licenses.

The Office of Foreign Assets Control reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. The Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 570.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which the Government of Libya or any other person whose property and interests in property are blocked pursuant to § 570.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

NOTE TO § 570.504: See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 570.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 570.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, Internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 570.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of the Government of Libya or any other persons whose property and interests in property are blocked pursuant to § 570.201 is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of the Government of Libya or persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. Federal, state, or local court or agency;

(4) Representation of the Government of Libya or persons before any U.S. Federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against the Government of Libya or such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to the Government of Libya or any other persons whose property and interests in property are blocked pursuant to § 570.201, not otherwise authorized by this section, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or

other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 570.201 is prohibited unless licensed pursuant to this part.

NOTE TO § 570.506: Effective July 1, 2011, this section replaces and supersedes General License No. 3, dated March 9, 2011, which was issued pursuant to Executive Order 13566, and posted on OFAC's Web site, to authorize provision of certain legal services.

§ 570.507 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 570.201 is authorized, provided that all receipt of payment for such services must be specifically licensed.

§ 570.508 Libyan diplomatic missions in the United States.

(a) The provision of goods or services in the United States to the diplomatic missions of the Government of Libya to the United States and the United Nations is authorized, provided that:

(1) The goods or services are for the conduct of the official business of the missions, or for personal use of the employees of the missions, and are not for resale;

(2) The transaction does not involve the purchase, sale, financing, or refinancing of real property;

(3) The transaction is not otherwise prohibited by law; and

(4) The transaction is conducted through an account at a U.S. financial institution specifically licensed by OFAC.

NOTE TO PARAGRAPH (a)(4) OF § 570.508: U.S. financial institutions are required to obtain specific licenses to operate accounts for, or extend credit to, the diplomatic missions of the Government of Libya to the United States and the United Nations.

(b) The provision of goods or services in the United States to the employees of the diplomatic missions of the Government of Libya to the United States and the United Nations is authorized, provided that:

(1) The goods or services are for personal use of the employees of the missions, and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

NOTE 1 TO § 570.508: See § 570.404 for authorization, with certain exceptions, of any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto.

NOTE 2 TO § 570.508: Effective July 1, 2011, this section replaces and supersedes General License No. 2, dated March 1, 2011, which was issued pursuant to Executive Order 13566 and posted on OFAC's Web site.

Subparts F–G [Reserved]

Subpart H—Procedures

§ 570.801 [Reserved]

§ 570.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13566 of February 25, 2011 (76 FR 11315, March 2, 2011), and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 570.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

APPENDIX A TO PART 570—EXECUTIVE ORDER 13566

EXECUTIVE ORDER 13566 OF FEBRUARY 25, 2011

Blocking Property and Prohibiting Certain Transactions Related to Libya

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code, I, BARACK OBAMA, President of the United States of America, find that Colonel Muammar Qadhafi, his government, and close associates have taken extreme measures against the people of Libya, including by using weapons of war, mercenaries, and wanton violence against unarmed civilians. I further find that there is a serious risk that Libyan state assets will be misappropriated by Qadhafi, members of his government, members of his family, or his close associates if those assets are not protected. The foregoing circumstances, the prolonged attacks, and the increased numbers of Libyans seeking refuge in other countries from the attacks, have caused a deterioration in the security of Libya and pose a serious risk to its stability, thereby constituting an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(a) The persons listed in the Annex to this order; and

(b) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To be a senior official of the Government of Libya;

(ii) To be a child of Colonel Muammar Qadhafi;

(iii) To be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of human rights abuses related to political repression in Libya;

(iv) To have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of the activities described in subsection (b)(iii) of this section or any person whose property and interests in property are blocked pursuant to this order;

(v) To be owned or controlled by, or to have acted or purported to act for or on behalf of, any person whose property and interests in property are blocked pursuant to this order; or

(vi) To be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to this order.

Sec. 2. All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Sec. 3. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 4. I hereby determine that, to the extent section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the type of articles specified in such section by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to sections 1 and 2 of this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by sections 1 and 2 of this order.

Sec. 5. The prohibitions in sections 1 and 2 of this order include but are not limited to:

(a) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) The receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 6. The prohibitions in sections 1 and 2 of this order apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 7. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or

attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 8. Nothing in this order shall prohibit transactions for the conduct of the official business of the Federal Government by employees, grantees, or contractors thereof.

Sec. 9. For the purposes of this order:

(a) The term ''person'' means an individual or entity;

(b) The term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) The term ''United States person'' means any United States citizen or national, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 10. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 11. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine that circumstances no longer warrant the blocking of the property and interests in property of a person listed in the Annex to this order, and to take necessary action to give effect to that determination.

Sec. 12. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 13. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 14. This order is effective at 8 p.m. eastern standard time on February 25, 2011.

Barack Obama

THE WHITE HOUSE,

February 25, 2011.

PART 576—IRAQ STABILIZATION AND INSURGENCY SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
576.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

576.201 Prohibited transactions involving blocked property.
576.202 Effect of transfers violating the provisions of this part.
576.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
576.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
576.205 Evasions; attempts; conspiracies.
576.206 Protection granted to the Development Fund for Iraq, Iraqi Petroleum and Petroleum Products, and the Central Bank of Iraq.
576.207 Exemption for property controlled by the military forces of the United States and their coalition partners in Iraq.
576.208 Prohibited transactions related to certain Iraqi cultural property.
576.209 Exempt transactions.

Subpart C—General Definitions

576.301 Blocked account; blocked property.
576.302 Development Fund for Iraq.
576.303 Effective date.
576.304 Entity.
576.305 Former Iraqi regime.
576.306 Information or informational materials.
576.307 Interest.
576.308 Iraqi petroleum and petroleum products.
576.309 Licenses; general and specific.
576.310 Government of Iraq.
576.311 Person.
576.312 Property; property interest.
576.313 Transfer.
576.314 UNSC Resolution 1483.
576.315 United States.
576.316 U.S. financial institution.
576.317 United States person; U.S. person.

Subpart D—Interpretations

576.401 Reference to amended sections.
576.402 Effect of amendment.
576.403 Setoffs prohibited.
576.404 Termination and acquisition of an interest in property.
576.405 Transactions ordinarily incident to a licensed transaction.
576.406 Provision of services.

576.407 Offshore transactions.
576.408 Payments from blocked accounts to satisfy obligations prohibited.
576.409 Charitable contributions.
576.410 Credit extended and cards issued by U.S. financial institutions.
576.411 Prohibited transactions involving certain Iraqi cultural property.
576.412 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

576.501 General and specific licensing procedures.
576.502 Effect of license or authorization.
576.503 Exclusion from licenses.
576.504 Payments and transfers to blocked accounts in U.S. financial institutions.
576.505 Entries in certain accounts for normal service charges authorized.
576.506 Investment and reinvestment of certain funds.
576.507 Provision of certain legal services authorized.
576.508 Judicial process in legal proceedings involving ecological accidents.
576.509 Authorization of emergency medical services.
576.510 Unblocking certain blocked property.
576.511 Property controlled by the military forces of the United States and their coalition partners in Iraq.
576.512 Transactions with certain blocked persons authorized.

Subpart F—Reports

576.601 Records and reports.

Subpart G—Penalties

576.701 Penalties.
576.702 Pre-Penalty Notice; settlement.
576.703 Penalty imposition.
576.704 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

576.801 Procedures.
576.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

576.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 110–96, 121 Stat. 1011; E.O. 13303, 68 FR 31931, 3 CFR, 2003 Comp., p. 227; E.O. 13315, 68 FR 52315, 3 CFR, 2003 Comp., p. 252; E.O. 13350, 69 FR 46055, 3 CFR, 2004 Comp., p. 196; E.O. 13364, 69 FR 70177, 3 CFR, 2004 Comp., p. 236; E.O. 13438, 72 FR 39719, 3 CFR, 2007 Comp., p. 224.

SOURCE: 75 FR 55466, Sept. 13, 2010, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 576.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

NOTE TO § 576.101: The Iraqi Sanctions Regulations, 31 CFR part 575, have been removed from 31 CFR chapter V.

Subpart B—Prohibitions

§ 576.201 Prohibited transactions involving blocked property.

(a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of the former Iraqi regime or its state bodies, corporations, or agencies, or of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) Persons listed in the Annex to Executive Order 13315 of August 28, 2003, as amended by Executive Order 13350 of July 29, 2004; and

(2) Persons determined by the Secretary of the Treasury, in consultation with the Secretary of State,

(i) To be senior officials of the former Iraqi regime or their immediate family members; or

(ii) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any of the persons whose property and interests in property are blocked pursuant to paragraphs (a)(1) or (a)(2) of this section; and

(3) Persons determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Defense,

(i) To have committed, or to pose a significant risk of committing, an act or acts of violence that have the purpose or effect of:

(A) Threatening the peace or stability of Iraq or the Government of Iraq; or

(B) Undermining efforts to promote economic reconstruction and political reform in Iraq or to provide humanitarian assistance to the Iraqi people;

(ii) To have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of, such an act or acts of violence or any person whose property and interests in property are blocked pursuant to paragraph (a)(3) of this section; or

(iii) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to paragraph (a)(3) of this section.

NOTE 1 TO PARAGRAPH (a) OF § 576.201: The names of persons listed in or designated pursuant to Executive Order 13315, as amended by Executive Order 13350, or designated pursuant to Executive Order 13438, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[IRAQ2]'' (for persons designated pursuant to paragraphs (a)(1) and (a)(2) of this section) or ''[IRAQ3]'' (for persons designated pursuant to paragraph (a)(3) of this section). The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 576.412 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

NOTE 2 TO PARAGRAPH (a) OF § 576.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–IRAQ2]'' or ''[BPI–IRAQ3].''

NOTE 3 TO PARAGRAPH (a) OF § 576.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) All property and interests in property blocked pursuant to Executive Order 12722 of August 2, 1990, or Executive Order 12724 of August 9, 1990, that continued to be blocked as of July 30, 2004, remain blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, except as authorized by regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date.

NOTE TO PARAGRAPH (b) OF § 576.201: In § 576.510 of this part, the Office of Foreign Assets Control authorizes all transactions involving property and interests in property blocked solely pursuant to Executive Orders 12722 or 12724. The Iraqi Sanctions Regulations, 31 CFR part 575, which implemented Executive Orders 12722 and 12724, have been removed from 31 CFR chapter V.

(c) The prohibitions in paragraphs (a) and (b) of this section include, but are not limited to, prohibitions on the following transactions:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraphs (a) or (b) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraphs (a) or (b) of this section.

(d) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

(e) The prohibitions in paragraphs (a) and (b) of this section apply except to the extent transactions are authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date.

[75 FR 55466, Sept. 13, 2010, as amended at FR 38543, June 30, 2011]

§ 576.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 576.201(a) or § 576.201(b), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 576.201(a) or § 576.201(b), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Orders 13315, 13350, or 13438, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of

material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 576.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 576.201(a), or with respect to any property and interests in property blocked pursuant to § 576.201(b).

§ 576.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 576.201(a) or § 576.201(b) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 576.201(a) or § 576.201(b) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 576.201(a) or § 576.201(b) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 576.201(a), nor may their holder cooperate in or facilitate the pledging or

other attempted use as collateral of blocked funds or other assets.

§ 576.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 576.201(a) or § 576.201(b) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 576.201(a) or § 576.201(b) may, in the discretion of the Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 576.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by any U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

§ 576.206 Protection granted to the Development Fund for Iraq, Iraqi Petroleum and Petroleum Products, and the Central Bank of Iraq.

(a) Unless licensed or otherwise authorized pursuant to this part, and except as provided in paragraph (b) of this section, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process on or after the effective date is prohibited, and shall be deemed null and void, with respect to the following:

(1) The Development Fund for Iraq;

(2) All Iraqi petroleum and petroleum products, and interests therein, but only until title passes to the initial purchaser, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein, in which any foreign country or a national thereof has any interest, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons; and

(3) Any accounts, assets, investments, or any other property of any kind owned by, belonging to, or held by the Central Bank of Iraq, or held, maintained, or otherwise controlled by any financial institution of any kind in the name of, on behalf of, or otherwise for the Central Bank of Iraq.

(b) The prohibitions in paragraph (a) of this section shall not apply with respect to any final judgment arising out of a contractual obligation entered into by the Government of Iraq, including any agency or instrumentality thereof, after June 30, 2004.

§ 576.207 Exemption for property controlled by the military forces of the United States and their coalition partners in Iraq.

The prohibitions in § 576.201(a)(1) and (a)(2) shall not apply to property and interests in property that come under the control of the military forces of the United States and their coalition partners present in Iraq and acting in their official capacity under the command or operational control of the commander of United States Central Command.

§ 576.208 Prohibited transactions related to certain Iraqi cultural property.

Unless licensed or otherwise authorized pursuant to this part or otherwise consistent with U.S. law, the trade in or transfer of ownership or possession of Iraqi cultural property or other items of archeological, historical, cultural, rare scientific, and religious importance that were illegally removed, or for which a reasonable suspicion exists that they were illegally removed,

from the Iraq National Museum, the National Library, and other locations in Iraq since August 6, 1990, is prohibited.

NOTE TO § 576.208: *See* § 576.411 for interpretive guidance on this section. Questions concerning whether particular Iraqi cultural property or other items are subject to this section should be directed to the Cultural Heritage Center, U.S. Department of State, tel. 202–632–6301, fax 202–632–6300, Web site *http://culturalheritage.state.gov*, e-mail *culprop@state.gov*.

§ 576.209 Exempt transactions.

(a) *Personal communications*. The prohibitions contained in § 576.201(a)(3) do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(b) *Information or informational materials*. (1) The importation from any country and the exportation to any country of any information or informational materials, as defined in § 576.306, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions of § 576.201(a)(3).

(2) This section does not exempt from regulation or authorize transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include, but are not limited to, payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and, with respect to information or informational materials imported from persons whose property and interests in property are blocked pursuant to § 576.201(a)(3), payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt or authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730–774, or to the exportation of goods, technology, or software for use in the transmission of any data, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person whose property and interests in property are blocked pursuant to § 576.201(a) are prohibited.

(c) *Travel*. The prohibitions contained in § 576.201(a)(3) do not apply to any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 576.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean:

(a) (1) Any account or property subject to the prohibitions in § 576.201(a) held in the name of a person whose property and interests in property are blocked pursuant to § 576.201(a), or in which such person has an interest, or

(2) Any account or property subject to the prohibitions in § 576.201(b), and

(b) With respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

NOTE TO § 576.301: *See* § 576.412 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 576.201(a).

§ 576.302 Development Fund for Iraq.

The term *Development Fund for Iraq* means the fund established on or about May 22, 2003, on the books of the Central Bank of Iraq, by the Administrator of the Coalition Provisional Authority responsible for the temporary governance of Iraq and all accounts held for the fund or for the Central Bank of Iraq in the name of the fund.

§ 576.303 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person whose property and interests in property are blocked pursuant to § 576.201(a)(1), 12:01 a.m. Eastern Daylight Time (''e.d.t.''), August 29, 2003, for those persons listed on the Annex to Executive Order 13315, and 12:01 a.m., e.d.t., July 30, 2004, for those persons added to the Annex to Executive Order 13315 by Executive Order 13350;

(b) With respect to a person whose property and interests in property are otherwise blocked pursuant to § 576.201(a)(2) or (a)(3), the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked;

(c) With respect to the transactions prohibited by § 576.206(a)(1) and (a)(2), 12:01 a.m. e.d.t., May 23, 2003;

(d) With respect to the transactions prohibited by § 576.206(a)(3), 12:01 a.m. Eastern Standard Time (''e.s.t.''), November 30, 2004.

(e) With respect to the transactions prohibited by § 576.201(b) or § 576.208, 12:01 a.m. e.d.t., July 30, 2004.

§ 576.304 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup or other organization.

§ 576.305 Former Iraqi regime.

The term *former Iraqi regime* means the Saddam Hussein regime that governed Iraq until on or about May 1, 2003.

§ 576.306 Information or informational materials.

(a) For purposes of this part, the term *information or informational materials* includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

NOTE TO PARAGRAPH (A) OF § 576.307: To be considered information or informational materials, artworks must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials,* with respect to United States exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to sections 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the ''EAA''), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 576.307 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (*e.g.*, ''an interest in property'') means an interest of any nature whatsoever, direct or indirect.

§ 576.308 Iraqi petroleum and petroleum products.

The term *Iraqi petroleum and petroleum products* means any petroleum, petroleum products, or natural gas originating in Iraq, including any Iraqi-origin oil inventories, wherever located.

§ 576.309 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set

forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 576.309: *See* § 501.801 of this chapter for licensing procedures.

§ 576.310 Government of Iraq.

The term *Government of Iraq* means:

(a) Any interim or permanent Iraqi government in authority after June 30, 2004, and any subdivision, agency, or instrumentality thereof; and

(b) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing.

§ 576.311 Person.

The term *person* means an individual or entity.

§ 576.312 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 576.313 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 576.314 UNSC Resolution 1483.

The term *UNSC Resolution 1483* means United Nations Security Council Resolution No. 1483, adopted May 22, 2003.

§ 576.315 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 576.316 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange,

securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 576.317 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 576.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 576.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 576.403 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 576.201 if made after the effective date.

§ 576.404 Termination and acquisition of an interest in property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 576.201, unless there exists in the property another interest that is blocked pursuant to § 576.201 or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 576.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

(c) Unless otherwise provided in a license or authorization issued pursuant to this part, Iraqi petroleum and petroleum products shall enjoy the protections of § 576.206 until title passes to the initial purchaser. For purposes of this part, an *initial purchaser* is a purchaser other than the Government of Iraq or persons acting for it or on its behalf in the marketing or sale of Iraqi petroleum and petroleum products.

§ 576.405 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in

property are blocked pursuant to § 576.201(a); or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(c)

Example. A license authorizing Company A, whose property and interests in property are blocked pursuant to § 576.201(a), to complete a securities sale also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, broker, transfer agents, banks, etc., provided that such other parties are not themselves persons whose property and interests in property are blocked pursuant to § 576.201(a).

§ 576.406 Provision of services.

(a) Except as provided in § 576.209, the prohibitions on transactions involving blocked property contained in § 576.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 576.201(a); or

(2) With respect to property interests subject to § 576.201.

(b)

Example: U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 576.201(a).

NOTE TO § 576.406: *See* §§ 576.507 and 576.509 on licensing policy with regard to the provision of certain legal and medical services.

§ 576.407 Offshore transactions.

The prohibitions in § 576.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of a person whose property and interests in property are blocked pursuant to § 576.201, or property in which a person whose property and interests in property are blocked pursuant to § 576.201 has or has had an interest since the effective date.

§ 576.408 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 576.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 576.409 Charitable contributions.

Unless specifically authorized by the Office of Foreign Assets Control pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing or medicine, may be made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 576.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 576.201(a) if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from any such person.

§ 576.410 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 576.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 576.201(a).

§ 576.411 Prohibited transactions involving certain Iraqi cultural property.

(a) The prohibition on trade in or transfer of ownership or possession of certain Iraqi cultural property in § 576.208 is separate from, and independent of, other laws and regulations

that may also prohibit the same conduct.

(b) The mere compliance with certain legal, administrative, or procedural requirements, such as the filing of a U.S. Customs and Border Protection Form 3461 (Entry/Immediate Delivery) or U.S. Customs and Border Protection Form 7501 (Entry Summary), does not render the trade in or transfer of Iraqi cultural property otherwise consistent with U.S. law for purposes of § 576.208. The trade in or transfer of Iraqi cultural property as described in § 576.208 would violate § 576.208 regardless of whether the U.S. Customs and Border Protection forms were truthfully and accurately completed.

NOTE TO § 576.411: Other laws and regulations potentially applicable to the unlawful trade in or transfer of Iraqi cultural property include, but are not limited to, the transportation of stolen goods, 18 U.S.C. 2314; the receipt of stolen goods, 18 U.S.C. 2315; the importation of goods contrary to law, 18 U.S.C. 545 and 19 U.S.C. 1595a(a), (b), and (c); the exportation of goods contrary to law, 19 U.S.C. 1595a(d); the importation of stolen cultural property, 19 U.S.C. 2607; the importation of cultural property pertaining to the inventory of a museum or religious or secular public monument, 19 CFR 12.104a; and the emergency protection of Iraqi cultural antiquities, 19 CFR 12.104j.

§ 576.412 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 576.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 576.201(a), regardless of whether the entity itself is listed in the Annex to Executive Order 13315, as amended, or designated pursuant to § 576.201(a)(2) or (3).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 576.501 General and specific licensing procedures.

For provisions relating to licensing procedures, *see* part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 576.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other part of this chapter unless the regulation, ruling, instruction, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 576.503 Exclusion from licenses.

The Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Office of Foreign Assets Control

also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 576.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 576.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

NOTE TO § 576.504: *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 576.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 576.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 576.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 576.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 576.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (*e.g.*, through pledging or other use) to a person whose property and interests in property are blocked pursuant to § 576.201(a).

§ 576.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 576.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property or interests in property are blocked pursuant to § 576.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 576.201(a) is prohibited unless licensed pursuant to this part.

§ 576.508 Judicial process in legal proceedings involving ecological accidents.

The Office of Foreign Assets Control may issue specific licenses on a case-by-case basis to authorize the attachment, judgment, decree, lien, execution, garnishment, or other judicial process against property and interests in property protected by § 576.206 to satisfy liability for damages assessed in connection with an ecological accident (including an oil spill) that occurred after May 22, 2003.

§ 576.509 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 576.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

§ 576.510 Unblocking certain blocked property.

(a) Except for such property and interests in property described in paragraph (b) of this section, all transactions involving property and interests in property blocked pursuant to § 576.201(b) of this part are authorized.

(b) The authorization in paragraph (a) of this section does not apply to blocked property and interests in property of persons subject to sanctions pursuant to § 576.201(a) of this part or any other part of 31 CFR chapter V.

§ 576.511 Property controlled by the military forces of the United States and their coalition partners in Iraq.

The prohibition in § 576.201(a)(3) that deals with blocked property and interests in property shall not apply to property and interests in property controlled by the military forces of the United States and their coalition partners present in Iraq and acting in their official capacity under the command or operational control of the commander of United States Central Command.

NOTE TO § 576.511: *See* § 576.207 of this part, which exempts property and interests in property that come under the control of the military forces of the United States and their coalition partners present in Iraq and acting in their official capacity from the prohibitions in § 576.201(a)(1) and (2).

§ 576.512 Transactions with certain blocked persons authorized.

(a) All transactions with state bodies, corporations, or agencies of the former Iraqi regime that are otherwise prohibited by § 576.201(a) are authorized.

(b) The authorization in paragraph (a) of this section does not apply to any transactions with state bodies, corporations, or agencies of the former Iraqi regime listed on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List.

[75 FR 55466, Sept. 13, 2010, as amended at 76 FR 38542, June 30, 2011]

Subpart F—Reports

§ 576.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 576.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (''IEEPA''), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, or regulation issued under IEEPA.

NOTE TO PARAGRAPH (a)(1) OF § 576.701: As of the date of publication in the FEDERAL REGISTER of the final rule adding this part to 31 CFR chapter V September 13, 2010, IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, imprisoned, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 576.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see Appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, see Appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was

mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a Federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see Appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in Appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 576.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see Appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

§ 576.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart H—Procedures

§ 576.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 576.802 Delegation by the Secretary of the Treasury.

(a) Except as provided in paragraph (b) of this section, any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13303 of May 22, 2003, and any subsequent Executive orders relating to the national emergency declared therein,

including but not limited to Executive Order 13315 of August 28, 2003, and Executive Order 13438 of July 17, 2007, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated the authority so to act.

(b) Unless otherwise delegated, the authority provided in section 2 of Executive Order 13315 to confiscate property blocked pursuant to this part and transfer all vested right, title, and interest in such property to the Development Fund for Iraq shall be exercised only by the Secretary of the Treasury, in consultation with the Secretary of State.

Subpart I—Paperwork Reduction Act

§ 576.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 588—WESTERN BALKANS STABILIZATION REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
588.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

588.201 Prohibited transactions involving blocked property.
588.202 Effect of transfers violating the provisions of this part.
588.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
588.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
588.205 Evasions; attempts; conspiracies.

Subpart C—General Definitions

588.301 Blocked account; blocked property.
588.302 Effective date.
588.303 Entity.
588.304 Interest.
588.305 Licenses; general and specific.
588.306 Person.
588.307 Property; property interest.
588.308 Transfer.
588.309 United States.
588.310 U.S. financial institution.
588.311 United States person; U.S. person.
588.312 Financial, material, or technological support.

Subpart D—Interpretations

588.401 Reference to amended sections.
588.402 Effect of amendment.
588.403 Termination and acquisition of an interest in blocked property.
588.404 Transactions ordinarily incident to a licensed transaction.
588.405 Provision of services.
588.406 Offshore transactions.
588.407 Payments from blocked accounts to satisfy obligations prohibited.
588.408 Charitable contributions.
588.409 Credit extended and cards issued by U.S. financial institutions.
588.410 Setoffs prohibited.
588.411 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

588.501 General and specific licensing procedures.
588.502 Effect of license or authorization.
588.503 Exclusion from licenses.
588.504 Payments and transfers to blocked accounts in U.S. financial institutions.
588.505 Entries in certain accounts for normal service charges authorized.
588.506 Investment and reinvestment of certain funds.
588.507 Provision of certain legal services authorized.
588.508 Authorization of emergency medical services.

Subpart F—Reports

588.601 Records and reports.

Subpart G—Penalties

588.701 Penalties.
588.702 Pre-Penalty Notice; settlement.
588.703 Penalty imposition.
588.704 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

588.801 Procedures.
588.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

588.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13219, 66 FR 34777, 3 CFR, 2001 Comp., p. 778; E.O. 13304, 68 FR 32315, 3 CFR, 2004 Comp. p. 229.

SOURCE: 76 FR 38004, June 29, 2011, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 588.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 588.201 Prohibited transactions involving blocked property.

(a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13219 of June 26, 2001 (66 FR 34777, 3 CFR, 2001 Comp., p.778), as amended by Executive Order 13304 of May 28, 2003 (68 FR 32315, 3 CFR, 2004 Comp. p. 229); and

(2) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To be under open indictment by the International Criminal Tribunal for the former Yugoslavia, unless circumstances warrant otherwise; or

(ii) To have committed, or to pose a significant risk of committing, acts of violence that have the purpose or effect of threatening the peace in or diminishing the stability or security of any area or state in the Western Balkans region, undermining the authority, efforts, or objectives of international organizations or entities present in the region, or endangering the safety of persons participating in or providing support to the activities of those international organizations or entities; or

(iii) To have actively obstructed, or pose a significant risk of actively obstructing, the Ohrid Framework Agreement of 2001 relating to Macedonia, United Nations Security Council Resolution 1244 relating to Kosovo, or the Dayton Accords or the Conclusions of the Peace Implementation Conference held in London on December 8–9, 1995, including the decisions or conclusions of the High Representative, the Peace Implementation Council or its Steering Board, relating to Bosnia and Herzegovina; or

(iv) To have materially assisted in, sponsored, or provided financial, material, or technological support for, or goods or services in support of, such acts of violence or obstructionism or any person whose property and interests in property are blocked pursuant to this paragraph (a); or

(v) To be owned or controlled by, or acting or purporting to act directly or indirectly for or on behalf of, any person whose property and interests in property are blocked pursuant to this paragraph (a).

NOTE 1 TO PARAGRAPH (a) OF § 588.201: The names of persons listed in or designated pursuant to Executive Order 13219, as amended by Executive Order 13304, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[BALKANS].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 588.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

NOTE 2 TO PARAGRAPH (a) OF § 588.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–BALKANS].''

NOTE 3 TO PARAGRAPH (a) OF § 588.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, prohibitions on the following transactions:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

(d) The prohibitions in paragraph (a) of this section apply except to the extent transactions are authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date.

[76 FR 38004, June 29, 2011, as amended at 76 FR 38543, June 30, 2011]

§ 588.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 588.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 588.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 588.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 588.201(a).

§ 588.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (e) or (f) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 588.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the

account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 588.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 588.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 588.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 588.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 588.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 588.201(a) may, in the discretion of the Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 588.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

Subpart C—General Definitions

§ 588.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 588.201 held in the name of a person whose property and interests in property are blocked pursuant to § 588.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

NOTE TO § 588.301: See § 588.411 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 588.201(a).

§ 588.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a)(1) With respect to a person whose property and interests in property are

blocked pursuant to § 588.201(a)(1), whose name appeared on the Annex to Executive Order 13219 as originally issued and also appeared on the Annex to Executive Order 13304, 12:01 a.m. eastern daylight time on June 27, 2001;

(2) With respect to a person whose property and interests in property are blocked pursuant to § 588.201(a)(1), whose name first appeared on the Annex to Executive Order 13304, which replaced and superseded the Annex to Executive Order 13219, 12:01 a.m. eastern daylight time on May 29, 2003; and

(b) With respect to a person whose property and interests in property are blocked pursuant to § 588.201(a)(2), the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

§ 588.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 588.304 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (*e.g.*, ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 588.305 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 588.305: See § 501.801 of this chapter on licensing procedures.

§ 588.306 Person.

The term *person* means an individual or entity.

§ 588.307 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 588.308 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any

lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 588.309 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 588.310 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, or commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 588.311 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 588.312 Financial, material, or technological support.

The term *financial, material, or technological support*, as used in § 588.201(a)(2)(iv) of this part, means any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. ''Technologies'' as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

Subpart D—Interpretations

§ 588.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 588.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment,

modification, or revocation had not been made.

§ 588.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 588.201(a), unless there exists in the property another interest that is blocked pursuant to § 588.201(a), the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 588.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 588.404 Transactions ordinarily incident to a licensed transaction.

(a) Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(1) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 588.201(a); or

(2) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(b) *Example.* A license authorizing Company A, whose property and interests in property are blocked pursuant to § 588.201(a), to complete a securities sale also authorizes other parties to engage in activities that are ordinarily incident and necessary to complete the sale, including transactions by the buyer, broker, transfer agents, and banks, provided that such other parties are not themselves persons whose property and interests in property are blocked pursuant to § 588.201(a).

§ 588.405 Provision of services.

(a) Except as provided in § 588.206, the prohibitions on transactions involving blocked property contained in § 588.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 588.201(a); or

(2) With respect to property interests subject to § 588.201.

(b) *Example.* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 588.201(a).

NOTE TO § 588.405: See §§ 588.507 and 588.508 on licensing policy with regard to the provision of certain legal and medical services.

§ 588.406 Offshore transactions.

The prohibitions in § 588.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of a person whose property and interests in property are blocked pursuant to § 588.201(a), or property in which a person whose property and interests in property are blocked pursuant to § 588.201(a) has or has had an interest since the effective date.

§ 588.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 588.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 588.408 Charitable contributions.

Unless specifically authorized by the Office of Foreign Assets Control pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food,

clothing or medicine, may be made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 588.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 588.201(a) if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from any such person.

§ 588.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 588.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 588.201(a).

§ 588.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 588.201 if effected after the effective date.

§ 588.411 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 588.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 588.201(a), regardless of whether the entity itself is listed in the Annex to Executive Order 13219, as amended by Executive Order 13304, or designated pursuant to § 588.201(a)(2).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 588.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 588.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other part of this chapter unless the regulation, ruling, instruction, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 588.503 Exclusion from licenses.

The Office of Foreign Assets Control reserves the right to exclude any person, property, transaction, or class

thereof from the operation of any license or from the privileges conferred by any license. The Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 588.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 588.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

NOTE TO § 588.504: See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 588.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 588.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 588.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 588.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 588.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (*e.g.*, through pledging or other use) to a person whose property and interests in property are blocked pursuant to § 588.201(a).

§ 588.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 588.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision by a U.S. person of professional legal services relating to the representation of persons whose property and interests in property are blocked pursuant to § 588.201(a) in matters pending before the International Criminal Tribunal for the former Yugoslavia (the ''ICTY'') is authorized. With respect to such representation, receipt of payment of professional fees and reimbursement of incurred expenses are authorized if such payments and reimbursements are made by the ICTY. Such payments and reimbursements from any other source must be specifically licensed.

(c) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 588.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(d) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 588.201(a) is prohibited unless licensed pursuant to this part.

§ 588.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 588.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 588.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 588.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (''IEEPA''), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

NOTE TO PARAGRAPH (a)(1) OF § 588.701: As of the date of publication in the FEDERAL REGISTER of the final rule amending this part, *inter alia*, to implement Executive Order 13304 (June 29, 2011), IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (''UNPA''), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.

(d) Violations involving transactions described at section 203(b)(1), (3), and (4) of IEEPA shall be subject only to the penalties set forth in paragraph (c) of this section.

(e) Attention is also directed to 18 U.S.C. 1001, which provides that ''whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry'' shall be fined under title 18, United States Code, imprisoned, or both.

(f) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 588.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, see appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a Federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of

Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in Appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 588.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see Appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in Federal district court.

§ 588.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 588.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 588.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13219 of June 26, 2001 (66 FR 34777, June 29, 2001), Executive Order 13304 of May 28, 2003 (68 FR 32315, May 29, 2003), and any further Executive orders relating to the national emergency declared in Executive Order 13219, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§588.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see §501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 592—ROUGH DIAMONDS CONTROL REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
592.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

592.201 Prohibited importation and exportation of any rough diamond; permitted importation and exportation of any rough diamond.
592.202 Evasions; attempts; conspiracies.

Subpart C—General Definitions

592.301 Controlled through the Kimberley Process Certification Scheme.
592.302 Effective date.
592.303 Entity.
592.304 Exporting authority.
592.305 Importation into the United States.
592.306 Importing authority.
592.307 Kimberley Process Certificate.
592.308 Participant.
592.309 Person.
592.310 Rough diamond.
592.311 United States.
592.312 United States person; U.S. person.

Subpart D—Interpretations

592.401 Reference to amended sections.
592.402 Effect of amendment.
592.403 Transshipment or transit through the United States.
592.404 Importation into or release from a bonded warehouse or foreign trade zone.

Subpart E—Records and Reports

592.501 Records and reports.
592.502 Annual reports by rough diamond importers and exporters.

Subpart F—Penalties

592.601 Penalties.
592.602 Prepenalty notice.
592.603 Response to prepenalty notice; informal settlement.
592.604 Penalty imposition or withdrawal.
592.605 Administrative collection; referral to United States Department of Justice.

Subpart G—Procedures

592.701 Procedures.
592.702 Delegation by the Secretary of the Treasury.

Subpart H—Paperwork Reduction Act

592.801 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); Pub. L. 108–19, 117 Stat. 631 (19 U.S.C. 3901–3913); E.O. 13312, 68 FR 45151 3 CFR, 2003 Comp., p. 246.

SOURCE: 69 FR 56938, Sept. 23, 2004, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§592.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

Subpart B—Prohibitions

§ 592.201 Prohibited importation and exportation of any rough diamond; permitted importation or exportation of any rough diamond.

(a) Except to the extent provided in paragraph (b) of this section, and notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to the effective date, the importation into, or exportation from, the United States on or after July 30, 2003, of any rough diamond, from whatever source, is prohibited, unless the rough diamond has been controlled through the Kimberley Process Certification Scheme.

(b) The prohibitions in paragraph (a) of this section regarding the importation into, or exportation from, the United States of any rough diamond not controlled through the Kimberley Process Certification Scheme do not apply to an importation from, or exportation to, any country with respect to which the Secretary of State has granted a waiver pursuant to section 4(b) of the Clean Diamond Trade Act (Pub. L. 108–19) and section 2(a)(i) of Executive Order 13312.

NOTE TO § 592.201. An importation of any rough diamond from, or an exportation of any rough diamond to, a non-Participant is not controlled through the Kimberley Process Certification Scheme and thus is not permitted, except in the following circumstance. The Secretary of State may, pursuant to section 4(b) of the Clean Diamond Trade Act, waive the prohibitions contained in section 4(a) of that Act with respect to a particular country for periods of not more than one year each. The Secretary of State will publish a notice in the FEDERAL REGISTER identifying any country with respect to which a waiver applies and specifying the relevant time period during which the waiver will apply.

§ 592.202 Evasions; attempts; conspiracies.

(a) Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to July 30, 2003, any transaction by a United States person anywhere, or any transaction that occurs in whole or in part within the United States, on or after the effective date that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this part is prohibited.

(b) Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to July 30, 2003, any conspiracy formed to violate any of the prohibitions of this part is prohibited.

Subpart C—General Definitions

§ 592.301 Controlled through the Kimberley Process Certification Scheme.

(a) Except as otherwise provided in paragraph (b) of this section, the term *controlled through the Kimberley Process Certification Scheme* refers to the following requirements that apply, as appropriate, to the importation into the United States from a Participant, or to the exportation from the United States to a Participant, of any shipment including any rough diamond:

(1) *Kimberley Process Certificate*. A shipment of rough diamonds imported into, or exported from, the United States must be accompanied by an original Kimberley Process Certificate. The certificate must be presented in connection with an importation or exportation of rough diamonds if demanded by United States customs officials. Pursuant to 31 CFR §§ 501.601 and 501.602, the person identified as the ultimate consignee (see Customs Directive 3550–079A) on the Customs Form 7501 Entry Summary or its electronic equivalent filed with U.S. Customs and Border Protection in connection with an importation of rough diamonds must retain the original Kimberley Process Certificate for a period of at least five years from the date of importation and must make such certificate available for examination upon demand.

(2) *Tamper-resistant container*. A shipment of rough diamonds imported into, or exported, from the United States must be sealed in a tamper-resistant container;

(3) *Notification requirements for importations into the United States*. The person identified as the ultimate consignee (see Customs Directive 3550–

079A) on the Customs Form 7501 Entry Summary or its electronic equivalent filed with U.S. Customs and Border Protection in connection with an importation of rough diamonds must report that person's receipt of a shipment of rough diamonds to the relevant foreign exporting authority within 15 calendar days of the date that the shipment arrived at the U.S. port of entry. The report must refer to the relevant Kimberley Process Certificate by its unique identifying number; specify the number of parcels in the shipment; specify the total carat weight of the shipment; and identify the importer and exporter of the shipment. The report need not be in any particular form and may be submitted electronically or by mail or courier; and

(4) *Validation of Kimberley Process Certificate for exportations from the United States*. With respect to the exportation of rough diamonds from the United States and regardless of the destination, the U.S. Census Bureau requires the filing of export information through the Automated Export System. Submission of export information through the Automated Export System must be done in advance and must be confirmed by the return of an Internal Transaction Number. The return to the filer of the Internal Transaction Number shall constitute the validation of the Kimberley Process Certificate for an exportation of rough diamonds from the United States to a Participant. The exporter is required to report the Internal Transaction Number on the Kimberley Process Certificate accompanying any exportation from the United States. The Internal Transaction Number is a unique confirmation number generated by the Automated Export System to the filer who provides in a timely manner the complete commodity shipment data when such data have been accepted by the system.

(b) The Secretary of State, consistent with section 3(2)(B) of the Clean Diamond Trade Act (Pub. L. 108–19), may modify the requirements set forth in paragraph (a) of this section upon making a determination that a Participant has established an alternative system of control for rough diamonds that meets substantially the standards, practices, and procedures of the Kimberley Process Certification Scheme.

NOTE 1 TO § 592.301. The Secretary of State will periodically publish in the FEDERAL REGISTER an up-to-date listing of all Participants and their importing and exporting authorities. Where appropriate, such listing also will describe any modification of the requirements set forth in paragraph (a) of this section.

NOTE 2 TO § 592.301. Pursuant to 31 CFR §§ 501.601 and 501.602, the recordkeeping and reporting requirements imposed by § 592.501 apply to all U.S. persons engaged in the importation into, or exportation from, the United States of any shipment of rough diamonds.

NOTE 3 TO § 592.301. Effective November 1, 2004, customs brokers, importers, and filers making entry of a shipment of rough diamonds must either submit through U.S. Customs' Automated Broker Interface (ABI) system the unique identifying number of the Kimberley Process Certificate accompanying the shipment or, for non-ABI entries, indicate the certificate number on the Customs Form 7501 Entry Summary at each entry line.

NOTE 4 TO § 592.301. As of May 21, 2008, any diamond, regardless of value, that is described in subheadings 7102.10, 7102.21 or 7102.31, Harmonized Tariff Schedule of the United States and is imported into the United States shall not be released from the custody of U.S. Customs and Border Protection (CBP) except by a formal entry for consumption, as defined in § 141.0a(f) of the CBP regulations. See 19 CFR 141.0a(f).

[69 FR 56938, Sept. 23, 2004, as amended at 73 FR 29433, May 21, 2008]

§ 592.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to all provisions of this part except for § 592.301(a)(3), 12:01 a.m., eastern daylight time, July 30, 2003; and

(b) With respect to § 592.301(a)(3), September 23, 2004.

§ 592.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, or other organization.

§ 592.304 Exporting authority.

(a) The term *exporting authority* means one or more entities designated

by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate the Kimberley Process Certificate.

(b) The exporting authority for the United States is the U.S. Bureau of the Census.

NOTE TO § 592.304. The Secretary of State will periodically publish in the FEDERAL REGISTER an up-to-date listing of the exporting authorities of all Participants.

§ 592.305 Importation into the United States.

The term *importation into the United States* means the bringing of goods into the United States.

§ 592.306 Importing authority.

(a) The term *importing authority* means one or more entities designated by a Participant into whose territory a shipment of rough diamonds is being imported as having the authority to enforce the laws and regulations of the Participant regulating imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

(b) The importing authorities for the United States are the U.S. Bureau of Customs and Border Protection or, in the case of a territory or possession of the United States with its own customs administration, analogous officials.

NOTE TO § 592.306. The Secretary of State will periodically publish in the FEDERAL REGISTER an up-to-date listing of the importing authorities of all Participants.

§ 592.307 Kimberley Process Certificate.

The term *Kimberley Process Certificate* means a tamper- and forgery-resistant document that bears the following information in any language, provided that an English translation is incorporated:

(a) The title ''Kimberley Process Certificate'' and the statement: ''The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for rough diamonds'';

(b) Country of origin for shipment of parcels of unmixed (*i.e.*, from the same) origin;

NOTE TO PARAGRAPH (b). A shipment including a parcel of mixed-origin rough diamonds is to be entered into the United States with the Kimberley Process Certificate accompanying the shipment, and the certificate need not indicate the countries of origin of the diamonds. With respect to such a shipment, the country-of-origin field on the certificate must be filled in with asterisks. The shipment must, however, still comply with all other country-of-origin reporting requirements imposed by statute or regulation.

(c) Unique numbering with the Alpha 2 country code, according to ISO 3166–1;

(d) Date of issuance;

(e) Date of expiry;

(f) Name of issuing authority;

(g) Identification of exporter and importer;

(h) Carat weight/mass;

(i) Value in U.S. dollars;

(j) Number of parcels in the shipment;

(k) Relevant Harmonized Commodity Description and Coding System; and

(l) Validation by the exporting authority.

NOTE TO PARAGRAPH (l): See § 592.301(a)(4) for procedures governing the validation of the Kimberley Process Certificate when exporting from the United States.

§ 592.308 Participant.

The term *Participant* means a state, customs territory, or regional economic integration organization identified by the Secretary of State as one for which rough diamonds are controlled through the Kimberley Process Certification Scheme.

NOTE TO § 592.308. The Secretary of State will periodically publish in the FEDERAL REGISTER an up-to-date listing of all Participants.

§ 592.309 Person.

The term *person* means an individual or entity.

§ 592.310 Rough diamond.

The term *rough diamond* means any diamond that is unworked or simply sawn, cleaved, or bruted and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States.

§ 592.311 United States.

The term *United States,* when used in the geographic sense, means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

§ 592.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen; any alien admitted for permanent residence into the United States; any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches); or any person in the United States.

Subpart D—Interpretations

§ 592.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in this part or chapter or to any other regulation refers to the same as currently amended.

§ 592.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, or instruction issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, or instruction continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 592.403 Transshipment or transit through the United States.

The prohibitions in § 592.201 apply to the importation into, or exportation from, the United States, for transshipment or transit, of any rough diamond intended or destined for any country other than the United States, unless the shipment is sealed in a tamper-resistant container, accompanied by a Kimberley Process Certificate, and leaves the United States in the identical state in which it entered. The validation, recordkeeping, and reporting procedures applicable to importations and exportations do not apply in this case.

§ 592.404 Importation into or release from a bonded warehouse or foreign trade zone.

The requirements of the Kimberley Process Certification Scheme apply to all imported shipments of a rough diamond, regardless of whether they are destined for entry into, or withdrawal from, a bonded warehouse or a foreign trade zone of the United States.

Subpart E—Records and Reports

§ 592.501 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

§ 592.502 Annual reports by rough diamond importers and exporters.

(a) *Requirement for reports.* Reports shall be filed annually, by April 1 of each year, covering the preceding calendar year (January 1–December 31), except the first annual report, covering the period January 1–December 31, 2007, shall be filed by September 1, 2008.

(b) *Who must report; reporting period.* All persons who import rough diamonds into the United States or export rough diamonds from the United States during the reporting period (January 1–December 31).

(c) *What must be reported.* The report need not be in any specified format but must include the following information:

(1) The contact information of the U.S. importer or exporter, including name, address, telephone number, fax number, and e-mail address;

(2) Identification of total import and/or export activity for each of the three Harmonized Tariff Schedule classifications of rough diamonds during the reporting year, including:

(A) Total amount of carats of each classification of rough diamonds imported and/or exported; and

(B) Total of all shipments of each classification of rough diamonds imported and/or exported.

(3) Information on stockpiles of rough diamonds, if any, for each of the three Harmonized Tariff Schedule classifications, as of the end of the reporting year, reported in both total carats and approximate total value. For the purposes of this section, stockpiles are defined as the amount of rough diamonds held unsold at the end of the reporting period.

(d) *Where to send report*. Reports must be filed with the Office of the Special Advisor for Conflict Diamonds, U.S. Department of State via e-mail at *USKimberleyProcess@state.gov*. For further information, please call that office at 202/647–1713.

(e) *Failure to file report*. Any importer or exporter who fails to file a required report shall be subject to the penalties set forth in Subpart F of this part.

[73 FR 29434, May 21, 2008]

Subpart F—Penalties

§ 592.601 Penalties.

(a) Attention is directed to section 8 of the Clean Diamond Trade Act (the ''Act'') (Pub. L. 108–19), which provides that:

(1) A civil penalty not to exceed $10,000 per violation may be imposed on any person who violates, or attempts to violate, any order or regulation issued under the Act;

(2) Whoever willfully violates, or willfully attempts to violate, any order or regulation issued under this Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who willfully participates in such violation may be punished by a like fine, imprisonment, or both; and

(3) Those customs laws of the United States, both civil and criminal, including those laws relating to seizure and forfeiture, that apply to articles imported in violation of such laws shall apply with respect to any rough diamond imported in violation of the Act.

NOTE TO PARAGRAPH (a). As reflected in paragraphs (a)(1) and (2) of this section, section 8(a) of the Clean Diamond Trade Act (Pub. L. 108–19) establishes penalties with respect to any violation of any regulation issued under the Act. OFAC prepenalty, penalty, and administrative collection procedures relating to such violations are set forth below in §§ 592.602 through 592.605. Section 8(c) of the Act also authorizes the U.S. Bureau of Customs and Border Protection and the U.S. Bureau of Immigration and Customs Enforcement, as appropriate, to enforce the penalty provisions set forth in paragraph (a) of this section and to enforce the laws and regulations governing exports of rough diamonds, including with respect to the validation of the Kimberley Process Certificate by the U.S. Bureau of the Census. The Office of Foreign Assets Control civil penalty procedures set forth below are separate from, and independent of, any penalty procedures that may be followed by the U.S. Bureau of Customs and Border Protection and the U.S. Bureau of Immigration and Customs Enforcement in their exercise of the authorities set forth in section 8(c) of the Clean Diamond Trade Act.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any materially false, fictitious, or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 592.602 Prepenalty notice.

(a) *When required*. If the Director of the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any regulation or order issued

by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Clean Diamond Trade Act, and the Director determines that further civil proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation*. The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond*. The prepenalty notice also shall inform the respondent of the respondent's right to make a written presentation within the applicable 30-day period set forth in § 592.603 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice*. At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 592.603 Response to prepenalty notice; informal settlement.

(a) *Deadline for response*. The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director of the Office of Foreign Assets Control may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response*. A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response*. If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response*. The response must be submitted in writing and may be handwritten or typed. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response*. A written response must contain information sufficient to indicate that it is in response to the prepenalty notice and must include the Office of Foreign Assets Control identification number listed on the prepenalty notice.

(1) A written response must include the respondent's full name, address,

telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Failure to respond*. Where the Office of Foreign Assets Control receives no response to a prepenalty notice within the applicable time period set forth in paragraph (a) of this section, a penalty notice generally will be issued, taking into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

(e) *Informal settlement*. In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Representation*. A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 592.604 Penalty imposition or withdrawal.

(a) *No violation*. If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation*. (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of

the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

§ 592.605 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart G—Procedures

§ 592.701 Procedures.

For procedures relating to rulemaking and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 592.702 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13312 (FR vol. 68, No. 147, July 31, 2003) and any further Executive orders relating to the Clean Diamond Trade Act (Pub. L. 108–19) may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart H—Paperwork Reduction Act

§ 592.801 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of the information collections relating to the recordkeeping and reporting requirements of §§ 592.301(a)(1), subpart C, § 592.501, subpart E, and 592.603, subpart F, *see* § 501.901 of this chapter. The information collection requirements in §§ 592.301(a)(3) and (a)(4), subpart C, have been approved by the OMB and assigned control numbers 1505–0198 and 0607–0152, respectively. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 593—FORMER LIBERIAN REGIME OF CHARLES TAYLOR SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
593.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

593.201 Prohibited transactions involving blocked property.
593.202 Effect of transfers violating the provisions of this part.
593.203 Holding of blocked physical funds in interest-bearing accounts; investment and reinvestment.
593.204 Expenses of maintaining blocked physical property; liquidation of blocked account.
593.205 Prohibition on the importation of any round log or timber product originating in Liberia.
593.206 Evasions; attempts; conspiracies.

Subpart C—General Definitions

593.301 Blocked account; blocked property.
593.302 Effective date.
593.303 Entity.
593.304 Interest.
593.305 Licenses; general and specific.
593.306 Originating in Liberia.
593.307 Person.
593.308 Property; property interest.
593.309 Round log or timber product.

593.310 Transfer.
593.311 United States.
593.312 U.S. financial institution.
593.313 United States person; U.S. person.

Subpart D—Interpretations

593.401 Reference to amended sections.
593.402 Effect of amendment.
593.403 Termination and acquisition of an interest in blocked property.
593.404 Transactions ordinarily incident to a licensed transaction.
593.405 Provision of services.
593.406 Offshore transactions.
593.407 Payments from blocked accounts to satisfy obligations prohibited.
593.408 Charitable Contributions.
593.409 Credit extended and cards issued by U.S. financial institutions.
593.410 Setoffs prohibited.
593.411 Importation into the United States.
593.412 Release of any round log or timber product originating in Liberia from a bonded warehouse or foreign trade zone.
593.413 Transshipments or transit through the United States prohibited.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

593.501 General and specific licensing procedures.
593.502 Effect of license or authorization.
593.503 Exclusion from licenses.
593.504 Payments and transfers to blocked accounts in U.S. financial institutions.
593.505 Entries in certain accounts for normal service charges authorized.
593.506 Investment and reinvestment of certain funds.
593.507 Provision of certain legal services authorized.
593.508 Authorization of emergency medical services.
593.509 Transactions related to mail authorized.
593.510 Transactions related to the importation of any round log and timber product originating in Liberia authorized.

Subpart F—Reports

593.601 Records and reports.

Subpart G—Penalties

593.701 Penalties.
593.702 Prepenalty notice.
593.703 Response to prepenalty notice; informal settlement.
593.704 Penalty imposition or withdrawal.
593.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

593.801 Procedures.
593.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

593.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13348, 69 FR 44885, 3 CFR, 2004 Comp., p. 189.

SOURCE: 72 FR 28856, May 23, 2007, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 593.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 593.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including

their overseas branches, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13348 of July 22, 2004 (69 FR 44885, July 27, 2004); and

(2) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To be or have been an immediate family member of Charles Taylor;

(ii) To have been a senior official of the former Liberian regime headed by Charles Taylor or otherwise to have been or be a close ally or associate of Charles Taylor or the former Liberian regime;

(iii) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the unlawful depletion of Liberian resources, the removal of Liberian resources from that country, and the secreting of Liberian funds and property by any person whose property and interests in property are blocked pursuant to this paragraph (a); or

(iv) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this paragraph (a).

NOTE 1 TO PARAGRAPH (a) OF § 593.201: The names of persons listed in or designated pursuant to Executive Order 13348, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[LIBERIA].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter.

NOTE 2 TO PARAGRAPH (a) OF § 593.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–LIBERIA].''

NOTE 3 TO PARAGRAPH (a) OF § 593.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The blocking of property and interests in property pursuant to § 593.201(a) includes, but is not limited to, the prohibition of the making or receiving by a United States person of any contribution or provision of funds, goods, or services by, to, or for the benefit of a person whose property and interests in property are blocked pursuant to § 593.201(a).

(c) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to § 593.201(a) is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

[72 FR 28856, May 23, 2007, as amended at 76 FR 38543, June 30, 2011]

§ 593.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part,

and that involves any property or interest in property blocked pursuant to § 593.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 593.201(a), unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13348, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained;

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 593.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Except to the extent otherwise provided by law, unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 593.201(a).

§ 593.203 Holding of blocked funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 593.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 593.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 593.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 593.201(a). However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 593.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 593.204 Expenses of maintaining blocked physical property; liquidation of blocked account.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 593.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 593.201(a) may, in the discretion of the Director of the Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 593.205 Prohibition on the importation of any round log or timber product originating in Liberia.

Except as otherwise authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this section, the importation into the United States, directly or indirectly, of any round log or timber product originating in Liberia is prohibited.

NOTE TO § 593.205: See section 593.510, which authorizes transactions related to the importation of any round log or timber product originating in Liberia. This general license has been issued in accordance with United Nations Security Council Resolution 1689 of June 20, 2006.

§ 593.206 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by any U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or

attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

Subpart C—General Definitions

§ 593.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 593.201 held in the name of a person whose property and interests in property are blocked pursuant to § 593.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

§ 593.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person whose property and interests in property are blocked pursuant to § 593.201(a)(1), or with respect to the prohibitions set forth at § 593.205, 12:01 a.m. eastern daylight time, July 23, 2004;

(b) With respect to a person whose property and interests in property are blocked pursuant to § 593.201(a)(2), the earlier of the date of actual or constructive notice of such person's designation.

§ 593.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 593.304 Interest.

Except as otherwise provided in this part, the term interest, when used with respect to property (e.g., ''an *interest* in property''), means an interest of any nature whatsoever, direct or indirect.

§ 593.305 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 593.305: See § 501.801 of this chapter on licensing procedures.

§ 593.306 Originating in Liberia.

The term *originating in Liberia* means:

(a) Any product determined to be a good of Liberian origin pursuant to the rules of origin of U.S. Customs and Border Protection; or

(b) Any product that has entered into Liberian commerce.

§ 593.307 Person.

The term *person* means an individual or entity.

§ 593.308 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations there under, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or

copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 593.309 Round log or timber product.

The term *round log or timber product* means any product classifiable in Chapter 44 of the Harmonized Tariff Schedule of the United States.

§ 593.310 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 593.311 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 593.312 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 593.313 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 593.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 593.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction,

or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 593.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of blocked property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 593.201(a), unless there exists in the property another interest that is blocked pursuant to § 593.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 593.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 593.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 593.201(a); or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 593.405 Provision of services.

(a) The prohibitions on transactions involving blocked property contained in § 593.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 593.201(a); or

(2) With respect to property interests subject to § 593.201.

(b) *Example.* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 593.201(a).

NOTE TO § 593.405. See §§ 593.507 and 593.508, respectively, on licensing policy with regard to the provision of certain legal or medical services.

§ 593.406 Offshore transactions.

The prohibitions in § 593.201 on transactions involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of a person whose property and interests in property are blocked pursuant to § 593.201(a), or property in which a person whose property and interests in property are blocked pursuant to § 593.201(a) has or has had an interest since the effective date.

§ 593.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 593.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 593.408 Charitable contributions.

Unless otherwise specifically authorized by the Office of Foreign Assets Control by or pursuant to this part, no charitable contribution or donation of funds, goods, services, or technology, including those to relieve human suffering, such as food, clothing or medicine, may be made by, to, or for the

benefit of a person whose property or interests in property are blocked pursuant to Sec. 593.201(a). For purposes of this part, a contribution or donation is made by, to, or for the benefit of a person whose property or interests in property are blocked pursuant to Sec. 593.201(a) if made by, to, or in the name of such a person; if made by, to, or in the name of an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions or donations by, to, or for such a person.

§ 593.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 593.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 593.201(a).

§ 593.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 593.201 if effected after the effective date.

§ 593.411 Importation into the United States.

With respect to the prohibitions set forth in § 593.205, the term *importation into the United States* generally means the bringing of any such products into the United States. In the case of round logs or timber products originating in Liberia being transported by vessel, *importation into the United States* means the bringing of any such products into the United States with the intent to unlade. See also § 593.413 and § 593.510.

§ 593.412 Release of any round log or timber product originating in Liberia from a bonded warehouse or foreign trade zone.

(a) The prohibitions in § 593.205 apply to importation into a bonded warehouse or a foreign trade zone in the United States.

(b) Section 593.205 does not prohibit the release from a bonded warehouse or foreign trade zone of any round log or timber product originating in Liberia imported into a bonded warehouse or foreign trade zone either prior to the effective date or in a transaction authorized pursuant to this part on or after the effective date.

(c) Notwithstanding paragraph (b) of this section, any round log or timber product originating in Liberia in which persons whose property and interests in property are blocked pursuant to § 593.201(a) have an interest may not be released unless authorized by the Office of Foreign Assets Control.

NOTE TO § 593.412. See § 593.510.

§ 593.413 Transshipment or transit through the United States prohibited.

Except as otherwise specified:

(a) The prohibitions in § 593.205 apply to the importation into the United States, for transshipment or transit to third countries, of any round log or timber product originating in Liberia.

(b) In the case of any round log or timber product originating in Liberia, the prohibitions in § 593.205 apply to the unlading in the United States and the intent to unlade in the United States of such products intended or destined for third countries.

NOTE TO § 593.413. See § 593.510.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 593.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 593.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any

transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 593.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

§ 593.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 593.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

NOTE TO § 593.504: Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 593.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 593.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 593.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 593.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 593.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount which is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to a person whose property and interests in property are blocked pursuant to § 593.201(a).

§ 593.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 593.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any Federal or State agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 593.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement affecting property and interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property and interests in property blocked pursuant to § 593.201(a) is prohibited unless specifically licensed in accordance with § 593.202(e).

§ 593.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 593.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

§ 593.509 Transactions related to mail authorized.

All transactions by U.S. persons, including payment and transfers to common carriers, incident to the receipt or transmission of mail between a U.S. person and a person whose property and interests in property are blocked pursuant to § 593.201(a) are authorized, provided the mail is limited to personal communications not involving a transfer of anything of value and not exceeding 12 ounces in weight.

§ 593.510 Transactions related to the importation of any round log or timber product originating in Liberia authorized.

Except as otherwise prohibited by § 593.201, all transactions that are prohibited by § 593.205 with respect to the importation into the United States of any round log or timber product originating in Liberia are authorized.

Subpart F—Reports

§ 593.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 593.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in Section 206 of the Act may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under the Act.

NOTE TO PARAGRAPH (a)(1) OF § 593.701: As of June 10, 2008, the Act provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in the Act are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in the Act are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Violations involving transactions described at section 203(b)(1), (3–4) of IEEPA (50 U.S.C. 1702(b)(1), (3–4)) shall be subject only to the penalties set forth in paragraph (b) of this section.

(d)(1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA and UNPA are subject to increase pursuant to 18 U.S.C. 3571.

(e) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(f) Violations of this part may also be subject to relevant provisions of other applicable laws.

[72 FR 28856, May 23, 2007, as amended at 73 FR 32655, June 10, 2008]

§ 593.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of the respondent's right to make a written presentation within the applicable 30-day period set forth in § 593.703 as to why a monetary penalty should not be imposed or why, if imposed, the

monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed 60 days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within the Director's discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 593.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director may grant, at the Director's discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a Federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response need not be in any particular form, but it must be typewritten and signed by the respondent or a representative thereof. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice and must identify the Office of Foreign Assets Control identification number listed on the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Failure to respond.* If the Office of Foreign Assets Control receives no response to a prepenalty notice within the applicable time period set forth in paragraph (a) of this section, a penalty notice generally will be issued, taking

into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

(e) *Informal settlement*. In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control's Civil Penalties Division as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (g) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Guidelines*. Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are available on OFAC's Web site (*http://www.treas.gov/ofac*).

(g) *Representation*. A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 593.704 Penalty imposition or withdrawal.

(a) *No violation*. If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation*. (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in Federal district court.

§ 593.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the

Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 593.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 593.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13348 of July 22, 2004 (69 FR 44885, July 27, 2004), and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 593.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to record keeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
594.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

594.201 Prohibited transactions involving blocked property.
594.202 Effect of transfers violating the provisions of this part.
594.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
594.204 Prohibited transaction or dealing in property; contributions of funds, goods, or services.
594.205 Evasions; attempts; conspiracies.
594.206 Expenses of maintaining blocked property; liquidation of blocked property.

Subpart C—General Definitions

594.301 Blocked account; blocked property.
594.302 Effective date.
594.303 Entity.
594.304 Foreign person.
594.305 Information or informational materials.
594.306 Interest.
594.307 Licenses; general and specific.
594.308 Person.
594.309 Property; property interest.
594.310 Specially designated global terrorist; SDGT.
594.311 Terrorism.
594.312 Transfer.
594.313 United States.
594.314 U.S. financial institution.
594.315 United States person; U.S. person.
594.316 Otherwise associated with.
594.317 Financial, material, or technological support.

Subpart D—Interpretations

594.401 Reference to amended sections.
594.402 Effect of amendment.
594.403 Setoffs prohibited.
594.404 Termination and acquisition of an interest in blocked property.
594.405 Transactions incidental to a licensed transaction.
594.406 Provision of services.
594.407 Offshore transactions.
594.408 Payments from blocked accounts to satisfy obligations prohibited.
594.409 Charitable contributions.
594.410 Credit extended and cards issued by U.S. financial institutions.
594.411 Palestinian Authority.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

594.501 General and specific licensing procedures.
594.502 Effect of license or authorization.
594.503 Exclusion from licenses and other authorizations.
594.504 Payments and transfers to blocked accounts in U.S. financial institutions.
594.505 Entries in certain accounts for normal service charges authorized.
594.506 Provision of certain legal services authorized.
594.507 Authorization of emergency medical services.
594.508 Transactions related to telecommunications authorized.
594.509 Transactions related to mail authorized.
594.510 Official activities of certain international organizations; U.S. person employees of certain governments.
594.511 Travel, employment, residence and maintenance transactions with the Palestinian Authority.
594.512 Payment of taxes and incidental fees to the Palestinian Authority.
594.513 Transactions with entities under the control of the Palestinian President and certain other entities.
594.514 Concluding activities with the Palestinian Authority.
594.515 In-kind donations of medicine, medical devices, and medical services.
594.516 Transactions with the Palestinian Authority authorized.
594.517 Payments from funds originating outside the United States and the formation of legal defense funds authorized.

Subpart F—Reports

594.601 Records and reports.

Subpart G—Penalties

594.701 Penalties.
594.702 Prepenalty notice.
594.703 Response to prepenalty notice; informal settlement.
594.704 Penalty imposition or withdrawal.
594.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

594.801 Procedures.
594.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

594.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR, 2002 Comp., p. 240; E.O. 13284, 68 FR 4075, 3 CFR, 2003 Comp., p. 161.

SOURCE: 68 FR 34197, June 6, 2003, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 594.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 594.201 Prohibited transactions involving blocked property.

(a) Except as authorized by statutes, regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, property and interests in property of the following persons that are in the United States, that hereafter come within the United States, or that hereafter come within the possession or control of U.S. persons, including their overseas branches, are blocked and may not be

transferred, paid, exported, withdrawn or otherwise dealt in:

(1) Foreign persons listed in the Annex to Executive Order 13224 of September 23, 2001, as may be amended;

(2) Foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States;

(3) Persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, to be owned or controlled by, or to act for or on behalf of, any person whose property or interests in property are blocked pursuant to paragraphs (a)(1), (a)(2), (a)(3), or (a)(4)(i) of this section; or

(4) Except as provided in section 5 of Executive Order 13224, any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General:

(i) To assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of:

(A) Acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States, or

(B) Any person whose property or interests in property are blocked pursuant to paragraph (a) of this section; or

(ii) To be otherwise associated with any person whose property or interests in property are blocked pursuant to paragraphs (a)(1), (a)(2), (a)(3), or (a)(4)(i) of this section.

NOTE 1 TO PARAGRAPH (a): Section 5 of Executive Order 13224, as amended, provides that, with respect to those persons designated pursuant to paragraph (a)(4) of this section, the Secretary of the Treasury, in the exercise of his discretion and in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, may take such other actions than the complete blocking of property or interests in property as the President is authorized to take under the International Emergency Economic Powers Act and the United Nations Participation Act if the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, deems such other actions to be consistent with the national interests of the United States, considering such factors as he deems appropriate.

NOTE 2 TO PARAGRAPH (a) OF § 594.201: The names of persons whose property and interests in property are blocked pursuant to § 594.201(a) are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SDGT].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter.

NOTE 3 TO PARAGRAPH (a) OF § 594.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any person whose property or interests in property are blocked pursuant to § 594.201(a) is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

NOTE 1 TO § 594.201: The International Emergency Economic Powers Act (50 U.S.C.

1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–PA]'' or ''[BPI–SDGT].'' The scope of the property or interests in property blocked during the pendency of an investigation may be more limited than the scope of the blocking set forth in § 594.201(a). Inquiries regarding the scope of any such blocking should be directed to OFAC's Sanctions Compliance & Evaluation Division at 202/622–2490.

NOTE 2 TO § 594.201. The prohibitions set forth in this part are separate from and in addition to other parts of 31 CFR chapter V, including but not limited to the Terrorism Sanctions Regulations (part 595), the Terrorism List Government Sanctions Regulations (part 596), and the Foreign Terrorist Organizations Sanctions Regulations (part 597). The prohibitions set forth in this part also are separate and apart from the criminal prohibition, set forth at 18 U.S.C. 2339B, against providing material support or resources to foreign terrorist organizations designated pursuant to section 219 of the Immigration and Nationality Act, as amended.

[68 FR 34197, June 6, 2003, as amended at 72 FR 4206, Jan. 30, 2007; 76 FR 38544, June 30, 2011]

§ 594.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 594.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 594.201(a), unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d)≤ The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Except to the extent otherwise provided by law or unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the effective date there existed an interest of a person whose property or interests in property are blocked pursuant to § 594.201(a).

§ 594.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 594.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 594.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 594.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 594.201(a). However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property or interests in property are blocked pursuant to § 594.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 594.204 Prohibited transaction or dealing in property; contributions of funds, goods, or services.

Except as otherwise authorized, no U.S. person may engage in any transaction or dealing in property or interests in property of persons whose property or interests in property are blocked pursuant to § 594.201(a), including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of persons whose property or interests

in property are blocked pursuant to § 594.201(a).

§ 594.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by any U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is prohibited.

§ 594.206 Expenses of maintaining blocked property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted before the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 594.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 594.201(a) may, in the discretion of the Director, Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Subpart C—General Definitions

§ 594.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibition in § 594.201 held in the name of a person whose property or interests in property are blocked pursuant to § 594.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

§ 594.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person whose property or interests in property are blocked pursuant to § 594.201(a)(1), 12:01 a.m. eastern daylight time, September 24, 2001;

(b) With respect to a person whose property or interests in property are blocked pursuant to § 594.201(a)(2), (a)(3), or (a)(4), the earlier of the date on which is received actual or constructive notice of such person's designation by the Secretary of State or the Secretary of the Treasury.

§ 594.303 Entity.

The term *entity* means a partnership, association, corporation, or other organization, group, or subgroup.

§ 594.304 Foreign person.

The term *foreign person* means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States), or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.

§ 594.305 Information or informational materials.

(a) For purposes of this part, the term *information or informational materials* includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

NOTE TO PARAGRAPH (a). To be considered information or informational materials, artworks must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials*, with respect to United States exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter became, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the ''EAA''), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 594.306 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (e.g., ''an interest in property'') means an interest of any nature whatsoever, direct or indirect.

§ 594.307 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 594.307: See § 501.801 of this chapter on licensing procedures.

§ 594.308 Person.

The term *person* means an individual or entity.

§ 594.309 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 594.310 Specially designated global terrorist; SDGT.

The term *specially designated global terrorist* or *SDGT* means any foreign person or person listed in the Annex or designated pursuant to Executive Order 13224 of September 23, 2001.

§ 594.311 Terrorism.

The term *terrorism* means an activity that:

(a) Involves a violent act or an act dangerous to human life, property, or infrastructure; and

(b) Appears to be intended:

(1) To intimidate or coerce a civilian population;

(2) To influence the policy of a government by intimidation or coercion; or

(3) To affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.

§ 594.312 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed

of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 594.313 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 594.314 U.S. financial institution.

The term *U.S. financial institution* means any U.S. person (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 594.315 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States.

§ 594.316 Otherwise associated with.

The term ''to be otherwise associated with,'' as used in § 594.201(a)(4)(ii), means:

(a) To own or control; or

(b) To attempt, or to conspire with one or more persons, to act for or on behalf of or to provide financial, material, or technological support, or financial or other services, to.

[72 FR 4207, Jan. 30, 2007]

§ 594.317 Financial, material, or technological support.

The term *financial, material, or technological support,* as used in § 594.201(a)(4)(i) of this part, means any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. ''Technologies'' as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

[74 FR 61037, Nov. 23, 2009]

Subpart D—Interpretations

§ 594.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this

part refers to the same as currently amended.

§ 594.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 594.403 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under §§ 594.201 and 594.204 if effected after the effective date.

§ 594.404 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 594.201(a), unless there exists in the property another interest that is blocked pursuant to § 594.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property or interests in property are blocked pursuant to § 594.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 594.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An incidental transaction, not explicitly authorized within the terms of the license, by or with a person whose property or interests in property are blocked pursuant to § 594.201(a); or

(b) An incidental transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 594.406 Provision of services.

(a) Except as provided in § 594.207, the prohibitions on transactions or dealings involving blocked property contained in §§ 594.201 and 594.204 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property or interests in property are blocked pursuant to § 594.201(a); or

(2) With respect to property interests subject to §§ 594.201 and 594.204.

(b) Example: U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, educational, or other services to a person whose property or interests in property are blocked pursuant to § 594.201(a).

NOTE TO § 594.406: See §§ 594.506 and 594.507, respectively, on licensing policy with regard to the provision of certain legal or medical services.

§ 594.407 Offshore transactions.

The prohibitions in §§ 594.201 and 594.204 on transactions or dealings involving blocked property apply to transactions or dealings by any U.S. person in a location outside the United States with respect to property that the U.S. person knows, or has reason to know, is held in the name of a person whose property or interests in property are blocked pursuant to § 594.201(a) or in which the U.S. person knows, or has reason to know, a person whose property or interests in property are

blocked pursuant to § 594.201(a) has or has had an interest since the effective date.

§ 594.408 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to §§ 594.201 and 594.204, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized pursuant to this part.

§ 594.409 Charitable contributions.

Unless otherwise specifically authorized by the Office of Foreign Assets Control by or pursuant to this part, no charitable contribution or donation of funds, goods, services, or technology, including those to relieve human suffering, such as food, clothing, or medicine, may be made to or for the benefit of a person whose property or interests in property are blocked pursuant to § 594.201(a). For purposes of this part, a contribution or donation is made to or for the benefit of a person whose property or interests in property are blocked pursuant to § 594.201(a) if made to or in the name of such a person; if made to or in the name of an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade or to avoid the bar on the provision of contributions or donations to such a person.

§ 594.410 Credit extended and cards issued by U.S. financial institutions.

The prohibitions in §§ 594.201 and 594.204 on engaging in transactions or dealings in property subject to those sections prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property or interests in property are blocked pursuant to § 594.201(a).

§ 594.411 Palestinian Authority.

Following the January 2006 Palestinian elections, Hamas, a designated terrorist entity whose property and interests in property are blocked pursuant to § 594.201, has been determined to have a property interest in the transactions of the Palestinian Authority. Accordingly, pursuant to §§ 594.201 and 594.204, U.S. persons are prohibited from engaging in transactions with the Palestinian Authority unless authorized. Certain transactions with the Palestinian Authority may be authorized by license, see subpart E of this part.

[71 FR 27200, May 10, 2006]

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 594.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[68 FR 53660, Sept. 11, 2003]

§ 594.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the

regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 594.503 Exclusion from licenses and other authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

§ 594.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property or interests in property are blocked pursuant to § 594.201(a) has any interest, that comes within the possession or control of a U.S. financial institution, must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may only be made to another blocked account held in the same name.

NOTE TO § 594.504. Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 594.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 594.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 594.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 594.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed or otherwise authorized pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons;

(5) Representation of persons, wherever located, detained within the jurisdiction of the United States or by the United States government, with respect to either such detention or any

charges made against such persons, including, but not limited to, the conduct of military commission prosecutions and the initiation and conduct of federal court proceedings; and

(6) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of legal services not otherwise authorized by paragraph (a) of this section to or on behalf of persons whose property and interests in property are blocked pursuant to § 594.201(a) in connection with the initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed.

(c) The provision of any other legal services to persons whose property or interests in property are blocked pursuant to § 594.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(d) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 594.201(a) is prohibited except to the extent otherwise provided by law or unless specifically licensed in accordance with § 594.202(e).

[68 FR 34197, June 6, 2003, as amended at 73 FR 78632, Dec. 23, 2008; 75 FR 75906, Dec. 7, 2010]

§ 594.507 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property or interests in property are blocked pursuant to § 594.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

§ 594.508 Transactions related to telecommunications authorized.

All transactions ordinarily incident to the receipt or transmission of telecommunications involving persons whose property or interests in property are blocked pursuant to § 594.201(a) are authorized, provided that any payment owed to any such person is paid into a blocked account in a U.S. financial institution. This section does not authorize the provision, sale, or lease to persons whose property or interests in property are blocked pursuant to § 594.201(a) of telecommunications equipment or technology; nor does it authorize the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity).

§ 594.509 Transactions related to mail authorized.

All transactions by U.S. persons, including payment and transfers to common carriers, incident to the receipt or transmission of mail between a U.S. person and a person whose property or interests in property are blocked pursuant to § 594.201(a) are authorized, provided the mail is limited to personal communications not involving a transfer of anything of value and not exceeding 12 ounces in weight.

§ 594.510 Official activities of certain international organizations; U.S. person employees of certain governments.

(a) Effective April 12, 2006, all transactions and activities with the Palestinian Authority otherwise prohibited under this part that are for the conduct of the official business of the United Nations are authorized, provided that no payment pursuant to this license may involve a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

(b) Effective April 12, 2006, U.S. persons who are employees of the governments of states bordering the West Bank or Gaza are authorized to engage in all transactions and activities outside of the United States with the Palestinian Authority that are otherwise prohibited under this part in support of

the U.S. persons' official duties, provided that no payment pursuant to this license may involve a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

(c) For purposes of this section only, the term ''United Nations'' means its principal organs, including funds, bodies, commissions, agencies, departments and other entities of the Security Council, General Assembly, Economic and Social Council and Secretariat, specifically including, among others, the World Bank, the International Monetary Fund, the World Food Programme, and the World Health Organization.

[71 FR 27200, May 10, 2006]

§ 594.511 Travel, employment, residence and maintenance transactions with the Palestinian Authority.

Effective April 12, 2006, U.S. persons are authorized to engage in all transactions with the Palestinian Authority otherwise prohibited under this part that are ordinarily incident to their travel to or from, or employment, residence or personal maintenance within, the jurisdiction of the Palestinian Authority, including, but not limited to, receipt of salaries, payment of living expenses and acquisition of goods or services for personal use. Nothing in this license authorizes any debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

[71 FR 27200, May 10, 2006]

§ 594.512 Payment of taxes and incidental fees to the Palestinian Authority.

Effective April 12, 2006, U.S. persons are authorized to pay taxes or fees to, and purchase or receive permits or public utility services from, the Palestinian Authority where such transactions are necessary and ordinarily incident to such persons' day-to-day operations. Nothing in this license authorizes a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

[71 FR 27200, May 10, 2006]

§ 594.513 Transactions with entities under the control of the Palestinian President and certain other entities.

(a) Effective April 12, 2006, U.S. persons are authorized to engage in all transactions otherwise prohibited under this part with the following entities and individuals:

(1) The Palestinian Authority Presidency, including only the Office of the President, Presidential Security, General Intelligence Apparatus, Governors and Governorate staff, the Attorney General's Office, the Palestine Investment Fund (PIF), the Border Crossings Administration, and the Palestine Broadcasting Corporation (including the Voice of Palestine, Wafa News Agency, and the General Public Information Agency/State Information Services);

(2) The Palestinian Judiciary, including the Higher Judicial Council;

(3) Members of the Palestinian Legislative Council (PLC) who were not elected to the PLC on the party slate of Hamas or any other Foreign Terrorist Organization (FTO), Specially Designated Terrorist (SDT), or Specially Designated Global Terrorist (SDGT); and

(4) The following independent agencies: The Central Elections Commission; the Independent Citizens Rights Commission; the General Audit Authority/External Audit Agency; and the Palestinian Monetary Authority.

(b) Effective April 12, 2006, U.S. financial institutions are authorized to reject transactions with members of the Palestinian Legislative Council (PLC) who were elected to the PLC on the party slate of Hamas or any other Foreign Terrorist Organization (FTO), Specially Designated Terrorist (SDT), or Specially Designated Global Terrorist (SDGT), provided that any such individuals are not named on OFAC's list of Specially Designated Nationals and Blocked Persons.

(c) Nothing in this license authorizes a debit to an account of the Palestinian Authority on the books of a U.S.

financial institution or to any account blocked pursuant to this part.

[71 FR 27200, May 10, 2006]

§ 594.514 Concluding activities with the Palestinian Authority.

Effective April 12, 2006, all transactions and activities with the Palestinian Authority otherwise prohibited under this part are authorized through May 12, 2006, provided that they are necessary to conclude ongoing contracts or programs with the Palestinian Authority, and further provided that no payment pursuant to this license may involve a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

[71 FR 27200, May 10, 2006]

§ 594.515 In-kind donations of medicine, medical devices, and medical services.

(a) Effective July 6, 2006, nongovernmental organizations that are U.S. persons are authorized to provide in-kind donations of medicine, medical devices, and medical services to the Palestinian Authority Ministry of Health, provided that such donations are strictly for distribution in the West Bank or Gaza and not intended for resale, and provided further that no payment pursuant to this license may involve a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

(b) For the purposes of this section only, the term medical device has the meaning given the term ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), including medical supplies, but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1.

NOTE TO PARAGRAPH (b): Nongovernmental organizations that are interested in providing items listed on the Commerce Control List to the Palestinian Authority Ministry of Health must apply for a specific license from the Office of Foreign Assets Control.

[72 FR 58743, Oct. 5, 2006]

§ 594.516 Transactions with the Palestinian Authority authorized.

(a) As of June 20, 2007, U.S. persons are authorized to engage in all transactions otherwise prohibited under this part with the Palestinian Authority.

(b) For purposes of this section only, the term *Palestinian Authority* means the Palestinian Authority government of Prime Minister Salam Fayyad and President Mahmoud Abbas, including all branches, ministries, offices, and agencies (independent or otherwise) thereof.

[72 FR 61518, Oct. 31, 2007]

§ 594.517 Payments from funds originating outside the United States and the formation of legal defense funds authorized.

(a) *Payments from funds originating outside the United States.* Effective December 7, 2010, receipts of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 594.506(a) are authorized from funds originating outside the United States, provided that:

(1) Prior to receiving payment for legal services authorized pursuant to § 594.506(a) rendered to persons whose property and interests in property are blocked pursuant to § 594.201(a), the U.S. person that is an attorney, law firm, or legal services organization provides to the Office of Foreign Assets Control a copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity. The copy of a letter of engagement or a letter of intent to engage, accompanied by correspondence referencing this paragraph (a), is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220;

(2) The funds received by U.S. persons as payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 594.506(a) must not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 594.506(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order;

NOTE TO PARAGRAPH (a)(2) OF § 594.517: This paragraph authorizes the blocked person on whose behalf the legal services authorized pursuant to § 594.506(a) are to be provided to make payments for authorized legal services using funds originating outside the United States that were not previously blocked. Nothing in this paragraph authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 594.201(a) or any other part of this chapter holds an interest.

(3) *Reports.* (i) U.S. persons who receive payments in connection with legal services authorized pursuant to § 594.506(a) must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the payments were received providing information on the funds received. Such reports shall specify:

(A) The individual or entity from whom the funds originated and the amount of funds received; and

(B) If applicable:

(*1*) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(*2*) A general description of the services provided; and

(*3*) The amount of funds paid in connection with such services.

(ii) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect.

(iii) Reports, which must reference this paragraph (a), are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220; and

NOTE TO PARAGRAPH (a)(3) OF § 594.517: U.S. persons who receive payments in connection with legal services authorized pursuant to § 594.506(a) do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. Additionally, U.S. persons do not need to obtain specific authorization to provide related services that are ordinarily incident to the provision of legal services authorized pursuant to § 594.506(a).

(4) Nothing in this paragraph (a) authorizes the receipt of payment of professional fees or reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 594.506(b).

NOTE 1 TO PARAGRAPH (a) OF § 594.517: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference this paragraph (a) to avoid the blocking of the transfer.

NOTE 2 TO PARAGRAPH (a) OF § 594.517: Nothing in this paragraph authorizes the transfer of any blocked property, the debiting of any blocked account, the entry of any judgment or order that effects a transfer of blocked property, or the execution of any judgment against property blocked pursuant to any Executive order or this Chapter. U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from the Office of Foreign Assets Control to authorize the release of a limited amount of blocked funds for the payment of legal fees where alternative funding sources are not available. For more information, see OFAC's *Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings,* which is available at: *http://www.treas.gov/resource-center/sanctions/Documents/legal_fee_guide.pdf.*

(b) *Legal defense funds.* Effective December 7, 2010, U.S. persons that are attorneys, law firms, or legal services organizations are authorized to form legal defense funds from which payments of professional fees and reimbursement for expenses incurred in connection with the provision of legal services authorized pursuant to § 594.506(a) may be debited provided that:

(1) The legal defense fund must be held in a savings or checking account at a financial institution located in the United States;

(2) Prior to debiting the legal defense fund, the U.S. person responsible for establishing the legal defense fund must submit the following information to the Office of Foreign Assets Control: A copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity; the name of the individual or entity responsible for establishing the legal defense fund; the name of the financial institution at which the account for the legal defense fund will be held; a point of contact at the financial institution holding the account for the legal defense fund; and the account name and account number for the legal defense fund. The foregoing information must be accompanied by correspondence referencing this paragraph (b) and is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220;

(3) The legal defense fund may not receive funds from a person whose property and interests in property are blocked pursuant to § 594.201(a) or any other part of this chapter;

(4) The U.S. person responsible for establishing the legal defense fund must notify the financial institution at which the account for the legal defense fund is held that the account may only be debited to make payments of professional fees and reimburse expenses incurred in connection with the provision of legal services authorized pursuant to § 594.506(a);

(5) *Reports.* (i) U.S. persons responsible for establishing legal defense funds from which payments of professional fees and reimbursement for expenses incurred in connection with the provision of legal services authorized pursuant to § 594.506(a) may be debited must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the funds were deposited with or debited from the account of the legal defense fund providing information on the funds received by the legal defense fund and debits made to the legal defense fund during the reporting period. Such reports shall specify:

(A) The individual or entity from whom the funds originated and the amount of funds received; and

(B) Any individual or entity to whom any payments were made, including, if applicable:

(*1*) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(*2*) A general description of the services provided; and

(*3*) The amount of funds paid in connection with such services.

(ii) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect.

(iii) Reports, which must reference this paragraph (b), are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220; and

NOTE TO PARAGRAPH (b)(5) OF § 594.517: U.S. persons who receive payments in connection with legal services authorized pursuant to § 594.506(a) do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. Additionally, U.S. persons do not need to obtain specific authorization to provide related services that are ordinarily incident to the provision of legal services authorized pursuant to § 594.506(a).

(6) Nothing in this paragraph (b) authorizes the formation or debiting of legal defense funds in connection with the provision of legal services authorized pursuant to § 594.506(b).

NOTE 1 TO PARAGRAPH (b) OF § 594.517: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference this paragraph (b) to avoid the blocking of the transfer.

NOTE 2 TO PARAGRAPH (b) OF § 594.517: Any funds remaining in a legal defense fund account after all payments of professional fees and reimbursement of incurred expenses authorized pursuant to this paragraph have been made or upon termination of the legal services for which payment is authorized pursuant to this paragraph are property in

which the person to or on whose behalf the legal services were rendered has an interest and is subject to the prohibitions of this part. Persons in the possession or control of such remaining funds may apply for the unblocking of the funds by following the procedures set forth at § 501.801 of this chapter.

[75 FR 75906, Dec. 7, 2010]

Subpart F—Reports

§ 594.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 594.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'') (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act.

(1) A civil penalty not to exceed the amount set forth in Section 206 of the Act may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under the Act.

NOTE TO PARAGRAPH (a)(1) OF § 594.701: As of June 10, 2008, the Act provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in the Act are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in the Act are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act (22 U.S.C. 287c(b)), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States. The criminal penalties provided in the United Nations Participation Act are subject to increase pursuant to 18 U.S.C. 3571.

(d) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any materially false, fictitious, or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(e) Violations of this part may also be subject to relevant provisions of other applicable laws.

[68 FR 34197, June 6, 2003, as amended at 71 FR 29253, May 22, 2006; 73 FR 32656, June 10, 2008]

§ 594.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of the respondent's right to make a written presentation within the applicable 30-day period set forth in § 594.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 594.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in writing and may be handwritten or typed. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Default.* If the respondent elects not to submit a written response within the time limit set forth in paragraph (a) of this section, the Office of Foreign Assets Control will conclude that the respondent has decided not to respond to the prepenalty notice. The agency generally will then issue a written penalty notice imposing the penalty proposed in the prepenalty notice.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 594.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made

within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in a federal district court.

§ 594.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart H—Procedures

§ 594.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

[68 FR 53660, Sept. 11, 2003]

§ 594.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13224 of September 23, 2001 (66 FR 49079, September 25, 2001), and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 594.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 595—TERRORISM SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
595.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

595.201 Prohibited transactions involving blocked property.
595.202 Effect of transfers violating the provisions of this part.
595.203 Holding of certain types of blocked property in interest-bearing accounts.
595.204 Prohibited dealing in property; contributions of funds, goods, or services.
595.205 Evasions; attempts; conspiracies.
595.206 Exempt transactions.

Subpart C—General Definitions

595.301 Blocked account; blocked property.
595.302 Effective date.
595.303 Entity.
595.304 Foreign person.
595.305 General license.
595.306 Information and informational materials.
595.307 Interest.
595.308 License.
595.309 Person.
595.310 Property; property interest.
595.311 Specially designated terrorist.
595.312 Specific license.
595.313 Transfer.

595.314 United States.
595.315 United States person; U.S. person.
595.316 U.S. financial institution.

Subpart D—Interpretations

595.401 Reference to amended sections.
595.402 Effect of amendment.
595.403 Termination and acquisition of an interest in blocked property.
595.404 Setoffs prohibited.
595.405 Transactions incidental to a licensed transaction.
595.406 Provision of services.
595.407 Offshore transactions.
595.408 Charitable contributions to specially designated terrorists.
595.409 Palestinian Authority.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

595.500 Licensing procedures.
595.501 Effect of license or authorization.
595.502 Exclusion from licenses and authorizations.
595.503 Payments and transfers to blocked accounts in U.S. financial institutions.
595.504 Investment and reinvestment of certain funds.
595.505 Entries in certain accounts for normal service charges authorized.
595.506 Provision of certain legal services authorized.
595.507 Authorization of emergency medical services.
595.508 Official activities of certain international organizations; U.S. person employees of certain governments.
595.509 Travel, employment, residence and maintenance transactions with the Palestinian Authority.
595.510 Payment of taxes and incidental fees to the Palestinian Authority.
595.511 Transactions with entities under the control of the Palestinian President and certain other entities.
595.512 Concluding activities with the Palestinian Authority.
595.513 In-kind donations of medicine, medical devices, and medical services.
595.514 Transactions with the Palestinian Authority authorized.
595.515 Payments from funds originating outside the United States and the formation of legal defense funds authorized.

Subpart F—Reports

595.601 Records and reports.

Subpart G—Penalties

595.701 Penalties.
595.702 Prepenalty notice.
595.703 Presentation responding to prepenalty notice.
595.704 Penalty notice.
595.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

595.801 Procedures.
595.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

595.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 319; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208.

SOURCE: 61 FR 3806, Feb. 2, 1996, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 595.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

[61 FR 3806, Feb. 2, 1996, as amended at 62 FR 45111, Aug. 25, 1997]

Subpart B—Prohibitions

§ 595.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, no property or interests in property of a

specially designated terrorist, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

(b) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

[61 FR 3806, Feb. 2, 1996, as amended at 62 FR 45111, Aug. 25, 1997]

§ 595.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date, which is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, license, or other authorization hereunder and involves any property held in the name of a specially designated terrorist or in which a specially designated terrorist has or has had an interest since such date, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property held in the name of a specially designated terrorist or in which a specially designated terrorist has an interest, or has had an interest since such date, unless the person with whom such property is held or maintained, prior to such date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued hereunder.

(d) Transfers of property which otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization hereunder; or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained.

NOTE: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that

the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property which, on or since the effective date, was held in the name of a specially designated terrorist or in which there existed an interest of a specially designated terrorist.

§ 595.203 Holding of certain types of blocked property in interest-bearing accounts.

(a)(1) Any person, including a U.S. financial institution, currently holding property subject to § 595.201 which, as of the effective date or the date of receipt if subsequent to the effective date, is not being held in an interest-bearing account, or otherwise invested in a manner authorized by the Office of Foreign Assets Control, shall transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account or interest-bearing status in a U.S. financial institution as of the effective date or the date of receipt if subsequent to the effective date of this section, unless otherwise authorized or directed by the Office of Foreign Assets Control.

(2) The requirement set forth in paragraph (a)(1) of this section shall apply to currency, bank deposits, accounts, obligations, and any other financial or economic resources or assets, and any proceeds resulting from the sale of tangible or intangible property. If interest is credited to an account separate from that in which the interest-bearing asset is held, the name of the account party on both accounts must be the same and must clearly indicate the specially designated terrorist having an interest in the accounts. If the account is held in the name of a specially designated terrorist, the name of the account to which interest is credited must be the same.

(b) For purposes of this section, the term *interest-bearing account* means a blocked account in a U.S. financial institution earning interest at rates that are commercially reasonable for the amount of funds in the account. Except as otherwise authorized, the funds may not be invested or held in instruments the maturity of which exceeds 90 days.

(c) This section does not apply to blocked tangible property, such as chattels, nor does it create an affirmative obligation on the part of the holder of such blocked tangible property to sell or liquidate the property and put the proceeds in a blocked account. However, the Office of Foreign Assets Control may issue licenses permitting or directing sales of tangible property in appropriate cases.

§ 595.204 Prohibited dealing in property; contributions of funds, goods, or services.

Except as otherwise authorized, no U.S. person may deal in property or interests in property of a specially designated terrorist, including the making or receiving of any contribution of funds, goods, or services to or for the benefit of a specially designated terrorist.

§ 595.205 Evasions; attempts; conspiracies.

Any transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this part, is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is hereby prohibited.

§ 595.206 Exempt transactions.

(a) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication, which does not involve the transfer of anything of value.

(b) *Information and informational materials.* (1) The importation from any country and the exportation to any country of information or informational materials as defined in § 595.306, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part.

(2) This section does not authorize transactions related to information and informational materials not fully

created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services by a U.S. person. Such prohibited transactions include, without limitation, payment of advances for informational materials not yet created and completed, provision of services to market, produce or coproduce, create or assist in the creation of information and informational materials, and payment of royalties to a specially designated terrorist with respect to income received for enhancements or alterations made by U.S. persons to information or informational materials imported from a specially designated terrorist.

(3) This section does not authorize transactions incident to the exportation of technical data under restriction as defined in § 779.4 of the Export Administration Regulations, 15 CFR parts 768–799 (1994), or to the exportation of goods for use in the transmission of any data. The exportation of such goods to specially designated terrorists is prohibited, as provided in § 595.201 of this part.

(c) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including non scheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 595.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibition in § 595.201 held in the name of a specially designated terrorist or in which a specially designated terrorist has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

§ 595.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part which is 12:01 a.m. EST, January 24, 1995, or, in the case of specially designated terrorists designated after that date, the earlier of the date on which a person receives actual or constructive notice of such designation.

§ 595.303 Entity.

The term *entity* means a partnership, association, corporation, or other organization, group or subgroup.

§ 595.304 Foreign person.

The term *foreign person* means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States), or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.

§ 595.305 General license.

The term *general license* means any license or authorization the terms of which are set forth in this part.

§ 595.306 Information and informational materials.

(a)(1) For purposes of this part, the term *information and informational materials* means publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds, and other information and informational articles.

(2) To be considered informational materials, artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The terms *information* and *informational materials* with respect to U.S. exports do not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (the ''EAA''), or section 6 of the EAA to the extent that

such controls promote nonproliferation or antiterrorism policies of the United States, including ''software'' that is not ''publicly available'' as these terms are defined in 15 CFR Parts 779 and 799.1; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 595.307 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (e.g., ''an interest in property'') means an interest of any nature whatsoever, direct or indirect.

§ 595.308 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 595.309 Person.

The term *person* means an individual or entity.

§ 595.310 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 595.311 Specially designated terrorist.

(a) The term *specially designated terrorist* means:

(1) Persons listed in the Annex to Executive Order 12947;

(2) Foreign persons designated by the Secretary of State, in coordination with the Secretary of the Treasury and the Attorney General, because they are found:

(i) To have committed, or to pose a significant risk of committing, acts of violence that have the purpose or effect of disrupting the Middle East peace process, or

(ii) To assist in, sponsor, or provide financial, material, or technological support for, or services in support of, such acts of violence; and

(3) Persons determined by the Secretary of the Treasury, in coordination with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of, any other specially designated terrorist.

(b) [Reserved]

NOTE TO § 595.311: The names of persons determined to fall within this definition, whose property and interests in property therefore are blocked pursuant to this part, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SDT].'' The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this part also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–SDT].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. Section 501.807 of this chapter sets forth the procedures to be followed by

persons seeking administrative reconsideration of their designation, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

[61 FR 3806, Feb. 2, 1996, as amended at 61 FR 32938, June 26, 1996; 62 FR 45111, Aug. 25, 1997; 76 FR 38544, June 30, 2011]

§ 595.312 Specific license.

The term *specific license* means any license or authorization not set forth in this part but issued pursuant to this part.

§ 595.313 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 595.314 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 595.315 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches); or any person in the United States.

§ 595.316 U.S. financial institution.

The term *U.S. financial institution* means any U.S. person (including foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including, but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions which are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 595.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

§ 595.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under

the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 595.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a specially designated terrorist, such property shall no longer be deemed to be property in which a specially designated terrorist has or has had an interest, or which is held in the name of a specially designated terrorist, unless there exists in the property another interest of a specially designated terrorist, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a specially designated terrorist, including by the making of any contribution of funds, goods, or services to or for the benefit of a specially designated terrorist, such property shall be deemed to be property in which there exists an interest of the specially designated terrorist.

§ 595.404 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 595.201 if effected after the effective date.

§ 595.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except a transaction by an unlicensed, specially designated terrorist or involving a debit to a blocked account or a transfer of blocked property not explicitly authorized within the terms of the license.

§ 595.406 Provision of services.

(a) Except as provided in § 595.206, the prohibitions contained in §§ 595.201 and 595.204 apply to services performed by U.S. persons, wherever located:

(1) On behalf of, or for the benefit of, a specially designated terrorist; or

(2) With respect to property interests of a specially designated terrorist.

(b) *Example:* U.S. persons may not, except as authorized by the Office of Foreign Assets Control by or pursuant to this part, provide legal, accounting, public relations, educational, or other services to a specially designated terrorist. See § 595.506.

§ 595.407 Offshore transactions.

The prohibitions contained in § 595.201 apply to transactions by U.S. persons in locations outside the United States with respect to property which the U.S. person knows, or has reason to know, is held in the name of a specially designated terrorist, or in which the U.S. person knows, or has reason to know, a specially designated terrorist has or has had an interest since the effective date.

§ 595.408 Charitable contributions to specially designated terrorists.

(a) Unless otherwise specifically authorized by the Office of Foreign Assets Control by or pursuant to this part, no charitable contribution or donation of funds, goods, services,or technology to relieve human suffering, such as food, clothing or medicine, may be made to or for the benefit of a specially designated terrorist. For purposes of this part, a contribution or donation is made to or for the benefit of a specially designated terrorist if made to or in the name of a specially designated terrorist; if made to or in the name of an entity or individual acting for or on behalf of, or owned or controlled by, a specially designated terrorist; or if made in an attempt to violate, to evade or to avoid the bar on the provision of contributions or donations to specially designated terrorists.

(b) Individuals and organizations who donate or contribute funds, goods, services or technology without knowledge or reason to know that the donation or contribution is destined to or for the benefit of a specially designated terrorist shall not be subject to penalties for such donation or contribution.

§ 595.409 Palestinian Authority.

Following the January 2006 Palestinian elections, Hamas, a designated terrorist entity whose property and interests in property are blocked pursuant to §§ 595.201 and 595.204, has been determined to have a property interest in the transactions of the Palestinian Authority. Accordingly, pursuant to §§ 595.201 and 595.204, U.S. persons are prohibited from engaging in transactions with the Palestinian Authority unless authorized. Certain transactions with the Palestinian Authority may be authorized by license, see subpart E of this part.

[71 FR 27201, May 10, 2006]

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 595.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[68 FR 53660, Sept. 11, 2003]

§ 595.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 595.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§ 595.503 Payments and transfers to blocked accounts in U.S. financial institutions.

(a) Any payment of funds or transfer of credit or other financial or economic resources or assets into a blocked account in a U.S. financial institution is authorized, provided that a transfer from a blocked account pursuant to this authorization may only be made to another blocked account held in the same name on the books of the same U.S. financial institution.

(b) This section does not authorize any transfer from a blocked account within the United States to an account held outside the United States.

NOTE TO § 595.503: Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers.

[61 FR 3806, Feb. 2, 1996, as amended at 62 FR 45111, Aug. 25, 1997]

§ 595.504 Investment and reinvestment of certain funds.

(a) U.S. financial institutions are hereby authorized and directed to invest and reinvest assets held in blocked accounts in the name of a specially designated terrorist, subject to the following conditions:

(1) The assets representing such investments and reinvestments are credited to a blocked account or sub-account which is in the name of the specially designated terrorist and which is located in the United States or within the possession or control of a U.S. person; and

(2) The proceeds of such investments and reinvestments are not credited to a blocked account or sub-account under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such funds or securities were held; and

(3) No immediate financial or economic benefit or access accrues (e.g., through pledging or other use) to the specially designated terrorist.

(b)(1) U.S. persons seeking to avail themselves of this authorization must register with the Office of Foreign Assets Control, Blocked Assets Section, before undertaking transactions authorized under this section.

(2) Transactions conducted pursuant to this section must be reported to the Office of Foreign Assets Control, Blocked Assets Division, in a report filed no later than 10 business days following the last business day of the month in which the transactions occurred.

§ 595.505 Entries in certain accounts for normal service charges authorized.

(a) U.S. financial institutions are hereby authorized to debit any blocked account with such U.S. financial institution in payment or reimbursement for normal service charges owed to such U.S. financial institution by the owner of such blocked account.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photostats, credit reports, transcripts of statements, registered mail insurance, stationary and supplies, check books, and other similar items.

§ 595.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 595.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed or otherwise authorized pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons;

(5) Representation of persons, wherever located, detained within the jurisdiction of the United States or by the United States government, with respect to either such detention or any charges made against such persons, including, but not limited to, the conduct of military commission prosecutions and the initiation and conduct of federal court proceedings; and

(6) Provision of legal services in any other context in which prevailing U.S.

law requires access to legal counsel at public expense.

(b) The provision of legal services not otherwise authorized by paragraph (a) of this section to or on behalf of persons whose property and interests in property are blocked pursuant to § 595.201(a) in connection with the initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed.

(c) The provision of any other legal services to persons whose property or interests in property are blocked pursuant to § 595.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(d) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 595.201(a) is prohibited except to the extent otherwise provided by law or unless specifically licensed in accordance with § 595.202(e).

[73 FR 78632, Dec. 23, 2008, as amended at 75 FR 75907, Dec. 7, 2010]

§ 595.507 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services to a specially designated terrorist located in the United States is authorized, provided that any payment for such services requires prior authorization by specific license.

§ 595.508 Official activities of certain international organizations; U.S. person employees of certain governments.

(a) Effective April 12, 2006, all transactions and activities with the Palestinian Authority otherwise prohibited under this part that are for the conduct of the official business of the United Nations are authorized, provided that no payment pursuant to this license may involve a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

(b) Effective April 12, 2006, U.S. persons who are employees of the governments of states bordering the West Bank or Gaza are authorized to engage in all transactions and activities outside of the United States with the Palestinian Authority that are otherwise prohibited under this part in support of the U.S. persons' official duties, provided that no payment pursuant to this license may involve a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

(c) For purposes of this section only, the term ''United Nations'' means its principal organs, including funds, bodies, commissions, agencies, departments and other entities of the Security Council, General Assembly, Economic and Social Council and Secretariat, specifically including, among others, the World Bank, the International Monetary Fund, the World Food Programme, and the World Health Organization.

[71 FR 27201, May 10, 2006]

§ 595.509 Travel, employment, residence and maintenance transactions with the Palestinian Authority.

Effective April 12, 2006, U.S. persons are authorized to engage in all transactions with the Palestinian Authority otherwise prohibited under this part that are ordinarily incident to their travel to or from, or employment, residence or personal maintenance within, the jurisdiction of the Palestinian Authority, including, but not limited to, receipt of salaries, payment of living expenses and acquisition of goods or services for personal use. Nothing in this license authorizes any debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

[71 FR 27201, May 10, 2006]

§ 595.510 Payment of taxes and incidental fees to the Palestinian Authority.

Effective April 12, 2006, U.S. persons are authorized to pay taxes or fees to, and purchase or receive permits or public utility services from, the Palestinian Authority where such transactions are necessary and ordinarily incident to such persons' day-to-day operations. Nothing in this license authorizes a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

[71 FR 27201, May 10, 2006]

§ 595.511 Transactions with entities under the control of the Palestinian President and certain other entities.

(a) Effective April 12, 2006, U.S. persons are authorized to engage in all transactions otherwise prohibited under this part with the following entities and individuals:

(1) The Palestinian Authority Presidency, including only the Office of the President, Presidential Security, General Intelligence Apparatus, Governors and Governorate staff, the Attorney General's Office, the Palestine Investment Fund (PIF), the Border Crossings Administration, and the Palestine Broadcasting Corporation (including the Voice of Palestine, Wafa News Agency, and the General Public Information Agency/State Information Services);

(2) The Palestinian Judiciary, including the Higher Judicial Council;

(3) Members of the Palestinian Legislative Council (PLC) who were not elected to the PLC on the party slate of Hamas or any other Foreign Terrorist Organization (FTO), Specially Designated Terrorist (SDT), or Specially Designated Global Terrorist (SDGT); and

(4) The following independent agencies: The Central Elections Commission; the Independent Citizens Rights Commission; the General Audit Authority/External Audit Agency; and the Palestinian Monetary Authority.

(b) Effective April 12, 2006, U.S. financial institutions are authorized to reject transactions with members of the Palestinian Legislative Council (PLC) who were elected to the PLC on the party slate of Hamas or any other Foreign Terrorist Organization (FTO), Specially Designated Terrorist (SDT), or Specially Designated Global Terrorist (SDGT), provided that any such individuals are not named on OFAC's list of Specially Designated Nationals and Blocked Persons.

(c) Nothing in this license authorizes a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

[71 FR 27201, May 10, 2006]

§ 595.512 Concluding activities with the Palestinian Authority.

Effective April 12, 2006, all transactions and activities with the Palestinian Authority otherwise prohibited under this part are authorized through May 12, 2006, provided that they are necessary to conclude ongoing contracts or programs with the Palestinian Authority, and further provided that no payment pursuant to this license may involve a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

[71 FR 27201, May 10, 2006]

§ 595.513 In-kind donations of medicine, medical devices, and medical services.

(a) Effective July 6, 2006, nongovernmental organizations that are U.S. persons are authorized to provide in-kind donations of medicine, medical devices, and medical services to the Palestinian Authority Ministry of Health, provided that such donations are strictly for distribution in the West Bank or Gaza and not intended for resale, and provided further that no payment pursuant to this license may involve a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

(b) For the purposes of this section only, the term medical device has the meaning given the term ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), including medical supplies, but does not

include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1.

NOTE TO PARAGRAPH (b): Nongovernmental organizations that are interested in providing items listed on the Commerce Control List to the Palestinian Authority Ministry of Health must apply for a specific license from the Office of Foreign Assets Control.

[71 FR 58744, Oct. 5, 2006]

§ 595.514 Transactions with the Palestinian Authority authorized.

(a) As of June 20, 2007, U.S. persons are authorized to engage in all transactions otherwise prohibited under this part with the Palestinian Authority.

(b) For purposes of this section only, the term *Palestinian Authority* means the Palestinian Authority government of Prime Minister Salam Fayyad and President Mahmoud Abbas, including all branches, ministries, offices, and agencies (independent or otherwise) thereof.

[72 FR 61518, Oct. 31, 2007]

§ 595.515 Payments from funds originating outside the United States and the formation of legal defense funds authorized.

(a) *Payments from funds originating outside the United States.* Effective December 7, 2010, receipts of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 595.506(a) are authorized from funds originating outside the United States, provided that:

(1) Prior to receiving payment for legal services authorized pursuant to § 595.506(a) rendered to persons whose property and interests in property are blocked pursuant to § 595.201(a), the U.S. person that is an attorney, law firm, or legal services organization provides to the Office of Foreign Assets Control a copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity. The copy of a letter of engagement or a letter of intent to engage, accompanied by correspondence referencing this paragraph (a), is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220;

(2) The funds received by U.S. persons as payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 595.506(a) must not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 595.506(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order;

NOTE TO PARAGRAPH (a)(2) OF § 595.515: This paragraph authorizes the blocked person on whose behalf the legal services authorized pursuant to § 595.506(a) are to be provided to make payments for authorized legal services using funds originating outside the United States that were not previously blocked. Nothing in this paragraph authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 595.201(a) or any other part of this chapter holds an interest.

(3) *Reports.* (i) U.S. persons who receive payments in connection with legal services authorized pursuant to § 595.506(a) must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the payments were received providing information on the funds received. Such reports shall specify:

(A) The individual or entity from whom the funds originated and the amount of funds received; and

(B) If applicable:

(*1*) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(*2*) A general description of the services provided; and

(*3*) The amount of funds paid in connection with such services.

(ii) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect.

(iii) Reports, which must reference this paragraph (a), are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220; and

NOTE TO PARAGRAPH (a)(3) OF § 595.515: U.S. persons who receive payments in connection with legal services authorized pursuant to § 595.506(a) do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. Additionally, U.S. persons do not need to obtain specific authorization to provide related services that are ordinarily incident to the provision of legal services authorized pursuant to § 595.506(a).

(4) Nothing in this paragraph (a) authorizes the receipt of payment of professional fees or reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 595.506(b).

NOTE 1 TO PARAGRAPH (a) OF § 595.515: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference this paragraph § 595.515(a) to avoid the blocking of the transfer.

NOTE 2 TO PARAGRAPH (a) OF § 595.515: Nothing in this paragraph authorizes the transfer of any blocked property, the debiting of any blocked account, the entry of any judgment or order that effects a transfer of blocked property, or the execution of any judgment against property blocked pursuant to any Executive order or this Chapter. U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from the Office of Foreign Assets Control to authorize the release of a limited amount of blocked funds for the payment of legal fees where alternative funding sources are not available. For more information, see OFAC's *Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings,* which is available at: *http://www.treas.gov/resource-center/sanctions/Documents/legal_fee_guide.pdf.*

(b) *Legal defense funds.* Effective December 7, 2010, U.S. persons that are attorneys, law firms, or legal services organizations are authorized to form legal defense funds from which payments of professional fees and reimbursement for expenses incurred in connection with the provision of legal services authorized pursuant to § 595.506(a) may be debited provided that:

(1) The legal defense fund must be held in a savings or checking account at a financial institution located in the United States;

(2) Prior to debiting the legal defense fund, the U.S. person responsible for establishing the legal defense fund must submit the following information to the Office of Foreign Assets Control: a copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity; the name of the individual or entity responsible for establishing the legal defense fund; the name of the financial institution at which the account for the legal defense fund will be held; a point of contact at the financial institution holding the account for the legal defense fund; and the account name and account number for the legal defense fund. The foregoing information must be accompanied by correspondence referencing this paragraph § 595.515(b) and is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220;

(3) The legal defense fund may not receive funds from a person whose property and interests in property are blocked pursuant to § 595.201(a) or any other part of this chapter;

(4) The U.S. person responsible for establishing the legal defense fund must notify the financial institution at which the account for the legal defense fund is held that the account may only be debited to make payments of professional fees and reimburse expenses incurred in connection with the provision of legal services authorized pursuant to § 595.506(a);

(5) *Reports.* (i) U.S. persons responsible for establishing legal defense

funds from which payments of professional fees and reimbursement for expenses incurred in connection with the provision of legal services authorized pursuant to § 595.506(a) may be debited must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the funds were deposited with or debited from the account of the legal defense fund providing information on the funds received by the legal defense fund and debits made to the legal defense fund during the reporting period. Such reports shall specify:

(A) The individual or entity from whom the funds originated and the amount of funds received; and

(B) Any individual or entity to whom any payments were made, including, if applicable:

(*1*) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(*2*) A general description of the services provided; and

(*3*) The amount of funds paid in connection with such services.

(ii) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect.

(iii) Reports, which must reference this paragraph (b), are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220; and

NOTE TO PARAGRAPH (b)(5) OF § 595.515: U.S. persons who receive payments in connection with legal services authorized pursuant to § 595.506(a) do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. Additionally, U.S. persons do not need to obtain specific authorization to provide related services that are ordinarily incident to the provision of legal services authorized pursuant to § 595.506(a).

(6) Nothing in this paragraph (b) authorizes the formation or debiting of legal defense funds in connection with the provision of legal services authorized pursuant to § 595.506(b).

NOTE 1 TO PARAGRAPH (b) OF § 595.515: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference this paragraph § 595.515(b) to avoid the blocking of the transfer.

NOTE 2 TO PARAGRAPH (b) OF § 595.515: Any funds remaining in a legal defense fund account after all payments of professional fees and reimbursement of incurred expenses authorized pursuant to this paragraph have been made or upon termination of the legal services for which payment is authorized pursuant to this paragraph are property in which the person to or on whose behalf the legal services were rendered has an interest and is subject to the prohibitions of this part. Persons in the possession or control of such remaining funds may apply for the unblocking of the funds by following the procedures set forth at § 501.801 of this chapter.

[75 FR 75907, Dec. 7, 2010]

Subpart F—Reports

§ 595.601 Records and reports.

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

[62 FR 45111, Aug. 25, 1997]

Subpart G—Penalties

§ 595.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'') (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act.

(1) A civil penalty not to exceed the amount set forth in Section 206 of the Act may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under the Act.

NOTE TO PARAGRAPH (a)(1) OF § 595.701: As of June 10, 2008, the Act provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in the Act are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in the Act are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

[61 FR 3806, Feb. 2, 1996, as amended at 61 FR 54940, Oct. 23, 1996; 62 FR 45111, Aug. 25, 1997; 71 FR 29253, May 22, 2006; 73 FR 32656, June 10, 2008]

§ 595.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to make presentation.* The prepenalty notice also shall inform the person of his right to make a written presentation within 30 days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 595.703 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

§ 595.704 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director of the Office of Foreign Assets Control determines that there was a violation by the person named in the prepenalty notice,

he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

§ 595.705 Administrative collection; referral to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 595.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

[62 FR 45111, Aug. 25, 1997, as amended at 68 FR 53660, Sept. 11, 2003]

§ 595.802 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12947 or any further Executive orders relating to the national emergency declared in Executive Order 12947 may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

[61 FR 3806, Feb. 2, 1996. Redesignated at 62 FR 45111, Aug. 25, 1997]

Subpart I—Paperwork Reduction Act

§ 595.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

[62 FR 45111, Aug. 25, 1997]

PART 596—TERRORISM LIST GOVERNMENTS SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
596.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

596.201 Prohibited financial transactions.
596.202 Evasions; attempts; conspiracies.

Subpart C—General Definitions

596.301 Donation.
596.302 Effective date.
596.303 Financial institution.
596.304 Financial transaction.
596.305 General license.
596.306 License.
596.307 Monetary instruments.
596.308 Person; entity.
596.309 Specific license.
596.310 Terrorism List Government.
596.311 Transaction.
596.312 United States.
596.313 United States person.

Subpart D—Interpretations

596.401 Reference to amended sections.
596.402 Effect of amendment.
596.403 Transactions incidental to a licensed transaction.
596.404 Financial transactions transferred through a bank of a Terrorism List Government.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

596.500 Licensing procedures.
596.501 Effect of license or authorization.
596.502 Exclusion from licenses and authorizations.
596.503 Financial transactions with a Terrorism List Government otherwise subject to 31 CFR chapter V.
596.504 Certain financial transactions with Terrorism List Governments authorized.
596.505 Certain transactions related to stipends and scholarships authorized.

Subpart F—Reports

596.601 Records and reports.

Subpart G—Penalties

596.701 Penalties.

Subpart H—Procedures

596.801 Procedures.
596.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

596.901 Paperwork Reduction Act notice.

AUTHORITY: 18 U.S.C. 2332d; 31 U.S.C. 321(b).

SOURCE: 61 FR 43463, Aug. 23, 1996, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 596.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. Except as otherwise authorized in this part, no license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. Except as otherwise authorized in this part, no license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. See § 596.503.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

[61 FR 43463, Aug. 23, 1996, as amended at 62 FR 45112, Aug. 25, 1997]

Subpart B—Prohibitions

§ 596.201 Prohibited financial transactions.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, no United States person, on or after the effective date, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act, 50 U.S.C. App. 2405, as a country supporting international terrorism, shall engage in a financial transaction with the government of that country.

(b) Countries designated under section 6(j) of the Export Administration Act as of May 18, 2009 are listed in the following schedule.

SCHEDULE

Cuba.
Iran.
Sudan.
Syria.

[74 FR 23112, May 18, 2009]

§ 596.202 Evasions; attempts; conspiracies.

Any transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this part, is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is hereby prohibited.

Subpart C—General Definitions

§ 596.301 Donation.

The term *donation* means a transfer made in the form of a gift or charitable contribution.

§ 596.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part which is 12:01 a.m. EDT, August 22, 1996.

§ 596.303 Financial institution.

The term *financial institution* shall have the definition given that term in 31 U.S.C. 5312(a)(2) or the regulations promulgated thereunder, as from time to time amended.

NOTE: The breadth of the definition precludes its reproduction in this section.

§ 596.304 Financial transaction.

The term *financial transaction* shall have the meaning set forth in 18 U.S.C. 1956(c)(4), as from time to time amended. As of the effective date, this term includes:

(a) A transaction which in any way or degree affects interstate or foreign commerce;

(1) Involving the movement of funds by wire or other means; or

(2) Involving one or more monetary instruments; or

(3) Involving the transfer of title to any real property, vehicle, vessel, or aircraft; or

(b) A transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree.

§ 596.305 General license.

The term *general license* means any license or authorization the terms of which are set forth in this part.

§ 596.306 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 596.307 Monetary instruments.

The term *monetary instruments* shall have the meaning set forth in 18 U.S.C. 1956(c)(5), as from time to time amended. As of the effective date, this term includes coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery.

§ 596.308 Person; entity.

(a) The term *person* means an individual or entity.

(b) The term *entity* means a partnership, association, corporation, or other organization.

§ 596.309 Specific license.

The term *specific license* means any license or authorization not set forth in this part but issued pursuant to this part.

§ 596.310 Terrorism List Government.

The term *Terrorism List Government* includes:

(a) The government of a country designated under section 6(j) of the Export Administration Act, as well as any political subdivision, agency, or instrumentality thereof, including the central bank of such a country;

(b) Any entity owned or controlled by such a government.

§ 596.311 Transaction.

The term *transaction* shall have the meaning set forth in 18 U.S.C. 1956(c)(3), as from time to time amended. As of the effective date, this term includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

§ 596.312 United States.

The term *United States* means the United States, including its territories and possessions.

§ 596.313 United States person.

The term *United States person* means any United States citizen or national, permanent resident alien, juridical person organized under the laws of the

United States, or any person in the United States.

Subpart D—Interpretations

§ 596.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 596.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not, unless otherwise specifically provided, affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 596.403 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized.

§ 596.404 Financial transactions transferred through a bank of a Terrorism List Government.

For the purposes of this part only, a financial transaction not originated by a Terrorism List Government, but transferred to the United States through a bank owned or controlled by a Terrorism List Government, shall not be deemed a financial transaction with the government of a country supporting international terrorism pursuant to § 596.201.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 596.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[68 FR 53660, Sept. 11, 2003]

§ 596.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such license or other authorization.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to a part in 31 CFR chapter V. No regulation, ruling, instruction, or license referring to this part authorizes any transactions prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 596.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action is binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§ 596.503 Financial transactions with a Terrorism List Government otherwise subject to 31 CFR chapter V.

United States persons are authorized to engage in financial transactions with a Terrorism List Government that is subject to regulations contained in parts of 31 CFR chapter V other than this part to the extent and subject to the conditions stated in such other parts, or in any regulations, orders, directives, rulings, instructions, or licenses issued pursuant thereto.

§ 596.504 Certain financial transactions with Terrorism List Governments authorized.

(a) United States persons are authorized to engage in all financial transactions with a Terrorism List Government that is not otherwise subject to 31 CFR chapter V, except for a transfer from a Terrorism List Government:

(1) Constituting a donation to a United States person; or

(2) With respect to which the United States person knows (including knowledge based on advice from an agent of the United States Government), or has reasonable cause to believe, that the transfer poses a risk of furthering terrorist acts in the United States.

(b) Nothing in this section authorizes the return of a transfer prohibited by paragraph (a)(2) of this section.

§ 596.505 Certain transactions related to stipends and scholarships authorized.

(a) United States persons are authorized to engage in all financial transactions with respect to stipends and scholarships covering tuition and related educational, living and travel expenses provided by the Government of Syria to Syrian nationals or the Government of Sudan to Sudanese nationals who are enrolled as students in an accredited educational institution in the United States. Representations made by an accredited educational institution concerning the status of a student maybe relied upon in determining the applicability of this section.

(b) Nothing in this section authorizes a transaction prohibited by § 596.504(a)(2).

[61 FR 67944, Dec. 26, 1996]

Subpart F—Reports

§ 596.601 Records and reports.

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

[62 FR 45112, Aug. 25, 1997]

Subpart G—Penalties

§ 596.701 Penalties.

Attention is directed to 18 U.S.C. 2332d, as added by Public Law 104–132, section 321, which provides that, except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, a United States person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act, 50 U.S.C. App. 2405, as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under title 18, United States Code, or imprisoned for not more than 10 years, or both.

Subpart H—Procedures

§ 596.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C.

552 and 552a), see part 501, subpart E, of this chapter.

[62 FR 45112, Aug. 25, 1997, as amended at 68 FR 53660, Sept. 11, 2003]

§ 596.802 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to section 321 of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132, 110 Stat. 1214, 1254 (18 U.S.C. 2332d), may be taken by the Director, Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

[61 FR 43463, Aug. 23, 1996. Redesignated at 62 FR 45112, Aug. 25, 1997]

Subpart I—Paperwork Reduction Act

§ 596.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

[62 FR 45112, Aug. 25, 1997]

PART 597—FOREIGN TERRORIST ORGANIZATIONS SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
597.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

597.201 Prohibited transactions involving blocked assets or funds of foreign terrorist organizations or their agents.
597.202 Effect of transfers violating the provisions of this part.
597.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
597.204 Evasions; attempts; conspiracies.

Subpart C—General Definitions

597.301 Agent.
597.302 Assets.
597.303 Blocked account; blocked funds.
597.304 Designation.
597.305 Effective date.
597.306 Entity.
597.307 Financial institution.
597.308 Financial transaction.
597.309 Foreign terrorist organization.
597.310 Funds.
597.311 General license.
597.312 Interest.
597.313 License.
597.314 Person.
597.315 Specific license.
597.316 Transaction.
597.317 Transfer.
597.318 United States.
597.319 U.S. financial institution.

Subpart D—Interpretations

597.401 Reference to amended sections.
597.402 Effect of amendment.
597.403 Termination and acquisition of an interest in blocked funds.
597.404 Setoffs prohibited.
597.405 Transactions incidental to a licensed transaction.
597.406 Offshore transactions.
597.407 Palestinian Authority.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

597.500 Licensing procedures.
597.501 Effect of license or authorization.
597.502 Exclusion from licenses and authorizations.
597.503 Payments and transfers to blocked accounts in U.S. financial institutions.
597.504 Entries in certain accounts for normal service charges authorized.
597.505 Payment for certain legal services.
597.506 Official activities of certain international organizations; U.S. person employees of certain governments.
597.507 Travel, employment, residence and maintenance transactions with the Palestinian Authority.
597.508 Payment of taxes and incidental fees to the Palestinian Authority.
597.509 Transactions with entities under the control of the Palestinian President and certain other entities.
597.510 Concluding activities with the Palestinian Authority.
597.511 In-kind donations of medicine, medical devices, and medical services.
597.512 Transactions with the Palestinian Authority authorized.

597.513 Payments from funds originating outside the United States and the formation of legal defense funds authorized.

Subpart F—Reports

597.601 Records and reports.

Subpart G—Penalties

597.701 Penalties.
597.702 Prepenalty notice.
597.703 Response to prepenalty notice.
597.704 Penalty notice.
597.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

597.801 Procedures.
597.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

597.901 Paperwork Reduction Act notice.

AUTHORITY: 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–132, 110 Stat. 1214, 1248–53 (8 U.S.C. 1189, 18 U.S.C. 2339B).

SOURCE: 62 FR 52495, Oct. 8, 1997, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 597.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Differing statutory authority and foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations. This part does not implement, construe, or limit the scope of any other part of this chapter, including (but not limited to) the Terrorism Sanctions Regulations, part 595 of this chapter, and does not excuse any person from complying with any other part of this chapter, including (but not limited to) part 595 of this chapter.

(c) This part does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

Subpart B—Prohibitions

§ 597.201 Prohibited transactions involving blocked assets or funds of foreign terrorist organizations or their agents.

(a) Upon notification to Congress of the Secretary of State's intent to designate an organization as a foreign terrorist organization pursuant to 8 U.S.C. 1189(a), until the publication in the FEDERAL REGISTER as described in paragraph (c) of this section, any U.S. financial institution receiving notice from the Secretary of the Treasury by means of order, directive, instruction, regulation, ruling, license, or otherwise shall, except as otherwise provided in such notice, block all financial transactions involving any assets of such organization within the possession or control of such U.S. financial institution until further directive from the Secretary of the Treasury, Act of Congress, or order of court.

(b) Except as otherwise authorized by order, directive, instruction, regulation, ruling, license, or otherwise, from and after the designation of an organization as a foreign terrorist organization pursuant to 8 U.S.C. 1189(a), any U.S. financial institution that becomes aware that it has possession of or control over any funds in which the designated foreign terrorist organization or its agent has an interest shall:

(1) Retain possession of or maintain control over such funds; and

(2) Report to the Secretary of the Treasury the existence of such funds in

accordance with § 501.603 of this chapter.

(c) Publication in the FEDERAL REGISTER of the designation of an organization as a foreign terrorist organization pursuant to 8 U.S.C. 1189(a) shall be deemed to constitute a further directive from the Secretary of the Treasury for purposes of paragraph (a) of this section, and shall require the actions contained in paragraph (b) of this section.

(d) The requirements of paragraph (b) of this section shall remain in effect until the effective date of an administrative, judicial, or legislative revocation of the designation of an organization as a foreign terrorist organization, or until the designation lapses, pursuant to 8 U.S.C. 1189.

(e) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter. Requests for the unblocking of funds pursuant to § 501.806 must be submitted to the attention of the Compliance Programs Division.

§ 597.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date which is in violation of § 597.201 or any other provision of this part or of any regulation, order, directive, ruling, instruction, license, or other authorization hereunder and involves any funds or assets held in the name of a foreign terrorist organization or its agent or in which a foreign terrorist organization or its agent has or has had an interest since such date, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such funds or assets.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any funds or assets held in the name of a foreign terrorist organization or its agent or in which a foreign terrorist organization or its agent has an interest, or has had an interest since such date, unless the financial institution with whom such funds or assets are held or maintained, prior to such date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part, and any regulation, order, directive, ruling, instruction, or license issued hereunder.

(d) Transfers of funds or assets which otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any financial institution with whom such funds or assets were held or maintained (and as to such financial institution only) in cases in which such financial institution is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the financial institution with whom such funds or assets were held or maintained;

(2) The financial institution with which such funds or assets were held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such institution, that such transfer required a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) The financial institution with which such funds or assets were held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating

to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization hereunder; or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d): The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Except for exercises of judicial authority pursuant to 8 U.S.C. 1189(b), unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any funds or assets which, on or since the effective date, were in the possession or control of a U.S. financial institution and were held in the name of a foreign terrorist organization or its agent or in which there existed an interest of a foreign terrorist organization or its agent.

§ 597.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. financial institution holding funds subject to § 597.201(b) shall hold or place such funds in a blocked interest-bearing account which is in the name of the foreign terrorist organization or its agent and which is located in the United States.

(b)(1) For purposes of this section, the term *interest-bearing account* means a blocked account:

(i) in a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates which are commercially reasonable for the amount of funds in the account or certificate of deposit; or

(ii) with a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury Bills.

(2) Funds held or placed in a blocked interest-bearing account pursuant to this paragraph may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or sub-account, the name of the account party on each account must be the same and must clearly indicate the foreign terrorist organization or agent having an interest in the accounts.

(c) Blocked funds held as of the effective date in the form of stocks, bonds, debentures, letters of credit, or instruments which cannot be negotiated for the purpose of placing the funds in a blocked interest-bearing account pursuant to paragraph (a) may continue to be held in the form of the existing security or instrument until liquidation or maturity, provided that any dividends, interest income, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with the requirements of this section.

(d) Funds subject to this section may not be held, invested, or reinvested in a manner in which an immediate financial or economic benefit or access accrues to the foreign terrorist organization or its agent.

§ 597.204 Evasions; attempts; conspiracies.

Any transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this part, is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is hereby prohibited.

Subpart C—General Definitions

§ 597.301 Agent.

(a) The term *agent* means:

(1) Any person owned or controlled by a foreign terrorist organization; or

(2) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of a foreign terrorist organization.

(b) The term *agent* includes, but is not limited to, any person determined by the Director of the Office of Foreign Assets Control to be an agent as defined in paragraph (a) of this section.

NOTE TO § 597.301: The names of persons designated as foreign terrorist organizations or determined to fall within this definition, whose property and interests in property therefore are blocked pursuant to this part, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[FTO].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. Section 501.807 of this chapter sets forth the procedures to be followed by a person seeking administrative reconsideration of a designation as an agent, or who wishes to assert that the circumstances resulting in the designation as an agent are no longer applicable.

[62 FR 52495, Oct. 8, 1997, as amended at 76 FR 38544, June 30, 2011]

§ 597.302 Assets.

The term *assets* includes, but is not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 597.303 Blocked account; blocked funds.

The terms *blocked account* and *blocked funds* shall mean any account or funds subject to the prohibitions in § 597.201 held in the name of a foreign terrorist organization or its agent or in which a foreign terrorist organization or its agent has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

§ 597.304 Designation.

The term *designation* includes both the designation and redesignation of a foreign terrorist organization pursuant to 8 U.S.C. 1189.

§ 597.305 Effective date.

Except as that term is used in § 597.201(d), the term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part which is October 6, 1997, or, in the case of foreign terrorist organizations designated after that date and their agents, the earlier of the date on which a financial institution receives actual or constructive notice of such designation or of the Secretary of Treasury's exercise of his authority to block financial transactions pursuant to 8 U.S.C. 1189(a)(2)(C) and § 597.201(a).

§ 597.306 Entity.

The term *entity* includes a partnership, association, corporation, or other organization, group, or subgroup.

§ 597.307 Financial institution.

The term *financial institution* shall have the definition given that term in 31 U.S.C. 5312(a)(2) as from time to time

amended, notwithstanding the definition of that term in 31 CFR part 103.

NOTE: The breadth of the statutory definition of *financial institution* precludes its reproduction in this section. Among the types of businesses covered are insured banks (as defined in 12 U.S.C. 1813(h)), commercial banks or trust companies, private bankers, agencies or branches of a foreign bank in the United States, insured institutions (as defined in 12 U.S.C. 1724(a)), thrift institutions, brokers or dealers registered with the Securities and Exchange Commission under 15 U.S.C. 78a et seq., securities or commodities brokers and dealers, investment bankers or investment companies, currency exchanges, issuers, redeemers, or cashiers of traveler's checks, checks, money orders, or similar instruments, credit card system operators, insurance companies, dealers in precious metals, stones or jewels, pawnbrokers, loan or finance companies, travel agencies, licensed senders of money, telegraph companies, businesses engaged in vehicle sales, including automobile, airplane or boat sales, persons involved in real estate closings and settlements, the United States Postal Service, a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 as further described in 31 U.S.C. 5312(a)(2), or agencies of the United States Government or of a State or local government carrying out a duty or power of any of the businesses described in 31 U.S.C. 5312(a)(2).

§ 597.308 Financial transaction.

The term *financial transaction* means a transactioninvolving the transfer or movement of funds, whether by wire or other means.

§ 597.309 Foreign terrorist organization.

The term *foreign terrorist organization* means an organization designated or redesignated as a foreign terrorist organization, or with respect to which the Secretary of State has notified Congress of the intention to designate as a foreign terrorist organization, under 8 U.S.C. 1189(a).

§ 597.310 Funds.

The term *funds* includes coin or currency of the United States or any other country, traveler's checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing. An electronic representation of any of the foregoing includes any form of digital or electronic cash, coin, or currency in use currently or placed in use in the future.

§ 597.311 General license.

The term *general license* means any license or authorization the terms of which are set forth in this part.

§ 597.312 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to funds or assets (e.g., ''an interest in funds'') means an interest of any nature whatsoever, direct or indirect.

§ 597.313 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 597.314 Person.

The term *person* means an individual or entity.

§ 597.315 Specific license.

The term *specific license* means any license or authorization not set forth in this part but issued pursuant to this part.

§ 597.316 Transaction.

The term *transaction* shall have the meaning set forth in 18 U.S.C. 1956(c)(3), as from time to time amended. As of the effective date, this term includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition of any asset, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

§ 597.317 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and

whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 597.318 United States.

The term *United States* means the United States, its territories, states, commonwealths, districts, and possessions, and all areas under the jurisdiction or authority thereof.

§ 597.319 U.S. financial institution.

The term *U.S. financial institution* means:

(a) Any financial institution organized under the laws of the United States, including such financial institution's foreign branches;

(b) Any financial institution operating or doing business in the United States; or

(c) Those branches, offices and agencies of foreign financial institutions which are located in the United States, but not such foreign financial institutions' other foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 597.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

§ 597.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 597.403 Termination and acquisition of an interest in blocked funds.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of funds (including any interest in funds) away from a foreign terrorist organization or its agent, such funds shall no longer be deemed to be funds in which the foreign terrorist organization or its agent has or has had an interest, or which are held in the name of a foreign terrorist organization or its agent, unless there exists in the funds another interest of a foreign terrorist organization or its agent, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if funds (including any interest in funds) are or at any time since the effective date have been held by a foreign terrorist organization or its agent, or at any time thereafter are transferred or attempted to be transferred to a foreign

terrorist organization or its agent, including by the making of any contribution to or for the benefit of a foreign terrorist organization or its agent, such funds shall be deemed to be funds in which there exists an interest of the foreign terrorist organization or its agent.

§ 597.404 Setoffs prohibited.

A setoff against blocked funds (including a blocked account) by a U.S. financial institution is a prohibited transaction under § 597.201 if effected after the effective date.

§ 597.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except a transaction by an unlicensed, foreign terrorist organization or its agent or involving a debit to a blocked account or a transfer of blocked funds not explicitly authorized within the terms of the license.

§ 597.406 Offshore transactions.

The prohibitions contained in § 597.201 apply to transactions by U.S. financial institutions in locations outside the United States with respect to funds or assets which the U.S. financial institution knows, or becomes aware, are held in the name of a foreign terrorist organization or its agent, or in which the U.S. financial institution knows, or becomes aware that, a foreign terrorist organization or its agent has or has had an interest since the effective date.

§ 597.407 Palestinian Authority.

Following the January 2006 Palestinian elections, Hamas, a designated terrorist entity whose property and interests in property are blocked pursuant to § 597.201, has been determined to have a property interest in the transactions of the Palestinian Authority. Accordingly, pursuant to § 597.201, U.S. persons are prohibited from engaging in transactions with the Palestinian Authority unless authorized. Certain transactions with the Palestinian Authority may be authorized by license, see subpart E of this part.

[71 FR 27202, May 10, 2006]

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 597.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[68 FR 53660, Sept. 11, 2003]

§ 597.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 597.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§ 597.503 Payments and transfers to blocked accounts in U.S. financial institutions.

(a) Any payment of funds or transfer of credit or other financial or economic resources or assets by a financial institution into a blocked account in a U.S. financial institution is authorized, provided that a transfer from a blocked account pursuant to this authorization may only be made to another blocked account held in the same name on the books of the same U.S. financial institution.

(b) This section does not authorize any transfer from a blocked account within the United States to an account held outside the United States.

NOTE TO § 597.503: Please refer to §§ 501.603 and 597.601 of this chapter for mandatory reporting requirements regarding financial transfers.

§ 597.504 Entries in certain accounts for normal service charges authorized.

(a) U.S. financial institutions are hereby authorized to debit any blocked account with such U.S. financial institution in payment or reimbursement for normal service charges owed to such U.S. financial institution by the owner of such blocked account.

(b) As used in this section, the term normal service charge shall include charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photostats, credit reports, transcripts of statements, registered mail insurance, stationery and supplies, check books, and other similar items.

§ 597.505 Payment for certain legal services.

Except as otherwise authorized, specific licenses may be issued, on a case-by-case basis, authorizing receipt of payment of professional fees and reimbursement of incurred expenses through a U.S. financial institution for the following legal services by U.S. persons:

(a) Provision of legal advice and counseling to a foreign terrorist organization or an agent thereof on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling is not provided to facilitate transactions in violation of any of the prohibitions of this part;

(b) Representation of a foreign terrorist organization or an agent thereof when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings;

(c) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings on behalf of a foreign terrorist organization or an agent thereof;

(d) Representation of a foreign terrorist organization or an agent thereof before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against a foreign terrorist organization or an agent thereof;

(e) Representation of an agent of a foreign terrorist organization, wherever located, detained within the jurisdiction of the United States or by the United States government, with respect to either such detention or any charges made against such agent, including, but not limited to, the conduct of military commission prosecutions and the initiation and conduct of federal court proceedings;

(f) Provision of legal services to a foreign terrorist organization or an agent thereof in any other context in which prevailing U.S. law requires access to legal counsel at public expense; and

(g) Representation of a foreign terrorist organization seeking judicial review of a designation before the United States Court of Appeals for the District of Columbia Circuit pursuant to 8 U.S.C. 1189(b)(1).

NOTE TO § 597.505: *See* § 597.513 of this part for authorized mechanisms for payment through a U.S. financial institution of professional fees and reimbursement of incurred expenses for legal services specified in this section provided by a U.S. person to or on behalf of a foreign terrorist organization or an agent thereof.

[62 FR 52495, Oct. 8, 1997, as amended at 73 FR 78633, Dec. 23, 2008; 75 FR 75909, Dec. 7, 2010]

§ 597.506 Official activities of certain international organizations; U.S. person employees of certain governments.

(a) Effective April 12, 2006, U.S. financial institutions are authorized to engage in all financial transactions with the Palestinian Authority otherwise prohibited by this part that are for the conduct of the official business of the United Nations, provided that no payment pursuant to this license may involve a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

(b) For purposes of this section only, the term ''United Nations'' means its principal organs, including funds, bodies, commissions, agencies, departments and other entities of the Security Council, General Assembly, Economic and Social Council and Secretariat, specifically including, among others, the World Bank, the International Monetary Fund, the World Food Programme, and the World Health Organization.

(c) The retention and reporting provisions of § 597.201 shall not apply with respect to transactions authorized by paragraph (a) of this section.

[71 FR 27202, May 10, 2006]

§ 597.507 Travel, employment, residence and maintenance transactions with the Palestinian Authority.

(a) Effective April 12, 2006, U.S. financial institutions are authorized to engage in all transactions that are ordinarily incident to U.S. persons' travel to or from, or employment, residence or personal maintenance within, the jurisdiction of the Palestinian Authority, including, but not limited to, receipt of salaries, payment of living expenses and acquisition of goods or services for personal use. Nothing in this license authorizes any debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

(b) The retention and reporting provisions of § 597.201 shall not apply with respect to transactions authorized by paragraph (a) of this section.

[71 FR 27202, May 10, 2006]

§ 597.508 Payment of taxes and incidental fees to the Palestinian Authority.

(a) Effective April 12, 2006, U.S. financial institutions are authorized to conduct all transactions ordinarily incident to the following activities by U.S. persons: the payment of taxes or fees to, or the purchase or receipt of permits or public utility services from, the Palestinian Authority where such transactions are necessary and ordinarily incident to such persons' day-to-day operations. Nothing in this license authorizes a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

(b) The retention and reporting provisions of § 597.201 shall not apply with respect to transactions authorized by paragraph (a) of this section.

[71 FR 27202, May 10, 2006]

§ 597.509 Transactions with entities under the control of the Palestinian President and certain other entities.

(a) Effective April 12, 2006, U.S. financial institutions are authorized to engage in all transactions otherwise prohibited under this part with the following entities and individuals:

(1) The Palestinian Authority Presidency, including only the Office of the President, Presidential Security, General Intelligence Apparatus, Governors and Governorate staff, the Attorney General's Office, the Palestine Investment Fund (PIF), the Border Crossings Administration, and the Palestine

Broadcasting Corporation (including the Voice of Palestine, Wafa News Agency, and the General Public Information Agency/State Information Services);

(2) The Palestinian Judiciary, including the Higher Judicial Council;

(3) Members of the Palestinian Legislative Council (PLC) who were not elected to the PLC on the party slate of Hamas or any other Foreign Terrorist Organization (FTO), Specially Designated Terrorist (SDT), or Specially Designated Global Terrorist (SDGT); and

(4) The following independent agencies: The Central Elections Commission; the Independent Citizens Rights Commission; the General Audit Authority/External Audit Agency; and the Palestinian Monetary Authority.

(b) Effective April 12, 2006, U.S. financial institutions are authorized to reject transactions with members of the Palestinian Legislative Council (PLC) who were elected to the PLC on the party slate of Hamas or any other Foreign Terrorist Organization (FTO), Specially Designated Terrorist (SDT), or Specially Designated Global Terrorist (SDGT), provided that any such individuals are not named on OFAC's list of Specially Designated Nationals and Blocked Persons.

(c) Nothing in this license authorizes a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

(d) The retention and reporting provisions of § 597.201 shall not apply with respect to transactions authorized by paragraph (a) of this section. The retention provisions of § 597.201 shall not apply with respect to transactions authorized by paragraph (b) of this section.

[71 FR 27202, May 10, 2006]

§ 597.510 Concluding activities with the Palestinian Authority.

(a) Effective April 12, 2006, all transactions and activities with the Palestinian Authority otherwise prohibited under this part are authorized through May 12, 2006, provided that they are necessary to conclude ongoing contracts or programs with the Palestinian Authority, and further provided that no payment pursuant to this license may involve a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

(b) The retention and reporting provisions of § 597.201 shall not apply with respect to transactions authorized by paragraph (a) of this section.

[71 FR 27202, May 10, 2006]

§ 597.511 In-kind donations of medicine, medical devices, and medical services.

(a) Effective July 6, 2006, U.S. financial institutions are authorized to conduct all transactions ordinarily incident to the provision by nongovernmental organizations that are U.S. persons of in-kind donations of medicine, medical devices, and medical services to the Palestinian Authority Ministry of Health, provided that such donations are strictly for distribution in the West Bank or Gaza and not intended for resale, and provided further that no payment pursuant to this license may involve a debit to an account of the Palestinian Authority on the books of a U.S. financial institution or to any account blocked pursuant to this part.

(b) For the purposes of this section only, the term medical device has the meaning given the term ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), including medical supplies, but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1.

(c) U.S. financial institutions are authorized to conduct all transactions ordinarily incident to the provision by nongovernmental organizations that are U.S. persons of in-kind donations of medical devices listed on the Commerce Control List to the Palestinian Authority Ministry of Health, provided that

(1) Such donation is licensed by OFAC; and

(2) Such donation is authorized under or pursuant to the Export Administration Regulations.

(d) The retention and reporting provisions of § 597.201 shall not apply with

respect to transactions authorized by paragraphs (a) and (c) of this section.

[71 FR 58744, Oct. 5, 2006]

§ 597.512 Transactions with the Palestinian Authority authorized.

(a) As of June 20, 2007, U.S. persons are authorized to engage in all transactions otherwise prohibited under this part with the Palestinian Authority.

(b) For purposes of this section only, the term *Palestinian Authority* means the Palestinian Authority government of Prime Minister Salam Fayyad and President Mahmoud Abbas, including all branches, ministries, offices, and agencies (independent or otherwise) thereof.

[72 FR 61518, Oct. 31, 2007]

§ 597.513 Payments from funds originating outside the United States and the formation of legal defense funds authorized.

(a) *Payments from funds originating outside the United States.* Effective December 7, 2010, receipts of payment through a U.S. financial institution of professional fees and reimbursement of incurred expenses for the provision of legal services specified in § 597.505 are authorized from funds originating outside the United States, provided that:

(1) Prior to receiving payment through a U.S. financial institution for legal services specified in § 597.505 rendered to a foreign terrorist organization or agent thereof, the U.S. person that is an attorney, law firm, or legal services organization provides to the Office of Foreign Assets Control a copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity. The copy of a letter of engagement or a letter of intent to engage, accompanied by correspondence referencing this paragraph § 597.513(a), is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220;

(2) The funds received by U.S. persons through a U.S. financial institution as payment of professional fees and reimbursement of incurred expenses for the provision of legal services specified in § 597.505 must not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services specified in § 597.505 are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order;

NOTE TO PARAGRAPH (a)(2) OF § 597.513: This paragraph authorizes the person on whose behalf the legal services specified in § 597.505 are to be provided to make payments for specified legal services using funds originating outside the United States that were not previously blocked. Nothing in this paragraph authorizes payments for legal services using funds in which any other person whose assets and funds are subject to the prohibitions in § 597.201(a) or whose property and interests in property are blocked pursuant to any other part of this chapter holds an interest.

(3) *Reports.* (i) U.S. persons who receive payments in connection with legal services specified in § 597.505 must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the payments were received providing information on the funds received. Such reports shall specify:

(A) The individual or entity from whom the funds originated and the amount of funds received; and

(B) If applicable:

(*1*) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with specified legal services, such as private investigators or expert witnesses;

(*2*) A general description of the services provided; and

(*3*) The amount of funds paid in connection with such services.

(ii) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect.

(iii) Reports, which must reference this paragraph (a), are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the

Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220; and

NOTE TO PARAGRAPH (a)(3) OF §597.513: U.S. persons who receive payments in connection with legal services specified in §597.505 do not need to obtain specific authorization to make payments through a U.S. financial institution for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses.

(4) Nothing in this paragraph (a) authorizes the receipt of payment through a U.S. financial institution of professional fees or reimbursement of incurred expenses for the provision of legal services not specified in §597.505.

NOTE 1 TO PARAGRAPH (a) OF §597.513: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference this paragraph (a) to avoid the blocking of the transfer.

NOTE 2 TO PARAGRAPH (a) OF §597.513: Nothing in this paragraph authorizes the transfer of any blocked property, the debiting of any blocked account, the entry of any judgment or order that effects a transfer of blocked property, or the execution of any judgment against property blocked pursuant to any Executive order or this chapter. U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from the Office of Foreign Assets Control to authorize the release of a limited amount of blocked funds for the payment of legal fees where alternative funding sources are not available. For more information, see OFAC's *Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings*, which is available at: *http://www.treas.gov/resource-center/sanctions/Documents/legal_fee_guide.pdf*.

(b) *Legal defense funds*. Effective December 7, 2010, U.S. persons that are attorneys, law firms, or legal services organizations are authorized to form legal defense funds from which payments of professional fees and reimbursement for expenses incurred in connection with the provision of legal services specified in §597.505 may be debited provided that:

(1) The legal defense fund must be held in a savings or checking account at a financial institution located in the United States;

(2) Prior to debiting the legal defense fund, the U.S. person responsible for establishing the legal defense fund must submit the following information to the Office of Foreign Assets Control: A copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity; the name of the individual or entity responsible for establishing the legal defense fund; the name of the financial institution at which the account for the legal defense fund will be held; a point of contact at the financial institution holding the account for the legal defense fund; and the account name and account number for the legal defense fund. The foregoing information must be accompanied by correspondence referencing this paragraph (b) and is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220;

(3) The legal defense fund may not receive funds from a person whose assets and funds are subject to the prohibitions in §597.201(a) or whose property and interests in property are blocked pursuant to any other part of this chapter;

(4) The U.S. person responsible for establishing the legal defense fund must notify the financial institution at which the account for the legal defense fund is held that the account may only be debited to make payments of professional fees and reimburse expenses incurred in connection with the provision of legal services specified in §597.505;

(5) *Reports*. (i) U.S. persons responsible for establishing legal defense funds from which payments of professional fees and reimbursement for expenses incurred in connection with the provision of legal services specified in §597.505 may be debited must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the funds were deposited with or debited from the account of the legal defense fund providing information on the funds received by the legal defense fund and debits made to

the legal defense fund during the reporting period. Such reports shall specify:

(A) The individual or entity from whom the funds originated and the amount of funds received; and

(B) Any individual or entity to whom any payments were made, including, if applicable:

(*1*) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with specified legal services, such as private investigators or expert witnesses;

(*2*) A general description of the services provided; and

(*3*) The amount of funds paid in connection with such services.

(ii) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect.

(iii) Reports, which must reference this paragraph (b), are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220; and

NOTE TO PARAGRAPH (b)(5) OF § 597.513: U.S. persons who receive payments in connection with legal services specified in § 597.505 do not need to obtain specific authorization to make payments through a U.S. financial institution for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses.

(6) Nothing in this paragraph (b) authorizes the formation or debiting of legal defense funds in connection with the provision of legal services not specified in § 597.505.

NOTE 1 TO PARAGRAPH (b) OF § 597.513: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference this paragraph (b) to avoid the blocking of the transfer.

NOTE 2 TO PARAGRAPH (b) OF § 597.513: Any funds remaining in a legal defense fund account after all payments of professional fees and reimbursement of incurred expenses authorized pursuant to this paragraph have been made or upon termination of the legal services for which payment is authorized pursuant to this paragraph are deemed to be funds of the foreign terrorist organization or agent thereof to or on whose behalf the legal services were rendered and subject to the prohibitions of this part. U.S. financial institutions in the possession or control of such remaining funds may apply for the unblocking of the funds by following the procedures set forth at § 501.801 of this chapter.

[75 FR 75909, Dec. 7, 2010]

Subpart F—Reports

§ 597.601 Records and reports.

For provisions relating to records and reports, see subpart C of part 501 of this chapter; provided, however, that all of the powers afforded the Director pursuant to the first 3 sentences of § 501.602 of this chapter may also be exercised by the Attorney General in conducting administrative investigations pursuant to 18 U.S.C. 2339B(e); provided further, that the investigative authority of the Director pursuant to § 501.602 of this chapter shall be exercised in accordance with 18 U.S.C. 2339B(e); and provided further, that for purposes of this part no person other than a U.S. financial institution and its directors, officers, employees, and agents shall be required to maintain records or to file any reports or furnish any information under §§ 501.601, 501.602, or 501.603 of this chapter.

Subpart G—Penalties

§ 597.701 Penalties.

(a) Attention is directed to 18 U.S.C. 2339B(a)(1), as added by Public Law 104–132, 110 Stat. 1250–1253, section 303, which provides that whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under title 18, United States Code, or imprisoned for not more than 10 years, or both.

(b) Attention is directed to 18 U.S.C. 2339B(b), as added by Public Law 104–132, 110 Stat. 1250–1253, section 303, which, as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note), provides that, except as authorized by the Secretary of the Treasury, any financial institution that knowingly fails to retain possession of or maintain control over funds in which a foreign terrorist

organization or its agent has an interest, or to report the existence of such funds in accordance with these regulations, shall be subject to a civil penalty in an amount that is the greater of $55,000 per violation, or twice the amount of which the financial institution was required to retain possession or control.

NOTE TO PARAGRAPH (b). The current $55,000 civil penalty cap may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

(c) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(d) Conduct covered by this part may also be subject to relevant provisions of other applicable laws.

[62 FR 52495, Oct. 8, 1997, as amended at 68 FR 61361, Oct. 28, 2003]

§ 597.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part, and the Director, acting in coordination with the Attorney General, determines that civil penalty proceedings are warranted, the Director shall issue to the person concerned a notice of intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to respond within 30 days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 597.703 Response to prepenalty notice.

(a) *Time within which to respond.* The respondent shall have 30 days from the date of mailing of the prepenalty notice to respond in writing to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of written response.* The written response need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should respond to the allegations in the prepenalty notice and set forth the reasons why the respondent believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

(c) *Informal settlement.* In addition or as an alternative to a written response to a prepenalty notice pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30–day period specified in paragraph (a) of this

section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control.

§ 597.704 Penalty notice.

(a) *No violation.* If, after considering any written response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent, the Director promptly shall notify the respondent in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent, the Director promptly shall issue a written notice of the imposition of the monetary penalty on the respondent. The issuance of a written notice of the imposition of a monetary penalty shall constitute final agency action.

(2) The penalty notice shall inform the respondent that payment of the assessed penalty must be made within 30 days of the mailing of the penalty notice.

(3) The penalty notice shall inform the respondent of the requirement to furnish respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that the Department intends to use such number for the purposes of collecting and reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

§ 597.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 597.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

[62 FR 52495, Oct. 8, 1997, as amended at 68 FR 53660, Sept. 11, 2003]

§ 597.802 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to 8 U.S.C. 1189 or 18 U.S.C. 2339B, as added by Public Law 104–132, 110 Stat. 1248–1253, sections 302 and 303, may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 597.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 598—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS

Subpart A—Relation of this Part to Other Laws and Regulations

Sec.
598.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

598.201 Applicability of sanctions.
598.202 Blocking of assets.
598.203 Prohibited transactions involving blocked property.
598.204 Evasions; attempts; conspiracies.
598.205 Effect of transfers violating the provisions of this part.
598.206 Holding of funds in interest-bearing accounts; investment and reinvestment.

Subpart C—General Definitions

598.301 Blocked account; blocked property.
598.302 Effective date.
598.303 Entity.
598.304 Foreign Narcotics Kingpin Designation Act.
598.305 Foreign person.
598.306 General license.
598.307 Interest.
598.308 License.
598.309 Narcotic drug; controlled substance; listed chemical.
598.310 Narcotics trafficking.
598.311 Person.
598.312 Property; property interest.
598.313 Significant foreign narcotics trafficker.
598.314 Specially designated narcotics trafficker.
598.315 Specific license.
598.316 Transfer.
598.317 United States.
598.318 United States person; U.S. person.
598.319 U.S. financial institution.

Subpart D—Interpretations

598.401 Reference to amended sections.
598.402 Effect of amendment.
598.403 Termination and acquisition of an interest in blocked property.
598.404 Setoffs prohibited.
598.405 Transactions incidental to a licensed transaction.
598.406 Provision of services.
598.407 Offshore transactions.
598.408 Alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker.
598.409 Credit extended and cards issued by U.S. financial institutions.
598.410 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

598.501 General and specific licensing procedures.
598.502 Effect of license.
598.503 Exclusion from licenses.
598.504 Payments and transfers to blocked accounts in U.S. financial institutions.
598.505 Investment and reinvestment of certain funds.
598.506 Entries in certain accounts for normal service charges authorized.
598.507 Provision of certain legal services authorized.

Subpart F—Reports

598.601 Records and reports.

Subpart G—Penalties

598.701 Penalties.
598.702 Prepenalty notice.
598.703 Response to prepenalty notice; informal settlement.
598.704 Penalty imposition or withdrawal.
598.705 Administrative collection; referral to United States Department of Justice.
598.706 Judicial review of civil penalty.

Subpart H—Procedures

598.801 Procedures.
598.802 Availability of information pursuant to the Freedom of Information Act.
598.803 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

598.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 21 U.S.C. 1901–1908; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note).

SOURCE: 65 FR 41336, July 5, 2000, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§598.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter, including part 536 of this chapter, ''Narcotics Trafficking Sanctions Regulations,'' with the exception of part 501 of this chapter, the provisions of which apply to this part. Actions

taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 598.201 Applicability of sanctions.

A specially designated narcotics trafficker is subject to any and all sanctions authorized by the Foreign Narcotics Kingpin Designation Act and implemented in this part. The application of sanctions on any specially designated narcotics trafficker will remain in effect until revoked by the President pursuant to section 804(h)(2) of the Foreign Narcotics Kingpin Designation Act, waived by the President pursuant to section 804(g)(1) of that Act, or revoked by the Secretary of the Treasury pursuant to section 805(e)(1)(A) of that Act.

§ 598.202 Blocking of assets.

Except to the extent provided in regulations, orders, instructions, licenses, or directives issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, there are blocked as of the effective date, and any date thereafter, all such property and interests in property within the United States, or within the possession or control of any United States person, which are owned or controlled by a specially designated narcotics trafficker.

§ 598.203 Prohibited transactions involving blocked property.

(a) Except to the extent provided in regulations, orders, instructions, licenses, or directives issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction or dealing by a United States person, or within the United States, in property or interests in property of a specially designated narcotics trafficker is prohibited.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any specially designated narcotics trafficker is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security.

(c) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

§ 598.204 Evasions; attempts; conspiracies.

Except to the extent provided in regulations, orders, instructions, licenses, or directives issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction or dealing by any United States person, or within the United States, that evades or avoids, or has the effect of evading or avoiding, and any endeavor, attempt, or conspiracy to violate any of the prohibitions set forth in this part is prohibited.

§ 598.205 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property of a specially designated narcotics trafficker is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property of a specially designated narcotics trafficker, unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of the Foreign Narcotics Kingpin Designation Act, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Property transfers that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license issued pursuant to this part and was not so licensed, or if a license did purport to cover the transfer, that such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, direction, or license issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 598.205: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the effective date there existed an interest of a specially designated narcotics trafficker.

§ 598.206 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 598.202 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or sub-account, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 598.202 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 598.202 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 598.202. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to specially designated narcotics traffickers, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

NOTE TO § 598.206: Please refer to § 598.505 for authorized investment and reinvestment of certain funds held in blocked accounts.

Subpart C—General Definitions

§ 598.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* mean any account or property subject to § 598.202 held in the name of a specially designated narcotics trafficker, or in which a specially designated narcotics trafficker has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

§ 598.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives of this part, which is December 3, 1999, or, in the case of specially designated narcotics traffickers designated after that date, the earlier of the date on which actual or constructive notice of such designation is received.

§ 598.303 Entity.

The term *entity* means a partnership, joint venture, association, corporation, organization, network, group, or subgroup, or any form of business collaboration.

§ 598.304 Foreign Narcotics Kingpin Designation Act.

The term *Foreign Narcotics Kingpin Designation Act* means the Foreign Narcotics Kingpin Designation Act, Pub. L. 106–120, title 8, 113 Stat. 1606, 1626–1636 (codified at 21 U.S.C. 1901–1908, 8 U.S.C. 1182(a)(2)(C)).

§ 598.305 Foreign person.

The term *foreign person* means any citizen or national of a foreign state or

any entity not organized under the laws of the United States, but does not include a foreign state.

§ 598.306 General license.

The term *general license* means any license or authorization the terms of which are set forth in this part.

§ 598.307 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (e.g., an interest in property) means an interest of any nature whatsoever, direct or indirect.

§ 598.308 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 598.309 Narcotic drug; controlled substance; listed chemical.

The terms *narcotic drug*, *controlled substance*, and *listed chemical* have the meanings given those terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

§ 598.310 Narcotics trafficking.

The term *narcotics trafficking* means any illicit activity to cultivate, produce, manufacture, distribute, sell, finance, or transport narcotic drugs, controlled substances, or listed chemicals, or otherwise endeavor or attempt to do so, or to assist, abet, conspire, or collude with others to do so.

§ 598.311 Person.

The term *person* means an individual or entity.

§ 598.312 Property; property interest.

The terms *property* and *property interest* include but are not limited to money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership, or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, whether present, future, or contingent.

§ 598.313 Significant foreign narcotics trafficker.

The term *significant foreign narcotics trafficker* means any foreign person that plays a significant role in international narcotics trafficking that the President has determined to be appropriate for sanctions and has publicly identified under section 804(b) or section 804(h)(1) of the Foreign Narcotics Kingpin Designation Act.

§ 598.314 Specially designated narcotics trafficker.

The term *specially designated narcotics trafficker* means:

(a) Significant foreign narcotics traffickers; and

(b) Foreign persons designated by the Secretary of the Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, because they are found to be:

(1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a specially designated narcotics trafficker;

(2) Owned, controlled, or directed by, or acting for or on behalf of, a specially designated narcotics trafficker; or

(3) Playing a significant role in international narcotics trafficking.

NOTE 1 TO § 598.314: The names of persons determined to fall within this definition, whose property and interests in property therefore are blocked pursuant to this part, are published in the FEDERAL REGISTER and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SDNTK].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter.

NOTE 2 TO § 598.314: The Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908, 8 U.S.C. 1182), in Section 806 (21 U.S.C. 1905), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this part also are published in the FEDERAL REGISTER and incorporated into the SDN List with the identifier ''[BPI–SDNTK].''

NOTE 3 TO § 598.314: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this part.

[65 FR 41336, July 5, 2000, as amended at 76 FR 38545, June 30, 2011]

§ 598.315 Specific license.

The term *specific license* means any license not set forth in this part but issued pursuant to this part.

§ 598.316 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation upon the foregoing, the term *transfer* includes the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order; the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 598.317 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 598.318 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen or national, permanent resident alien, an entity organized under the laws of the United States (including its foreign branches), or any person within the United States.

§ 598.319 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including a foreign branch) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, as principal or agent. This terms includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates,

or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions which are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 598.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 598.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 598.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed pursuant to this part results in the transfer of property (including any property interest) away from a specially designated narcotics trafficker, the transferred property will no longer be considered property in which that person has or has had an interest. Provided no other specially designated narcotics trafficker has any interest in the transferred property following the transfer, the transferred property will no longer be considered property blocked pursuant to § 598.202.

(b) Unless otherwise specifically provided in a license issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a specially designated narcotics trafficker, such property shall be deemed to be property in which that person has an interest, and such property is therefore blocked pursuant to § 598.202.

§ 598.404 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. financial institution or other U.S. person, is a prohibited transfer under § 598.203 if effected after the effective date.

§ 598.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect to the licensed transaction is also authorized by the license. Except as specifically authorized by the terms of a license, prohibited transactions by specially designated narcotics traffickers and debits to accounts blocked pursuant to § 598.202 are not considered incidental to a licensed transaction and therefore remain prohibited.

§ 598.406 Provision of services.

(a) The prohibitions contained in § 598.203 apply to services performed by U.S. persons, wherever located:

(1) On behalf of or for the benefit of a specially designated narcotics trafficker; or

(2) With respect to property interests of a specially designated narcotics trafficker.

(b) Example: U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a specially designated narcotics trafficker. See § 598.507 on licensing policy with regard to the provision of certain legal services.

§ 598.407 Offshore transactions.

The prohibitions contained in § 598.203 apply to transactions by any U.S. person in a location outside the United States with respect to property in which the U.S. person knows, or has

reason to know, that a specially designated narcotics trafficker has or has had an interest since the effective date.

§ 598.408 Alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker.

(a) A change or alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker shall not be the basis for removal of that entity from the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') unless, upon investigation by the Office of Foreign Control and submission of evidence by the entity, it is demonstrated to the satisfaction of the Director of the Office of Foreign Assets Control that the transfer to a bona fide purchaser at arm's length, or other means of changing ownership or control, is legitimate and that the entity no longer meets the criteria for designation under § 598.314. Evidence submitted must conclusively demonstrate that all ties with other specially designated narcotics traffickers have been completely severed, and may include, but is not limited to, articles of incorporation; identification of new directors, officers, shareholders, and sources of capital; and contracts evidencing the sale of the entity to its new owners.

(b) Any continuing substantial financial obligations on the part of the new owners to any specially designated narcotics traffickers, including long-term payment plans, leases, or rents, will be considered as evidence of continuing control of the entity by the specially designated narcotics trafficker. Purchase of a designated entity without ongoing substantial financial obligations to a specially designated narcotics trafficker may nonetheless be a basis for subsequent designation of the purchaser, if the transaction is determined materially to assist in or provide financial support for the international narcotics trafficking activities of specially designated narcotics traffickers for purposes of § 598.314(b)(1). For example, any acquisition transaction resulting in a direct cash transfer to or other enrichment of a specially designated narcotics trafficker could lead to designation of the purchaser. Mere change in name of an entity will not be considered as constituting a change of the entity's status.

[65 FR 41336, July 5, 2000, as amended at 76 FR 38545, June 30, 2011]

§ 598.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 598.203 on dealing in property in which a specially designated narcotics trafficker has an interest prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a specially designated narcotics trafficker.

§ 598.410 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.

No debits may be made to a blocked account to pay obligations to U.S. persons or other persons, including payment for goods or services exported prior to the effective date of the blocking, except as authorized pursuant to this part.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 598.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[65 FR 41336, July 5, 2000, as amended at 68 FR 53660, Sept. 11, 2003]

§ 598.502 Effect of license.

(a) No license contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control pursuant to this part, authorizes or validates any transaction effected prior to the issuance of the license, unless the prior transaction is specifically authorized in such license.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited by this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part authorizes any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited by this part has the effect of removing from the transaction a prohibition or prohibitions contained in this part, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest that would not otherwise exist under ordinary principles of law in or with respect to any property.

§ 598.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

§ 598.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a specially designated narcotics trafficker has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may only be made to another blocked account held in the same name.

NOTE TO § 598.504: Please refer to part 501, subpart C of this chapter for mandatory reporting requirements regarding financial transfers. See also § 598.206 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 598.505 Investment and reinvestment of certain funds.

Subject to the requirements of § 598.206, U.S. financial institutions are authorized to invest and reinvest assets held in blocked accounts in the name of a specially designated narcotics trafficker, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but in no case may funds be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments are not credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to the specially designated narcotics trafficker.

§ 598.506 Entries in certain accounts for normal service charges authorized.

(a) U.S. financial institutions are authorized to debit any blocked account with such U.S. financial institution in payment or reimbursement for normal service charges owed to such U.S. financial institution by the owner of such blocked account.

(b) As used in this section, the term *normal service charges* includes but is not limited to charges in payment or reimbursement for interest due; cable,

telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; minimum balance charges; notary and protest fees; and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 598.507 Provision of certain legal services authorized.

(a) The provision to or on behalf of a specially designated narcotics trafficker of the legal services set forth in paragraph (b) of this section is authorized, provided that all receipt of payment for such services must be specifically licensed.

(b) Specific licenses may be issued on a case-by-case basis authorizing receipt from unblocked sources of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to a specially designated narcotics trafficker:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling is not provided to facilitate transactions that would violate any prohibition contained in this chapter;

(2) Representation of a specially designated narcotics trafficker when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction of a specially designated narcotics trafficker;

(4) Representation of a specially designated narcotics trafficker before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such person; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(c) The provision of any other legal services to a specially designated narcotics trafficker, not otherwise authorized in this part, requires the issuance of a specific license.

(d) Entry into a settlement agreement affecting property or interests in property of a specially designated narcotics trafficker or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property of a specially designated narcotics trafficker is prohibited unless specifically licensed in accordance with § 598.205(e).

Subpart F—Reports

§ 598.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 598.701 Penalties.

(a) Attention is directed to section 807 of the Foreign Narcotics Kingpin Designation Act, which is applicable to violations of the provisions of any license, rule, or regulation issued by or pursuant to the direction or authorization of the Secretary of Treasury pursuant to this part or otherwise under that Act. Section 807 of the Foreign Narcotics Kingpin Designation Act, as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, as amended, 28 U.S.C. 2461 note), provides that:

(1) Whoever willfully violates the provisions of the Foreign Narcotics Kingpin Designation Act, or any license, rule, or regulation issued pursuant to that Act, or willfully neglects or refuses to comply with any order of the President issued under that Act, shall be imprisoned for not more than 10 years, fined in the amount provided in title 18, United States Code, or both, or, in the case of an entity, fined not more than $10,000,000;

(2) Any officer, director, or agent of any entity who knowingly participates

in a violation of the provisions of the Foreign Narcotics Kingpin Designation Act, shall be imprisoned for not more than 30 years, fined not more than $5,000,000, or both;

(3) A civil penalty not to exceed $1,075,000 per violation may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of the Foreign Narcotics Kingpin Designation Act.

NOTE TO PARAGRAPH (a)(3). The current $1,075,000 civil penalty cap may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

(b) The criminal penalties provided in this part are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

[65 FR 41336, July 5, 2000, as amended at 68 FR 61361, Oct. 28, 2003]

§ 598.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Foreign Narcotics Kingpin Designation Act, and the Director determines that further proceedings are warranted, the Director shall issue to the person concerned a notice of intent to impose a monetary penalty. This prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to make a written presentation within 30 days of the date of mailing of the notice as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

§ 598.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent shall have 30 days from the date of mailing of the prepenalty notice to make a written response to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of response.* The written response need not be in any particular form, but must contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(c) *Informal settlement.* In addition or as an alternative to a written response to a prepenalty notice issued pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a

violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30-day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control.

§ 598.704 Penalty imposition or withdrawal.

(a) *No violation*. If, after considering any response to a prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation*. If, after considering any response to a prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition of the monetary penalty to the respondent. The issuance of a written notice of the imposition of a monetary penalty shall constitute final agency action.

(1) The penalty notice shall inform the respondent that payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice.

(2) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

§ 598.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay a penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of a penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

§ 598.706 Judicial review of civil penalty.

A civil penalty imposed pursuant to this subpart G is subject to judicial review only to the extent provided in 5 U.S.C. 702.

Subpart H—Procedures

§ 598.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Privacy Act (5 U.S.C. 552a), see part 501, subpart E of this chapter.

[65 FR 41336, July 5, 2000, as amended at 68 FR 53660, Sept. 11, 2003]

§ 598.802 Availability of information pursuant to the Freedom of Information Act.

Any record or information obtained or created in the implementation of this part is not subject to disclosure under section 552(a)(3) of the Freedom of Information Act. Information required to be made available to the public under other provisions of the Freedom of Information Act (5 U.S.C. 552) will be made available in accordance with § 501.805(a) of this chapter.

§ 598.803 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to the Foreign Narcotics Kingpin Designation Act may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 598.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

APPENDIX A TO CHAPTER V—INFORMATION PERTAINING TO THE SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST

AUTHORITY: 3 U.S.C. 301; 8 U.S.C. 1182, 1189; 18 U.S.C. 2339B; 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 50 U.S.C. App. 1–44; Pub. L. 110–286, 122 Stat. 2632; Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551).

The Office of Foreign Assets Control (''OFAC'') maintains on its Web site a list of blocked persons, blocked vessels, specially designated nationals, specially designated terrorists, specially designated global terrorists, foreign terrorist organizations, and specially designated narcotics traffickers whose property and interests in property are blocked pursuant to the various economic sanctions programs administered by OFAC. This Specially Designated Nationals and Blocked Persons List (''SDN List'') is updated frequently and at irregular intervals to incorporate changes reflected in notices of blocking, designation, identification, and delisting actions, all of which are published in the FEDERAL REGISTER. The SDN List is available in a variety of formats for review on, or download from, the following location on OFAC's Web site: *http://www.treasury.gov/sdn*. Members of the public may also sign up through OFAC's Web site to receive e-mail notifications of changes to the SDN List.

In addition to accessing information through OFAC's Web site, the public may contact OFAC's Sanctions Compliance & Evaluation Division, at 202/622–2490 or 800/540–6322 (toll-free), for information on blocking, designation, identification, and delisting actions. The public also may contact OFAC in writing at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Finally, the public may obtain information on blocking, designation, identification, and delisting actions through OFAC's fax-on-demand service, at 202/622–0077.

NOTES: The SDN List provides the following information (to the extent known) concerning blocked persons, specially designated nationals, specially designated terrorists, specially designated global terrorists, foreign terrorist organizations, specially designated narcotics traffickers and blocked vessels:

1. For blocked individuals: Name and title (known aliases); address(es); other identifying information, such as date of birth, place of birth, nationality, and passport or national identification number; the notation ''(individual)''; and [sanctions program under which the individual is blocked].

2. For blocked entities: Name (known former or alternate names); address(es); other identifying information, such as national tax identification number(s); and [sanctions program under which the entity is blocked].

3. For blocked vessels: Name (known former or alternate names); other identifying information, such as International Maritime Organization number, country of registration or flag, vessel type, size in dead weight and/or gross tons, call sign, vessel owner; the notation ''(vessel)''; and [sanctions program under which the vessel is blocked].

4. Abbreviations. ''a.k.a.'' means ''also known as''; ''d.b.a.'' means ''doing business as''; ''f.k.a.'' means ''formerly known as''; ''IMO'' means ''International Maritime Organization''; ''n.k.a.'' means ''now known as''; ''DOB'' means ''date of birth''; ''DWT'' means ''deadweight''; ''GRT'' means ''Gross Registered Tonnage''; ''POB'' means ''place of birth''.

5. Notices of blocking, designation, identification, and delisting actions are published in the FEDERAL REGISTER frequently and at irregular intervals. Updated information on OFAC blocking, designation, identification, and delisting actions is provided on OFAC's Web site (*http://www.treasury.gov/ofac*). In addition, such information is incorporated on an ongoing basis into OFAC's SDN List, which is available for review on, or download from, the following location on OFAC's Web site: *http://www.treasury.gov/sdn*. Please call OFAC's Sanctions Compliance & Evaluation Division with questions about OFAC-administered sanctions programs, including current electronic sources of OFAC information: 202/622–2490 or 800/540–6322 (toll-free). Information also is available by fax through OFAC's fax-on-demand service, at 202/622–0077. Updated information on OFAC designations and other OFAC actions should be consulted before engaging in transactions that

may be prohibited by the economic sanctions programs in chapter V.

6. Specific licenses previously issued by OFAC may include references to appendix A or appendix B to 31 CFR chapter V. OFAC hereby notifies persons who have been issued specific licenses by OFAC that any reference to appendix A to 31 CFR chapter V or Appendix B to 31 CFR chapter V in an outstanding specific license shall be read to refer to the SDN List. The SDN List is available for review on or download from the following location on OFAC's Web site: *http://www.treasury.gov/sdn*.

7. The SDN List incorporates the names of vessels owned by blocked persons, which are themselves blocked. SDN List entries for blocked vessels, which include the notation ''(vessel),'' are incorporated in alphabetical order into the SDN List. In addition, these entries are segregated into a separate subsection of the SDN List under the heading ''(vessels).'' Except in limited circumstances, financial institutions are instructed to reject any funds transfer referencing a blocked vessel and must notify OFAC, preferably via facsimile at 202/622–2426 with a copy of the payment instructions, that funds have been returned to remitter due to the possible involvement of a blocked vessel in the underlying transaction. *See* §501.604(b)(1) of this chapter. Financial institutions should contact OFAC's Sanctions Compliance & Evaluation Division, at 202/622–2490 or 800/540–6322 (toll-free), for further instructions should the name of a blocked vessel appear in shipping documents presented under a letter of credit or if noticed in a documentary collection. Blocked vessels must themselves be physically blocked should they enter U.S. jurisdiction. Freight forwarders and shippers may not charter, book cargo on, or otherwise deal with blocked vessels.

8. The SDN List includes the names of persons identified in Appendix A to Part 560 as persons determined to be the Government of Iran. The SDN List entries for such persons include the identifier ''[IRAN].'' U.S. persons are advised to review 31 CFR part 560 prior to engaging in transactions involving the persons included on the SDN List with the identifier ''[IRAN].'' U.S. persons are further cautioned that persons identified as persons determined to be the Government of Iran also may be designated or blocked pursuant to other sanctions programs administered by OFAC. The SDN List entry for a person listed in Appendix A to Part 560 may include—in addition to the identifier ''[IRAN]''—identifier(s) for the other sanctions program(s) pursuant to which the person is listed on the SDN List. Moreover, the compliance obligations with respect to persons who fall within the definition of the Government of Iran in §560.304 of the Iranian Transactions Regulations, 31 CFR part 560, apply regardless of whether such persons are identified in appendix A to part 560 or the SDN List.

9. Unless otherwise specifically provided, any amendment, modification, or revocation of any entry on the SDN List does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation.

[76 FR 38545, June 30, 2011]

CHAPTER VI—BUREAU OF ENGRAVING AND PRINTING, DEPARTMENT OF THE TREASURY

Part		*Page*
601	Distinctive paper for United States currency and other securities	529
605	Regulations governing conduct in Bureau of Engraving and Printing Buildings and on the grounds of Washington, DC and Fort Worth, Texas	529

PART 601—DISTINCTIVE PAPER FOR UNITED STATES CURRENCY AND OTHER SECURITIES

Sec.
601.1 Notice to the public.
601.2 Description of paper.
601.3 Use of paper.
601.4 Use of paper; interest-bearing securities of the United States.
601.5 Penalty for unauthorized control or possession.

AUTHORITY: 5 U.S.C. 301; 12 U.S.C. 418; 18 U.S.C. 474A.

SOURCE: 61 FR 10895, Mar. 18, 1996, unless otherwise noted.

§ 601.1 Notice to the public.

The Secretary of the Treasury, by authority of law, has adopted a new distinctive paper for use in printing United States currency in addition to the existing distinctive papers for use in printing United States currency and other securities.

§ 601.2 Description of paper.

The paper utilized in the printing of United States currency and public debt issues is cream-white bank note paper which must contain security features prescribed by the Secretary of the Treasury. All currency paper shall contain distinctive fibers, colored red and blue, incorporated in the body of the paper while in the process of manufacture and evenly distributed throughout. In addition to distinctive red and blue fibers, currency paper shall contain, for denominations prescribed by the Secretary of the Treasury, security threads embedded beneath the surface of the paper during the manufacturing process. Security threads shall contain graphics consisting of the designation ''USA'' and the denomination of the currency, expressed in alphabetic or numeric characters. In addition to the security thread, for the denominations prescribed by the Secretary of the Treasury, the paper will bear a watermark identical to the portrait to be printed on the paper.

§ 601.3 Use of paper.

The new distinctive paper shall be used for printing Federal Reserve Notes of the denominations prescribed by the Secretary of the Treasury. The use of the existing distinctive papers, the distinctive features of which consist of distinctive fibers, colored red and blue, incorporated in the body of the paper while in the process of manufacture and evenly distributed throughout, and the security thread containing graphics consisting of the designation ''USA'' and the denomination of the currency, will be continued for printing of any currency denomination prescribed by the Secretary of the Treasury.

§ 601.4 Use of paper; interest-bearing securities of the United States.

The existing distinctive papers shall be used for the printing of interest-bearing securities of the United States, and for any other printing where the use of distinctive paper is indicated.

§ 601.5 Penalty for unauthorized control or possession.

The Secretary of the Treasury hereby gives notice that the new distinctive paper, together with any other distinctive papers heretofore adopted for the printing of paper currency or other obligations or securities of the United States, is and will be subject to the provisions of 18 U.S.C. 474A which provides, in part, that it is against the law to possess any paper, or facsimile thereof, designated by the Secretary of the Treasury for the printing of U.S. currency or any other security of the United States, except with the permission of the Secretary or the authorized official. This crime is punishable by a fine not to exceed five thousand dollars or imprisonment for not more than fifteen years, or both.

PART 605—REGULATIONS GOVERNING CONDUCT IN BUREAU OF ENGRAVING AND PRINTING BUILDINGS AND ON THE GROUNDS OF WASHINGTON, DC AND FORT WORTH, TEXAS

AUTHORITY: 5 U.S.C. 301; Delegation, Administrator, General Services, dated December 3, 1992; Treasury Delegation, Assistant Secretary (Management), dated February 4, 1993.

§ 605.1 Conduct on Bureau of Engraving and Printing property.

(a) *Applicability.* These regulations apply to the Buildings and grounds of the Bureau of Engraving and Printing located in Washington, DC at 14th and C Streets SW., and in Fort Worth, Texas, at 9000 Blue Mound Road, and to all persons entering in or on such property. Unless otherwise stated herein, the Bureau of Engraving and Printing Buildings and grounds shall be referred to in these regulations as the ''property.'' It is the responsibility of the occupant agencies to require observance of the regulations in this part by their employees.

(b) *Limited access.* (1) The property shall, in general, be closed to the public. Except as specified in this subsection, access is limited to Bureau of Engraving and Printing (BEP) employees and those individuals having official business with the BEP.

(2) Public tours of the facilities are available during authorized hours, or during such other times as the Director may prescribe.

(3) Limited areas of the premises may be open to individuals, authorized by the Director, by prior arrangement on infrequent occasions that are announced in advance.

(4) All persons entering the property, except for the public areas specified in paragraph (b)(2) of this section, may be required to present suitable identification and may be required to sign entry logs or registers.

(5) All persons entering the property may be subjected to screening by weapons detection devices and shall submit to such screening upon request as a condition of entrance.

(6) All persons entering the property may be subjected to inspections of their personal handbags, briefcases, and other handheld articles.

(7) In the event of emergency situations, access to the property may be more tightly controlled and restricted.

(8) Any entrance onto the property without official permission is prohibited.

(c) *Recording presence.* All persons entering the property may be monitored by means of closed circuit television. Most internal areas of the property, especially production areas, are continuously monitored by closed circuit television. Any video image from the closed circuit television systems may be recorded for later use as needed.

(d) *Preservation of property.* It shall be unlawful for any person without proper authority to willfully destroy, damage, deface, or remove property or any part thereof or any furnishings therein.

(e) *Compliance with signs and directions.* Persons in and on the property shall comply with the instructions of BEP Special Police, other authorized officials, and posted signs or notices.

(f) *Nuisances.* The use of loud, abusive, or profane language, unwarranted loitering, unauthorized assembly, the creation of any hazard to persons or property, improper disposal of rubbish, spitting, prurient prying, the commission of any obscene or indecent act, or any other disorderly conduct on the property is prohibited. The throwing of any articles of any kind in, upon, or from the property and climbing upon any part thereof is prohibited.

(g) *Gambling.* (1) Participating in games for money or other property, the operation of gambling devices, the conduct of a lottery or pool, the selling or purchasing of numbers, tickets, or any other gambling in or on the property is prohibited.

(2) Possession in or on the property of any numbers slip or ticket, record, notation, receipt or other writing of a type ordinarily used in any illegal form of gambling such as a tip sheet or dream book, unless explained to the satisfaction of the Director or his delegate, shall be prima facie evidence that there is participation in an illegal form of gambling in or on such property.

(h) *Intoxicating beverages, narcotics, and drugs.* Entering or being on the property, or operating a motor vehicle thereon, by a person under the influence of intoxicating beverages, narcotics, hallucinogenic or dangerous drugs, or marijuana, or the consumption of such beverages or the use of such drugs or marijuana in or on the property is prohibited. Intoxicants, nonprescription narcotics, and other controlled substances (21 CFR part 1308) are prohibited on the property.

(i) *Soliciting, vending, debt collection, and distribution of handbills.* The unauthorized soliciting of alms and contributions, the commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, or the collecting of private debts other than as provided by law, in or on the property is prohibited. This rule does not apply to BEP concessions or notices posted by authorized employees on the bulletin boards. Distribution of material such as pamphlets, handbills, and flyers is prohibited without prior approval from the Director or his delegate.

(j) *Photographs.* The taking of photographs on the property is prohibited, without the written permission of the Director. Title 18 United States Code, Section 474 provides, in part, that whoever photographs any obligation or other security of the United States, or any part thereof, shall be fined not more than $5,000 or imprisoned not more than 15 years, or both.

(k) *Dogs and other animals.* Dogs and other animals, except seeing-eye dogs, shall not be brought upon the property for other than official purposes.

(l) *Vehicular and pedestrian traffic.* (1) Drivers of all vehicles in or on the property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of BEP Special Police and all posted traffic signs.

(2) The blocking of entrances, driveways, walks, loading platforms, fire hydrants, or standpipes in or on the property is prohibited.

(3) Parking in or on the property is not allowed without a permit or specific authority. Parking without authority, parking in unauthorized locations or in locations reserved for other persons or continuously in excess of 8 hours without permission, or contrary to the direction of BEP Special Police or of posted signs is prohibited.

(4) This subsection may be supplemented from time to time, with the approval of the Director or his delegate, by the issuance and posting of such specific traffic directives as may be required and when so issued and posted such directives shall have the same force and effect as if made a part hereof.

(m) *Weapons and explosives.* No person while on the property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes. According to 18 United States Code, Section 930, ''dangerous weapon'' means ''a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or readily capable of, causing death or serious bodily injury . . .''

(n) *Penalties and other law.* (1) Violations of this part shall be punishable by a fine of not more than $50 or imprisonment of not more than 30 days, or both in accordance with 40 United States Code, Section 318c.

(2) Violations of 18 United States Code, Section 930 (dangerous weapon clause) shall be punishable by a fine of $100,000 or imprisonment for not more than a year, or both, unless there is intent to commit a crime with the weapon, in which case the punishment shall be a fine of $250,000 or imprisonment for not more than five years, or both.

(3) Nothing contained in this part shall be construed to abrogate any other Federal, District of Columbia, or Texas law or regulations, or any Tarrant County ordinance applicable to the property.

[59 FR 41978, Aug. 16, 1994]

CHAPTER VII—FEDERAL LAW ENFORCEMENT TRAINING CENTER, DEPARTMENT OF THE TREASURY

Part		*Page*
700	Regulations governing conduct in or on the Federal Law Enforcement Training Center (FLETC) buildings and grounds	535

PART 700—REGULATIONS GOVERNING CONDUCT IN OR ON THE FEDERAL LAW ENFORCEMENT TRAINING CENTER (FLETC) BUILDINGS AND GROUNDS

Sec.
700.2 Applicability.
700.3 Recording presence.
700.4 Preservation of property.
700.5 Compliance with signs and directions.
700.6 Nuisances.
700.7 Alcoholic beverages, narcotics, and drugs.
700.8 Soliciting, vending, debt collection, and distribution of handbills.
700.9 Photographs for news, advertising, or commercial purposes.
700.10 Vehicular and pedestrian traffic.
700.11 Weapons and explosives.
700.12 Authority to search persons and vehicles.
700.13 Nondiscrimination.
700.14 Smoking.

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 321; Treasury Department Order No. 140–01, dated September 20, 1994; 41 FR 5869, dated Feb. 10, 1996.

SOURCE: 63 FR 39730, July 24, 1998, unless otherwise noted.

§ 700.2 Applicability.

The regulations in this part apply to the buildings and surrounding property of the FLETC, Glynco, Georgia; Artesia, New Mexico; FLECT's Washington Office; any other temporary site FLETC may occupy; and to all persons entering such buildings or property.

§ 700.3 Recording presence.

Except as otherwise ordered, the property shall be closed to the general public. Admission to the property will be limited to authorized individuals who will be required to obtain a visitor's pass and/or display identification documents, in accordance with FLETC policy.

§ 700.4 Preservation of property.

It shall be unlawful for any person without proper authority to willfully destroy, damage, deface, or remove property (including Federal records) or any part thereof or any furnishing therein.

§ 700.5 Compliance with signs and directions.

Persons in and on the property shall comply with the instructions of uniformed FLETC security officers, other authorized officials, official signs of a prohibitory or directory nature, and all applicable statutes and regulations.

§ 700.6 Nuisances.

The use of loud, abusive, or profane language, except as part of an authorized practical training exercise, unwarranted loitering, unauthorized assembly, the creation of any hazard to persons or things, improper disposal of rubbish, or the commission of any disorderly conduct on the property is prohibited. Prohibited actions in the preceding sentence are limited to those actions which impede, obstruct, or otherwise interfere with the Government's business which includes, among other things, the maintenance of the facility, protection of persons and property, and the smooth administration of academic activities and supporting services. The entry, without specific permission, upon any part of the property to which authorized visitors do not customarily have access, is prohibited.

§ 700.7 Alcoholic beverages, narcotics, and drugs.

Entering or being on the property, or operating a motor vehicle thereon, by a person under the influence of alcoholic beverages, narcotics, hallucinogenic or dangerous drugs, or marijuana is prohibited. The possession or use of any unlawful drug or substance contrary to the provisions of Federal, State, or local law in or on the property is prohibited.

§ 700.8 Soliciting, vending, debt collection and distribution of handbills.

The unauthorized soliciting for charity and contributions, commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, or the collecting of private debts, other than legal service of process, in or on the property, is prohibited. This prohibition does not apply to Federal Law Enforcement Training Center concessions or notices posted by authorized employees on the bulletin boards. Distribution of material such

as pamphlets, handbills, and flyers is prohibited without prior approval of the Director.

§ 700.9 Photographs for news, advertising, or commercial purposes.

Photographs for news, advertising, or commercial purposes may be taken on the property only with the prior permission of the Director. Taking photographs of a student is prohibited without the consent of the student.

§ 700.10 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles on the property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of security officers and all posted traffic signs. All persons on the property must comply with all applicable Federal, State, and local laws. All drivers operating a vehicle on property roadways must possess a valid driver's license.

(b) The blocking of entrances, driveways, walks, loading platforms, or firehydrants in or on the property is prohibited.

(c) Parking is permitted only in authorized locations.

(d) This section may be supplemented from time to time by the Director by the issuance and posting of traffic directives. When so issued and posted, such directives shall have the same force and effect as if made a part hereof.

§ 700.11 Weapons and explosives.

No person, while on the property, shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for authorized training or official purposes, in accordance with FLETC regulations.

§ 700.12 Authority to search persons and vehicles.

Persons and vehicles entering upon FLETC facilities are subject to search by authorized security officers.

§ 700.13 Nondiscrimination.

(a) No one entering upon FLETC property shall discriminate against or harass any other person on such property, on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability, Sexual harassment is a form of sex discrimination and is expressly prohibited.

(b) Appropriate action will be taken against any person who violates any discrimination prohibition contained in paragraph (a) of this section. However, this section does not create any legal rights enforceable against the Department of the Treasury, its officers, or employees, or any other person. Although this section does not create any enforceable rights, actions in violation of the section may still result in civil or criminal action in accordance with applicable laws.

§ 700.14 Smoking.

Smoking of cigarettes, cigars and pipes is prohibited in all FLETC buildings and vehicles.

CHAPTER VIII—OFFICE OF INVESTMENT SECURITY, DEPARTMENT OF THE TREASURY

Part		*Page*
800	Regulations pertaining to mergers, acquisitions, and takeovers by foreign persons	539

PART 800—REGULATIONS PERTAINING TO MERGERS, ACQUISITIONS, AND TAKEOVERS BY FOREIGN PERSONS

Subpart A—General

Sec.
800.101 Scope.
800.102 Effect on other law.
800.103 Applicability rule; prospective application of certain provisions.
800.104 Transactions or devices for avoidance.

Subpart B—Definitions

800.201 Business day.
800.202 Certification.
800.203 Committee; Chairperson of the Committee; Staff Chairperson.
800.204 Control.
800.205 Conversion.
800.206 Convertible voting instrument.
800.207 Covered transaction.
800.208 Critical infrastructure.
800.209 Critical technologies.
800.210 Effective date.
800.211 Entity.
800.212 Foreign entity.
800.213 Foreign government.
800.214 Foreign government-controlled transaction.
800.215 Foreign national.
800.216 Foreign person.
800.217 Hold.
800.218 Lead agency.
800.219 Parent.
800.220 Party or parties to a transaction.
800.221 Person.
800.222 Section 721.
800.223 Solely for the purpose of passive investment.
800.224 Transaction.
800.225 United States.
800.226 U.S. business.
800.227 U.S. national.
800.228 Voting interest.

Subpart C—Coverage

800.301 Transactions that are covered transactions.
800.302 Transactions that are not covered transactions.
800.303 Lending transactions.
800.304 Timing rule for convertible voting instruments.

Subpart D—Notice

800.401 Procedures for notice.
800.402 Contents of voluntary notice.
800.403 Deferral, rejection, or disposition of certain voluntary notices.

Subpart E—Committee Procedures: Review and Investigation

800.501 General.
800.502 Beginning of thirty-day review period.
800.503 Determination of whether to undertake an investigation.
800.504 Determination not to undertake an investigation.
800.505 Commencement of investigation.
800.506 Completion or termination of investigation and report to the President.
800.507 Withdrawal of notice.
800.508 Role of the Secretary of Labor.
800.509 Materiality.

Subpart F—Finality of Action

800.601 Finality of actions under section 721.

Subpart G—Provision and Handling of Information

800.701 Obligation of parties to provide information.
800.702 Confidentiality.

Subpart H—Penalties

800.801 Penalties.

AUTHORITY: 50 U.S.C. App. 2170; E.O. 11858, as amended, 73 FR 4677.

SOURCE: 73 FR 70716, Nov. 21, 2008, unless otherwise noted.

Subpart A—General

§ 800.101 Scope.

The regulations in this part implement section 721 of title VII of the Defense Production Act of 1950 (50 U.S.C. App. 2170), as amended, hereinafter referred to as ''section 721.'' The definitions in this part are applicable to section 721 and these regulations. The principal purpose of section 721 is to authorize the President to suspend or prohibit any covered transaction when, in the President's judgment, there is credible evidence to believe that the foreign person exercising control over a U.S. business might take action that threatens to impair the national security, and when provisions of law other than section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security in the matter before the President. It is also a purpose of section 721

to authorize the Committee to mitigate any threat to the national security of the United States that arises as a result of a covered transaction.

§ 800.102 Effect on other law.

Nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of federal law, including the International Emergency Economic Powers Act, or any other authority of the President or the Congress under the Constitution of the United States.

§ 800.103 Applicability rule; prospective application of certain provisions.

(a) Except as provided in paragraph (b) of this section and otherwise in this part, the regulations in this part apply from the effective date (as defined in Section 800.210).

(b) Sections 800.204 (Control), 800.205 (Conversion), 800.206 (Convertible voting instrument), 800.211 (Entity), 800.212 (Foreign entity), 800.216 (Foreign person), 800.220 (Party or parties to a transaction), 800.223 (Solely for the purpose of passive investment), 800.224 (Transaction), 800.226 (U.S. business), and 800.228 (Voting interest), and the regulations in subpart C (Coverage) do not apply to any transaction for which the following has occurred before the effective date, in which case corresponding provisions of the regulations in this part that were in effect the day before the effective date will apply:

(1) The parties to the transaction have executed a written agreement or other document establishing the material terms of the transaction;

(2) A party has made a public offer to shareholders to buy shares of a U.S. business;

(3) A shareholder has solicited proxies in connection with an election of the board of directors of a U.S. business or has requested the conversion of convertible voting securities; or

(4) The parties have, in the Committee's view, otherwise made a commitment to engage in a transaction.

NOTE TO § 800.103: See subpart H of this part for specific applicability rules pertaining to that subpart.

§ 800.104 Transactions or devices for avoidance.

Any transaction or other device entered into or employed for the purpose of avoiding section 721 shall be disregarded, and section 721 and the regulations in this part shall be applied to the substance of the transaction.

Example. Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards avoiding possible application of section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a U.S. business. That transaction is subject to section 721.

Subpart B—Definitions

§ 800.201 Business day.

The term *business day* means Monday through Friday, except the legal public holidays specified in 5 U.S.C. 6103 or any other day declared to be a holiday by federal statute or executive order.

§ 800.202 Certification.

(a) The term *certification* means a written statement signed by the chief executive officer or other duly authorized designee of a party to a transaction filing a notice or information, certifying that the notice or information filed:

(1) Fully complies with the requirements of section 721, the regulations in this part, and any agreement or condition entered into with the Committee or any member of the Committee, and

(2) Is accurate and complete in all material respects, as it relates to:

(i) The transaction, and

(ii) The party providing the certification, including its parents, subsidiaries, and any other related entities described in the notice or information.

(b) For purposes of this section, a *duly authorized designee* is:

(1) In the case of a partnership, any general partner thereof;

(2) In the case of a corporation, any officer or director thereof;

(3) In the case of any entity lacking officers, directors, or partners, any individual within the organization exercising executive functions similar to those of an officer or director of a corporation or a general partner of a partnership; and

(4) In the case of an individual, such individual or his or her legal representative.

(c) In each case described in paragraphs (b)(1) through (b)(4) of this section, such designee must possess actual authority to make the certification on behalf of the party to the transaction filing a notice or information.

NOTE TO § 800.202: A sample certification may be found at the Committee's section of the Department of the Treasury Web site at *http://www.treas.gov/offices/international-affairs/cfius/index.shtml*.

§ 800.203 Committee; Chairperson of the Committee; Staff Chairperson.

The term *Committee* means the Committee on Foreign Investment in the United States. The *Chairperson of the Committee* is the Secretary of the Treasury. The *Staff Chairperson* of the Committee is the Department of the Treasury official so designated by the Secretary of the Treasury or by the Secretary's designee.

§ 800.204 Control.

(a) The term *control* means the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the following matters, or any other similarly important matters affecting an entity:

(1) The sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business;

(2) The reorganization, merger, or dissolution of the entity;

(3) The closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the entity;

(4) Major expenditures or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity;

(5) The selection of new business lines or ventures that the entity will pursue;

(6) The entry into, termination, or non-fulfillment by the entity of significant contracts;

(7) The policies or procedures of the entity governing the treatment of nonpublic technical, financial, or other proprietary information of the entity;

(8) The appointment or dismissal of officers or senior managers;

(9) The appointment or dismissal of employees with access to sensitive technology or classified U.S. Government information; or

(10) The amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of the entity with respect to the matters described in paragraphs (a)(1) through (9) of this section.

(b) In examining questions of control in situations where more than one foreign person has an ownership interest in an entity, consideration will be given to factors such as whether the foreign persons are related or have formal or informal arrangements to act in concert, whether they are agencies or instrumentalities of the national or subnational governments of a single foreign state, and whether a given foreign person and another person that has an ownership interest in the entity are both controlled by any of the national or subnational governments of a single foreign state.

(c) The following minority shareholder protections shall not in themselves be deemed to confer control over an entity:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of an entity or a voluntary filing for bankruptcy or liquidation;

(2) The power to prevent an entity from entering into contracts with majority investors or their affiliates;

(3) The power to prevent an entity from guaranteeing the obligations of majority investors or their affiliates;

(4) The power to purchase an additional interest in an entity to prevent the dilution of an investor's pro rata interest in that entity in the event that the entity issues additional instruments conveying interests in the entity;

(5) The power to prevent the change of existing legal rights or preferences of the particular class of stock held by minority investors, as provided in the relevant corporate documents governing such shares; and

(6) The power to prevent the amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of an entity with respect to the matters described in paragraphs (c)(1) through (5) of this section.

(d) The Committee will consider, on a case-by-case basis, whether minority shareholder protections other than those listed in paragraph (c) of this section do not confer control over an entity.

(e) Any transaction in which a foreign person acquires an additional interest in a U.S. business that was previously the subject of a covered transaction for which the Committee concluded all action under section 721 shall not be deemed to be a transaction that could result in foreign control over that U.S. business (i.e., it is not a covered transaction). However, if a foreign person that did not acquire control of the U.S. business in the prior transaction is a party to the later transaction, the later transaction may be a covered transaction.

Example 1. Corporation A is a U.S. business. A U.S. investor owns 50 percent of the voting interest in Corporation A, and the remaining voting interest is owned in equal shares by five unrelated foreign investors. The foreign investors jointly financed their investment in Corporation A and vote as a single block on matters affecting Corporation A. The foreign investors have an informal arrangement to act in concert with regard to Corporation A, and, as a result, the foreign investors control Corporation A.

Example 2. Same facts as in Example 1 with regard to the composition of Corporation A's shareholders. The foreign investors in Corporation A have no contractual or other commitments to act in concert, and have no informal arrangements to do so. Assuming no other relevant facts, the foreign investors do not control Corporation A.

Example 3. Corporation A, a foreign person, is a private equity fund that routinely acquires substantial interests in companies and manages them for a period of time. Corporation B is a U.S. business. In addition to its acquisition of seven percent of Corporation B's voting shares, Corporation A acquires the right to terminate significant contracts of Corporation B. Corporation A controls Corporation B.

Example 4. Corporation A, a foreign person, acquires a nine percent interest in the shares of Corporation B, a U.S. business. As part of the transaction, Corporation A also acquires certain veto rights that determine important matters affecting Corporation B, including the right to veto the dismissal of senior executives of Corporation B. Corporation A controls Corporation B.

Example 5. Corporation A, a foreign person, acquires a thirteen percent interest in the shares of Corporation B, a U.S. business, and the right to appoint one member of Corporation B's seven-member Board of Directors. Corporation A receives minority shareholder protections listed in § 800.204(c), but receives no other positive or negative rights with respect to Corporation B. Assuming no other relevant facts, Corporation A does not control Corporation B.

Example 6. Corporation A, a foreign person, acquires a twenty percent interest in the shares of Corporation B, a U.S. business. Corporation A has negotiated an irrevocable passivity agreement that completely precludes it from controlling Corporation B. Corporation A does, however, receive the right to prevent Corporation B from entering into contracts with majority investors or their affiliates and to prevent Corporation B from guaranteeing the obligations of majority investors or their affiliates. Assuming no other relevant facts, Corporation A does not control Corporation B.

Example 7. Corporation A, a foreign person, acquires a 40 percent interest and important rights in Corporation B, a U.S. business. The documentation pertaining to the transaction gives no indication that Corporation A's interest in Corporation B may increase at a later date. Following its review of the transaction, the Committee informs the parties that the notified transaction is a covered transaction, and concludes action under section 721. Three years later, Corporation A acquires the remainder of the voting interest in Corporation B. Assuming no other relevant facts, because the Committee concluded all action with respect to Corporation A's earlier investment in the same U.S. business, and because no other foreign person is a party to this subsequent transaction, this subsequent transaction is not a covered transaction.

Example 8. Limited Partnership A comprises two limited partners, each of which holds 49 percent of the interest in the partnership, and a general partner, which holds two percent of the interest. The general partner has sole authority to determine, direct, and decide important matters affecting the partnership and a fund operated by the partnership. The general partner alone controls Limited Partnership A and the fund.

Example 9. Same facts as in Example 8, except that each of the limited partners has the authority to veto major investments proposed by the general partner and to choose the fund's representatives on the boards of the fund's portfolio companies. The general partner and the limited partners each have control over Limited Partnership A and the fund.

NOTE TO § 800.204: See § 800.302(b) regarding the Committee's treatment of transactions in which a foreign person holds or acquires ten percent or less of the outstanding voting interest in a U.S. business solely for the purpose of passive investment.

§ 800.205 Conversion.

The term *conversion* means the exercise of a right inherent in the ownership or holding of particular financial instruments to exchange any such instruments for voting instruments.

§ 800.206 Convertible voting instrument.

The term *convertible voting instrument* means a financial instrument that currently does not entitle its owner or holder to voting rights but is convertible into a voting instrument.

§ 800.207 Covered transaction.

The term *covered transaction* means any transaction that is proposed or pending after August 23, 1988, by or with any foreign person, which could result in control of a U.S. business by a foreign person.

§ 800.208 Critical infrastructure.

The term *critical infrastructure* means, in the context of a particular covered transaction, a system or asset, whether physical or virtual, so vital to the United States that the incapacity or destruction of the particular system or asset of the entity over which control is acquired pursuant to that covered transaction would have a debilitating impact on national security.

§ 800.209 Critical technologies.

The term *critical technologies* means:

(a) Defense articles or defense services covered by the United States Munitions List (USML), which is set forth in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130);

(b) Those items specified on the Commerce Control List (CCL) set forth in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 CFR parts 730–774) that are controlled pursuant to multilateral regimes (i.e., for reasons of national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology), as well as those that are controlled for reasons of regional stability or surreptitious listening;

(c) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology specified in the Assistance to Foreign Atomic Energy Activities regulations (10 CFR part 810), and nuclear facilities, equipment, and material specified in the Export and Import of Nuclear Equipment and Material regulations (10 CFR part 110); and

(d) Select agents and toxins specified in the Select Agents and Toxins regulations (7 CFR part 331, 9 CFR part 121, and 42 CFR part 73).

§ 800.210 Effective date.

The term *effective date* means December 22, 2008.

§ 800.211 Entity.

The term *entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization (whether or not organized under the laws of any State or foreign state); assets (whether or not organized as a separate legal entity) operated by any one of the foregoing as a business undertaking in a particular location or for particular products or services; and any government (including a foreign national or subnational government, the United States Government, a subnational government within the United

States, and any of their respective departments, agencies, or instrumentalities). (See examples following §§ 800.301(c) and 800.302(c).)

§ 800.212 Foreign entity.

(a) The term *foreign entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(b) Notwithstanding paragraph (a) of this section, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity.

§ 800.213 Foreign government.

The term *foreign government* means any government or body exercising governmental functions, other than the United States Government or a subnational government of the United States. The term includes, but is not limited to, national and subnational governments, including their respective departments, agencies, and instrumentalities.

§ 800.214 Foreign government-controlled transaction.

The term *foreign government-controlled transaction* means any covered transaction that could result in control of a U.S. business by a foreign government or a person controlled by or acting on behalf of a foreign government.

§ 800.215 Foreign national.

The term *foreign national* means any individual other than a U.S. national.

§ 800.216 Foreign person.

The term *foreign person* means:

(a) Any foreign national, foreign government, or foreign entity; or

(b) Any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.

Example 1. Corporation A is organized under the laws of a foreign state and is only engaged in business outside the United States. All of its shares are held by Corporation X, which controls Corporation A. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Assuming no other relevant facts, Corporation A, although organized and only operating outside the United States, is not a foreign person.

Example 2. Same facts as in the first sentence of Example 1. The government of the foreign state under whose laws Corporation A is organized exercises control over Corporation A through government interveners. Corporation A is a foreign person.

Example 3. Corporation A is organized in the United States, is engaged in interstate commerce in the United States, and is controlled by Corporation X. Corporation X is organized under the laws of a foreign state, its principal place of business is located outside the United States, and 50 percent of its shares are held by foreign nationals and 50 percent of its shares are held by U.S. nationals. Both Corporation A and Corporation X are foreign persons. Corporation A is also a U.S. business.

Example 4. Corporation A is organized under the laws of a foreign state and is owned and controlled by a foreign national. A branch of Corporation A engages in interstate commerce in the United States. Corporation A (including its branch) is a foreign person. The branch is also a U.S. business.

Example 5. Corporation A is a corporation organized under the laws of a foreign state and its principal place of business is located outside the United States. Forty-five percent of the voting interest in Corporation A is owned in equal shares by numerous unrelated foreign investors, none of whom has control. The foreign investors have no formal or informal arrangement to act in concert with regard to Corporation A with any other holder of voting interest in Corporation A. Corporation A demonstrates that the remainder of the voting interest in Corporation A is held by U.S. nationals. Assuming no other relevant facts, Corporation A is not a foreign person.

Example 6. Same facts as Example 5, except that one of the foreign investors controls Corporation A. Assuming no other relevant facts, Corporation A is not a foreign entity pursuant to § 800.212(b), but it is a foreign person because it is controlled by a foreign person.

§ 800.217 Hold.

The terms *hold(s)* and *holding* mean legal or beneficial ownership, whether direct or indirect, whether through fiduciaries, agents, or other means.

§ 800.218 Lead agency.

The term *lead agency* means an agency designated by the Chairperson of the Committee to have primary responsibility, on behalf of the Committee, for the specific activity for which the Chairperson designates it as a lead agency, including all or a portion of a review, an investigation, or the negotiation or monitoring of a mitigation agreement or condition.

§ 800.219 Parent.

(a) The term *parent* means a person who or which directly or indirectly:

(1) Holds or will hold at least 50 percent of the outstanding voting interest in an entity; or

(2) Holds or will hold the right to at least 50 percent of the profits of an entity, or has or will have the right in the event of the dissolution to at least 50 percent of the assets of that entity.

(b) Any entity that meets the conditions of paragraphs (a)(1) or (2) of this section with respect to another entity (i.e., the intermediate parent) is also a parent of any other entity of which the intermediate parent is a parent.

Example 1. Corporation P holds 50 percent of the voting interest in Corporations R and S. Corporation R holds 40 percent of the voting interest in Corporation X; Corporation S holds 50 percent of the voting interest in Corporation Y, which in turn holds 50 percent of the voting interest in Corporation Z. Corporation P is a parent of Corporations R, S, Y, and Z, but not of Corporation X. Corporation S is a parent of Corporation Y and Z, and Corporation Y is a parent of Corporation Z.

Example 2. Corporation A holds warrants which when exercised will entitle it to vote 50 percent of the outstanding shares of Corporation B. Corporation A is a parent of Corporation B.

§ 800.220 Party or parties to a transaction.

The terms *party to a transaction* and *parties to a transaction* mean:

(a) In the case of an acquisition of an ownership interest in an entity, the person acquiring the ownership interest, and the person from which such ownership interest is acquired, without regard to any person providing brokerage or underwriting services for the transaction;

(b) In the case of a merger, the surviving entity, and the entity or entities that are merged into that entity as a result of the transaction;

(c) In the case of a consolidation, the entities being consolidated, and the new consolidated entity;

(d) In the case of a proxy solicitation, the person soliciting proxies, and the person who issued the voting interest;

(e) In the case of the acquisition or conversion of convertible voting instruments, the issuer and the person holding the convertible voting instruments; and

(f) In the case of any other type of transaction, any person who is in a role comparable to that of a person described in paragraphs (a) through (e) of this section.

§ 800.221 Person.

The term *person* means any individual or entity.

§ 800.222 Section 721.

The term *section 721* means section 721 of title VII of the Defense Production Act of 1950, 50 U.S.C. App. 2170.

§ 800.223 Solely for the purpose of passive investment.

Ownership interests are held or acquired *solely for the purpose of passive investment* if the person holding or acquiring such interests does not plan or intend to exercise control, does not possess or develop any purpose other than passive investment, and does not take any action inconsistent with holding or acquiring such interests solely for the purpose of passive investment. (See § 800.302(b).)

Example. Corporation A, a foreign person, acquires a voting interest in Corporation B, a U.S. business. In addition to the voting interest, Corporation A negotiates the right to appoint a member of Corporation B's Board of Directors. The acquisition by Corporation A of a voting interest in Corporation B is not solely for the purpose of passive investment.

§ 800.224 Transaction.

The term *transaction* means a proposed or completed merger, acquisition, or takeover. It includes:

(a) The acquisition of an ownership interest in an entity.

(b) The acquisition or conversion of convertible voting instruments of an entity.

(c) The acquisition of proxies from holders of a voting interest in an entity.

(d) A merger or consolidation.

(e) The formation of a joint venture.

(f) A long-term lease under which a lessee makes substantially all business decisions concerning the operation of a leased entity, as if it were the owner.

NOTE TO § 800.224(b): See § 800.304 regarding factors the Committee will consider in determining whether to include the rights to be acquired by a foreign person upon the conversion of convertible voting instruments as part of the Committee's assessment of whether a transaction that involves such instruments is a covered transaction.

Example. Corporation A, a foreign person, signs a concession agreement to operate the toll road business of Corporation B, a U.S. business, for 99 years. Corporation B, however, is required under the agreement to perform safety and security functions with respect to the business and to monitor compliance by Corporation A with the operating requirements of the agreement on an ongoing basis. Corporation B may terminate the agreement or impose other penalties for breach of these operating requirements. Assuming no other relevant facts, this is not a transaction.

§ 800.225 United States.

The term *United States* or *U.S.* means the United States of America, the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, or any subdivision of the foregoing, and includes the Outer Continental Shelf, as defined in 43 U.S.C. 1331(a). For purposes of these regulations and their examples, an entity organized under the laws of the United States of America, one of the States, the District of Columbia, or a commonwealth, territory, dependency, or possession of the United States is an entity organized ''in the United States.''

§ 800.226 U.S. business.

The term *U.S. business* means any entity, irrespective of the nationality of the persons that control it, engaged in interstate commerce in the United States, but only to the extent of its activities in interstate commerce.

Example 1. Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. It engages in interstate commerce in the United States through a branch or subsidiary. Its branch or subsidiary is a U.S. business. Corporation A and its branch or subsidiary is each also a foreign person should any of them engage in a transaction involving a U.S. business.

Example 2. Same facts as in the first sentence of Example 1. Corporation A, however, does not have a branch office, subsidiary, or fixed place of business in the United States. It exports and licenses technology to an unrelated company in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

Example 3. Corporation A, a company organized under the laws of a foreign state, is wholly owned and controlled by Corporation X. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Corporation A does not have a branch office, subsidiary, or fixed place of business in the United States. It exports goods to Corporation X and to unrelated companies in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

§ 800.227 U.S. national.

The term *U.S. national* means a citizen of the United States or an individual who, although not a citizen of the United States, owes permanent allegiance to the United States.

§ 800.228 Voting interest.

The term *voting interest* means any interest in an entity that entitles the owner or holder of that interest to vote for the election of directors of the entity (or, with respect to unincorporated entities, individuals exercising similar functions) or to vote on other matters affecting the entity.

Subpart C—Coverage

§ 800.301 Transactions that are covered transactions.

Transactions that are covered transactions include, without limitation:

(a) A transaction which, irrespective of the actual arrangements for control provided for in the terms of the transaction, results or could result in control of a U.S. business by a foreign person.

Example 1. Corporation A, a foreign person, proposes to purchase all of the shares of Corporation X, which is a U.S. business. As the sole owner, Corporation A will have the right to elect directors and appoint other primary officers of Corporation X, and those directors will have the right to make decisions about the closing and relocation of particular production facilities and the termination of significant contracts. The directors also will have the right to propose to Corporation A, the sole shareholder, the dissolution of Corporation X and the sale of its principal assets. The proposed transaction is a covered transaction.

Example 2. Same facts as in Example 1, except that Corporation A plans to retain the existing directors of Corporation X, all of whom are U.S. nationals. Although Corporation A may choose not to exercise its power to elect new directors for Corporation X, Corporation A nevertheless will have that exercisable power. The proposed transaction is a covered transaction.

Example 3. Corporation A, a foreign person, proposes to purchase 50 percent of the shares in Corporation X, a U.S. business, from Corporation B, also a U.S. business. Corporation B would retain the other 50 percent of the shares in Corporation X, and Corporation A and Corporation B would contractually agree that Corporation A would not exercise its voting and other rights for ten years. The proposed transaction is a covered transaction.

(b) A transaction in which a foreign person conveys its control of a U.S. business to another foreign person.

Example. Corporation X is a U.S. business, but is wholly owned and controlled by Corporation Y, a foreign person. Corporation Z, also a foreign person, but not related to Corporation Y, seeks to acquire Corporation X from Corporation Y. The proposed transaction is a covered transaction because it could result in control of Corporation X, a U.S. business, by another foreign person, Corporation Z.

(c) A transaction that results or could result in control by a foreign person of any part of an entity or of assets, if such part of an entity or assets constitutes a U.S. business. (See § 800.302(c).)

Example 1. Corporation X, a foreign person, has a branch office located in the United States. Corporation A, a foreign person, proposes to buy that branch office. The proposed transaction is a covered transaction.

Example 2. Corporation A, a foreign person, buys a branch office located entirely outside the United States of Corporation Y, which is incorporated in the United States. Assuming no other relevant facts, the branch office of Corporation Y is not a U.S. business, and the transaction is not a covered transaction.

Example 3. Corporation A, a foreign person, makes a start-up, or ''greenfield,'' investment in the United States. That investment involves such activities as separately arranging for the financing of and the construction of a plant to make a new product, buying supplies and inputs, hiring personnel, and purchasing the necessary technology. The investment may involve the acquisition of shares in a newly incorporated subsidiary. Assuming no other relevant facts, Corporation A will not have acquired a U.S. business, and its greenfield investment is not a covered transaction.

Example 4. Corporation A, a foreign person, purchases substantially all of the assets of Corporation B. Corporation B, which is incorporated in the United States, was in the business of producing industrial equipment, but stopped producing and selling such equipment one week before Corporation A purchased substantially all of its assets. At the time of the transaction, Corporation B continued to have employees on its payroll, maintained know-how in producing the industrial equipment it previously produced, and maintained relationships with its prior customers, all of which were transferred to Corporation A. The acquisition of substantially all of the assets of Corporation B by Corporation A is a covered transaction.

Example 5. Corporation A, a foreign person, owns businesses both outside the United States and in the United States. Corporation B, a foreign person, acquires Corporation A. The acquisition of Corporation A by Corporation B is a covered transaction with respect to Corporation A's businesses in the United States.

Example 6. Corporation X, a foreign person, seeks to acquire from Corporation A, a U.S. business, an empty warehouse facility located in the United States. The acquisition would be limited to the physical facility, and would not include customer lists, intellectual property, or other proprietary information, or other intangible assets or the transfer of personnel. Assuming no other relevant facts, the facility is not an entity and therefore not a U.S. business, and the proposed acquisition of the facility is not a covered transaction.

Example 7. Same facts as Example 6, except that, in addition to the proposed acquisition of Corporation A's warehouse facility, Corporation X would acquire the personnel, customer list, equipment, and inventory management software used to operate the facility. Under these facts, Corporation X is acquiring a U.S. business, and the proposed acquisition is a covered transaction.

(d) A joint venture in which the parties enter into a contractual or other

similar arrangement, including an agreement on the establishment of a new entity, but only if one or more of the parties contributes a U.S. business and a foreign person could control that U.S. business by means of the joint venture.

Example 1. Corporation A, a foreign person, and Corporation X, a U.S. business, form a separate corporation, JV Corporation, to which Corporation A contributes only cash and Corporation X contributes a U.S. business. Each owns 50 percent of the shares of JV Corporation and, under the Articles of Incorporation of JV Corporation, both Corporation A and Corporation X have veto power over all of the matters affecting JV Corporation identified under § 800.204(a)(1) through (10), giving them both control over JV Corporation. The formation of JV Corporation is a covered transaction.

Example 2. Corporation A, a foreign person, and Corporation X, a U.S. business, form a separate corporation, JV Corporation, to which Corporation A contributes funding and managerial and technical personnel, while Corporation X contributes certain land and equipment that do not in this example constitute a U.S. business. Corporations A and B each have a 50 percent interest in the joint venture. Assuming no other relevant facts, the formation of JV Corporation is not a covered transaction.

§ 800.302 Transactions that are not covered transactions.

Transactions that are not covered transactions include, without limitation:

(a) A stock split or pro rata stock dividend that does not involve a change in control.

Example. Corporation A, a foreign person, holds 10,000 shares of Corporation B, a U.S. business, constituting ten percent of the stock of Corporation B. Corporation B pays a 2-for-1 stock dividend. As a result of this stock split, Corporation A holds 20,000 shares of Corporation B, still constituting ten percent of the stock of Corporation B. Assuming no other relevant facts, the acquisition of additional shares is not a covered transaction.

(b) A transaction that results in a foreign person holding ten percent or less of the outstanding voting interest in a U.S. business (regardless of the dollar value of the interest so acquired), but only if the transaction is solely for the purpose of passive investment. (See § 800.223.)

Example 1. In an open market purchase solely for the purpose of passive investment, Corporation A, a foreign person, acquires seven percent of the voting securities of Corporation X, which is a U.S. business. Assuming no other relevant facts, the acquisition of the securities is not a covered transaction.

Example 2. Corporation A, a foreign person, acquires nine percent of the voting shares of Corporation X, a U.S. business. Corporation A also negotiates contractual rights that give it the power to control important matters of Corporation X. The acquisition by Corporation A of the voting shares of Corporation X is not solely for the purpose of passive investment and is a covered transaction.

Example 3. Corporation A, a foreign person, acquires five percent of the voting shares in Corporation B, a U.S. business. In addition to the securities, Corporation A obtains the right to appoint one out of eleven seats on Corporation B's Board of Directors. The acquisition by Corporation A of Corporation B's securities is not solely for the purpose of passive investment. Whether the transaction is a covered transaction would depend on whether Corporation A obtains control of Corporation B as a result of the transaction.

(c) An acquisition of any part of an entity or of assets, if such part of an entity or assets do not constitute a U.S. business. (See § 800.301(c).)

Example 1. Corporation A, a foreign person, acquires, from separate U.S. nationals: (a) products held in inventory, (b) land, and (c) machinery for export. Assuming no other relevant facts, Corporation A has not acquired a U.S. business, and this acquisition is not a covered transaction.

Example 2. Corporation X, a U.S. business, produces armored personnel carriers in the United States. Corporation A, a foreign person, seeks to acquire the annual production of those carriers from Corporation X. under a long-term contract. Assuming no other relevant facts, this transaction is not a covered transaction.

Example 3. Same facts as Example 2, except that Corporation X, a U.S. business, has developed important technology in connection with the production of armored personnel carriers. Corporation A seeks to negotiate an agreement under which it would be licensed to manufacture using that technology. Assuming no other relevant facts, neither the proposed acquisition of technology pursuant to that license agreement, nor the actual acquisition, is a covered transaction.

Example 4. Same facts as Example 2, except that Corporation A enters into a contractual arrangement to acquire the entire armored personnel carrier business operations of Corporation X, including production facilities,

customer lists, technology, and staff. This transaction is a covered transaction.

Example 5. Same facts as Example 2, except that Corporation X suspended all activities of its armored personnel carrier business a year ago and currently is in bankruptcy proceedings. Existing equipment provided by Corporation X is being serviced by another company, which purchased the service contracts from Corporation X. The business's production facilities are idle but still in working condition, some of its key former employees have agreed to return if the business is resuscitated, and its technology and customer and vendor lists are still current. Corporation X's personnel carrier business constitutes a U.S. business, and its purchase by Corporation A is a covered transaction.

(d) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business and in the process of underwriting.

(e) An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business.

§ 800.303 Lending transactions.

(a) The extension of a loan or a similar financing arrangement by a foreign person to a U.S. business, regardless of whether accompanied by the creation in the foreign person of a secured interest in securities or other assets of the U.S. business, shall not, by itself, constitute a covered transaction.

(1) The Committee will accept notices concerning a loan or a similar financing arrangement that does not, by itself, constitute a covered transaction only at the time that, because of imminent or actual default or other condition, there is a significant possibility that the foreign person may obtain control of a U.S. business as a result of the default or other condition.

(2) Where the Committee accepts a notice concerning a loan or a similar financing arrangement pursuant to paragraph (a)(1) of this section, and a party to the transaction is a foreign person that makes loans in the ordinary course of business, the Committee will take into account whether the foreign person has made any arrangements to transfer management decisions and day-to-day control over the U.S. business to U.S. nationals for purposes of determining whether such loan or financing arrangement constitutes a covered transaction.

(b) Notwithstanding paragraph (a) of this section, a loan or a similar financing arrangement through which a foreign person acquires an interest in profits of a U.S. business, the right to appoint members of the board of directors of the U.S. business, or other comparable financial or governance rights characteristic of an equity investment but not of a typical loan may constitute a covered transaction.

(c) An acquisition of voting interest or assets of a U.S. business by a foreign person upon default or other condition involving a loan or a similar financing arrangement does not constitute a covered transaction, provided that the loan was made by a syndicate of banks in a loan participation where the foreign lender (or lenders) in the syndicate:

(1) Needs the majority consent of the U.S. participants in the syndicate to take action, and cannot on its own initiate any action vis-à-vis the debtor; or

(2) Does not have a lead role in the syndicate, and is subject to a provision in the loan or financing documents limiting its ability to control the debtor such that control for purposes of § 800.204 could not be acquired.

Example 1. Corporation A, which is a U.S. business, borrows funds from Corporation B, a bank organized under the laws of a foreign state and controlled by foreign persons. As a condition of the loan, Corporation A agrees not to sell or pledge its principal assets to any person. Assuming no other relevant facts, this lending arrangement does not alone constitute a covered transaction.

Example 2. Same facts as in Example 1, except that Corporation A defaults on its loan from Corporation B and seeks bankruptcy protection. Corporation A has no funds with which to satisfy Corporation B's claim, which is greater than the value of Corporation A's principal assets. Corporation B's secured claim constitutes the only secured claim against Corporation A's principal assets, creating a high probability that Corporation B will receive title to Corporation A's principal assets, which constitute a U.S. business. Assuming no other relevant facts, the Committee would accept a notice of the impending bankruptcy court adjudication transferring control of Corporation A's principal assets to Corporation B, which would constitute a covered transaction.

Example 3. Corporation A, a foreign bank, makes a loan to Corporation B, a U.S. business. The loan documentation extends to Corporation A rights in Corporation B that are characteristic of an equity investment but not of a typical loan, including dominant minority representation on the board of directors of Corporation B and the right to be paid dividends by Corporation B. This loan is a covered transaction.

§ 800.304 Timing rule for convertible voting instruments.

(a) For purposes of determining whether to include the rights that a holder of convertible voting instruments will acquire upon conversion of those instruments in the Committee's assessment of whether a notified transaction is a covered transaction, the Committee will consider factors that include:

(1) The imminence of conversion;

(2) Whether conversion depends on factors within the control of the acquiring party; and

(3) Whether the amount of voting interest and the rights that would be acquired upon conversion can be reasonably determined at the time of acquisition.

(b) When the Committee, applying paragraph (a) of this section, determines that the rights that the holder will acquire upon conversion will not be included in the Committee's assessment of whether a notified transaction is a covered transaction, the Committee will disregard the convertible voting instruments for purposes of that transaction except to the extent that they convey immediate rights to the holder with respect to the governance of the entity that issued the instruments.

Example 1. Corporation A, a foreign person, notifies the Committee that it intends to buy common stock and debentures of Corporation X, a U.S. business. By their terms, the debentures are convertible into common stock only upon the occurrence of an event the timing of which is not in the control of Corporation A, and the number of common shares that would be acquired upon conversion cannot now be determined. Assuming no other relevant facts, the Committee will disregard the debentures in the course of its covered transaction analysis at the time that Corporation A acquires the debentures. In the event that it determines that the acquisition of the common stock is not a covered transaction, the Committee will so inform the parties. Once the conversion of the instruments becomes imminent, it may be appropriate for the Committee to consider the rights that would result from the conversion and whether the conversion is a covered transaction. The conversion of those debentures into common stock could be a covered transaction, depending on what percentage of Corporation X's voting securities Corporation A would receive and what powers those securities would confer on Corporation A.

Example 2. Same facts as Example 1, except that the debentures at issue are convertible at the sole discretion of Corporation A after six months, and if converted, would represent a 50 percent interest in Corporation X. The Committee may consider the rights that would result from the conversion as part of its assessment.

Subpart D—Notice

§ 800.401 Procedures for notice.

(a) A party or parties to a proposed or completed transaction may file a voluntary notice of the transaction with the Committee. Voluntary notice to the Committee is filed by sending:

(1) One paper copy of the notice to the Staff Chairperson, Office of Investment Security, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, that includes, in English only, the information set out in § 800.402, including the certification required under paragraph (l) of that section; and

(2) One electronic copy of the same information required in paragraph (a)(1) of this section. See the Committee's section of the Department of the Treasury Web site, at *http://www.treas.gov/offices/international-affairs/cfius/* for electronic submission instructions.

(b) If the Committee determines that a transaction for which no voluntary notice has been filed under paragraph (a) of this section may be a covered transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction to provide to the Committee the information necessary to determine whether the transaction is a covered transaction, and if the Committee determines that the transaction is a covered transaction, to file a notice under paragraph (a) of such covered transaction.

(c) Any member of the Committee, or his designee at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding a transaction for which no voluntary notice has been filed under paragraph (a) of this section if that member has reason to believe that the transaction is a covered transaction and may raise national security considerations. Notices filed under this paragraph are deemed accepted upon their receipt by the Staff Chairperson. No agency notice under this paragraph shall be made with respect to a transaction more than three years after the date of the completion of the transaction, unless the Chairperson of the Committee, in consultation with other members of the Committee, files such an agency notice.

(d) No communications other than those described in paragraphs (a) and (c) of this section shall constitute the filing or submitting of a notice for purposes of section 721.

(e) Upon receipt of the certification required by § 800.402(l) and an electronic copy of a notice filed under paragraph (a) of this section, the Staff Chairperson shall promptly inspect such notice for completeness.

(f) Parties to a transaction are encouraged to consult with the Committee in advance of filing a notice and, in appropriate cases, to file with the Committee a draft notice or other appropriate documents to aid the Committee's understanding of the transaction and to provide an opportunity for the Committee to request additional information to be included in the notice. Any such pre-notice consultation should take place, or any draft notice should be provided, at least five business days before the filing of a voluntary notice. All information and documentary material made available to the Committee pursuant to this paragraph shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 800.702.

(g) Information and other documentary material provided by the parties to the Committee after the filing of a voluntary notice under § 800.401 shall be part of the notice, and shall be subject to the certification requirements of § 800.402(l).

§ 800.402 Contents of voluntary notice.

(a) If the parties to a transaction file a voluntary notice, they shall provide in detail the information set out in this section, which must be accurate and complete with respect to all parties and to the transaction. (See also paragraph (l) of this section and § 800.701(d) regarding certification requirements.)

(b) In the case of a hostile takeover, if fewer than all the parties to a transaction file a voluntary notice, each notifying party shall provide the information set out in this section with respect to itself and, to the extent known or reasonably available to it, with respect to each non-notifying party.

(c) A voluntary notice filed pursuant to § 800.401(a) shall describe or provide, as applicable:

(1) The transaction in question, including:

(i) A summary setting forth the essentials of the transaction, including a statement of the purpose of the transaction, and its scope, both within and outside of the United States;

(ii) The nature of the transaction, for example, whether the acquisition is by merger, consolidation, the purchase of voting interest, or otherwise;

(iii) The name, United States address (if any), Web site address (if any), nationality (for individuals) or place of incorporation or other legal organization (for entities), and address of the principal place of business of each foreign person that is a party to the transaction;

(iv) The name, address, website address (if any), principal place of business, and place of incorporation or other legal organization of the U.S. business that is the subject of the transaction;

(v) The name, address, and nationality (for individuals) or place of incorporation or other legal organization (for entities) of:

(A) The immediate parent, the ultimate parent, and each intermediate parent, if any, of the foreign person that is a party to the transaction;

(B) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and

(C) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent;

(vi) The name, address, website address (if any), and nationality (for individuals) or place of incorporation or other legal organization (for entities) of the person that will ultimately control the U.S. business being acquired;

(vii) The expected date for completion of the transaction, or the date it was completed;

(viii) A good faith approximation of the net value of the interest acquired in the U.S. business in U.S. dollars, as of the date of the notice; and

(ix) The name of any and all financial institutions involved in the transaction, including as advisors, underwriters, or a source of financing for the transaction;

(2) With respect to a transaction structured as an acquisition of assets of a U.S. business, a detailed description of the assets of the U.S. business being acquired, including the approximate value of those assets in U.S. dollars;

(3) With respect to the U.S. business that is the subject of the transaction and any entity of which that U.S. business is a parent (unless that entity is excluded from the scope of the transaction):

(i) Their respective business activities, as, for example, set forth in annual reports, and the product or service categories of each, including an estimate of U.S. market share for such product or service categories and the methodology used to determine market share, and a list of direct competitors for those primary product or service categories;

(ii) The street address (and mailing address, if different) within the United States and website address (if any) of each facility that is manufacturing classified or unclassified products or producing services described in paragraph (c)(3)(v) of this section, their respective Commercial and Government Entity Code (CAGE Code) assigned by the Department of Defense, their Dun and Bradstreet identification (DUNS) number, and their North American Industry Classification System (NAICS) Code, if any;

(iii) Each contract (identified by agency and number) that is currently in effect or was in effect within the past five years with any agency of the United States Government involving any information, technology, or data that is classified under Executive Order 12958, as amended, its estimated final completion date, and the name, office, and telephone number of the contracting official;

(iv) Any other contract (identified by agency and number) that is currently in effect or was in effect within the past three years with any United States Government agency or component with national defense, homeland security, or other national security responsibilities, including law enforcement responsibility as it relates to defense, homeland security, or national security, its estimated final completion date, and the name, office, and telephone number of the contracting official;

(v) Any products or services (including research and development):

(A) That it supplies, directly or indirectly, to any agency of the United States Government, including as a prime contractor or first tier subcontractor, a supplier to any such prime contractor or subcontractor, or, if known by the parties filing the notice, a subcontractor at any tier; and

(B) If known by the parties filing the notice, for which it is a single qualified source (i.e., other acceptable suppliers are readily available to be so qualified) or a sole source (i.e., no other supplier has needed technology, equipment, and manufacturing process capabilities) for any such agencies and whether there are other suppliers in the market that are available to be so qualified;

(vi) Any products or services (including research and development) that:

(A) It supplies to third parties and it knows are rebranded by the purchaser or incorporated into the products of another entity, and the names or brands under which such rebranded products or services are sold; and

(B) In the case of services, it provides on behalf of, or under the name of, another entity, and the name of any such entities;

(vii) For the prior three years—

(A) The number of priority rated contracts or orders under the Defense Priorities and Allocations System (DPAS) regulations (15 CFR part 700) that the U.S. business that is the subject of the transaction has received and the level of priority of such contracts or orders (''DX'' or ''DO''); and

(B) The number of such priority rated contracts or orders that the U.S. business has placed with other entities and the level of priority of such contracts or orders, and the acquiring party's plan to ensure that any new entity formed at the completion of the notified transaction (or the U.S. business, if no new entity is formed) complies with the DPAS regulations; and

(viii) A description and copy of the cyber security plan, if any, that will be used to protect against cyber attacks on the operation, design, and development of the U.S. business's services, networks, systems, data storage, and facilities;

(4) Whether the U.S. business that is being acquired produces or trades in:

(i) Items that are subject to the EAR and, if so, a description (which may group similar items into general product categories) of the items and a list of the relevant commodity classifications set forth on the CCL (i.e., Export Control Classification Numbers (ECCNs) or EAR99 designation);

(ii) Defense articles and defense services, and related technical data covered by the USML in the ITAR, and, if so, the category of the USML; articles and services for which commodity jurisdiction requests (22 CFR 120.4) are pending; and articles and services (including those under development) that may be designated or determined in the future to be defense articles or defense services pursuant to 22 CFR 120.3;

(iii) Products and technology that are subject to export authorization administered by the Department of Energy (10 CFR part 810), or export licensing requirements administered by the Nuclear Regulatory Commission (10 CFR part 110); or

(iv) Select Agents and Toxins (7 CFR part 331, 9 CFR part 121, and 42 CFR part 73);

(5) Whether the U.S. business that is the subject of the transaction:

(i) Possesses any licenses, permits, or other authorizations other than those under the regulatory authorities listed in paragraph (c)(4) of this section that have been granted by an agency of the United States Government (if applicable, identification of the relevant licenses shall be provided); or

(ii) Has technology that has military applications (if so, an identification of such technology and a description of such military applications shall be included); and

(6) With respect to the foreign person engaged in the transaction and its parents:

(i) The business or businesses of the foreign person and its ultimate parent, as such businesses are described, for example, in annual reports, and the CAGE codes, NAICS codes, and DUNS numbers, if any, for such businesses;

(ii) The plans of the foreign person for the U.S. business with respect to:

(A) Reducing, eliminating, or selling research and development facilities;

(B) Changing product quality;

(C) Shutting down or moving outside of the United States facilities that are within the United States;

(D) Consolidating or selling product lines or technology;

(E) Modifying or terminating contracts referred to in paragraphs (c)(3)(iii) and (iv) of this section; or

(F) Eliminating domestic supply by selling products solely to non-domestic markets;

(iii) Whether the foreign person is controlled by or acting on behalf of a foreign government, including as an agent or representative, or in some similar capacity, and if so, the identity of the foreign government;

(iv) Whether a foreign government or a person controlled by or acting on behalf of a foreign government:

(A) Has or controls ownership interests, including convertible voting instruments, of the acquiring foreign person or any parent of the acquiring foreign person, and if so, the nature and amount of any such instruments, and

with regard to convertible voting instruments, the terms and timing of their conversion;

(B) Has the right or power to appoint any of the principal officers or the members of the board of directors of the foreign person that is a party to the transaction or any parent of that foreign person;

(C) Holds any contingent interest (for example, such as might arise from a lending transaction) in the foreign acquiring party and, if so, the rights that are covered by this contingent interest, and the manner in which they would be enforced; or

(D) Has any other affirmative or negative rights or powers that could be relevant to the Committee's determination of whether the notified transaction is a foreign government-controlled transaction, and if there are any such rights or powers, their source (for example, a ''golden share,'' shareholders agreement, contract, statute, or regulation) and the mechanics of their operation;

(v) Any formal or informal arrangements among foreign persons that hold an ownership interest in the foreign person that is a party to the transaction or between such foreign person and other foreign persons to act in concert on particular matters affecting the U.S. business that is the subject of the transaction, and provide a copy of any documents that establish those rights or describe those arrangements;

(vi) For each member of the board of directors or similar body (including external directors) and officers (including president, senior vice president, executive vice president, and other persons who perform duties normally associated with such titles) of the acquiring foreign person engaged in the transaction and its immediate, intermediate, and ultimate parents, and for any individual having an ownership interest of five percent or more in the acquiring foreign person engaged in the transaction and in the foreign person's ultimate parent, the following information:

(A) A curriculum vitae or similar professional synopsis, provided as part of the main notice, and

(B) The following ''personal identifier information,'' which, for privacy reasons, and to ensure limited distribution, shall be set forth in a separate document, not in the main notice:

(1) Full name (last, first, middle name);

(2) All other names and aliases used;

(3) Business address;

(4) Country and city of residence;

(5) Date of birth;

(6) Place of birth;

(7) U.S. Social Security number (where applicable);

(8) National identity number, including nationality, date and place of issuance, and expiration date (where applicable);

(9) U.S. or foreign passport number (if more than one, all must be fully disclosed), nationality, date and place of issuance, and expiration date and, if a U.S. visa holder, the visa type and number, date and place of issuance, and expiration date; and

(10) Dates and nature of foreign government and foreign military service (where applicable), other than military service at a rank below the top two non-commissioned ranks of the relevant foreign country; and

(vii) The following ''business identifier information'' for the immediate, intermediate, and ultimate parents of the foreign person engaged in the transaction, including their main offices and branches:

(A) Business name, including all names under which the business is known to be or has been doing business;

(B) Business address;

(C) Business phone number, fax number, and e-mail address; and

(D) Employer identification number or other domestic tax or corporate identification number.

(d) The voluntary notice shall list any filings with, or reports to, agencies of the United States Government that have been or will be made with respect to the transaction prior to its closing, indicating the agencies concerned, the nature of the filing or report, the date on which it was filed or the estimated date by which it will be filed, and a relevant contact point and/or telephone number within the agency, if known.

Example. Corporation A, a foreign person, intends to acquire Corporation X, which is

wholly owned and controlled by a U.S. national and which has a Facility Security Clearance under the Department of Defense Industrial Security Program. See Department of Defense, ''Industrial Security Regulation,'' DOD 5220.22–R, and ''Industrial Security Manual for Safeguarding Classified Information,'' DOD 5220.22–M. Corporation X accordingly files a revised Form DD SF–328, and enters into discussions with the Defense Security Service about effectively insulating its facilities from the foreign person. Corporation X may also have made filings with the Securities and Exchange Commission, the Department of Commerce, the Department of State, or other federal departments and agencies. Paragraph (d) of this section requires that certain specific information about these filings be reported to the Committee in a voluntary notice.

(e) In the case of the establishment of a joint venture in which one or more of the parties is contributing a U.S. business, information for the voluntary notice shall be prepared on the assumption that the foreign person that is party to the joint venture has made an acquisition of the existing U.S. business that the other party to the joint venture is contributing or transferring to the joint venture. The voluntary notice shall describe the name and address of the joint venture and the entities that established, or are establishing, the joint venture.

(f) In the case of the acquisition of some but not all of the assets of an entity, § 800.402(c) requires submission of the specified information only with respect to the assets of the entity that have been or are proposed to be acquired.

(g) Persons filing a voluntary notice shall, with respect to the foreign person that is a party to the transaction, its immediate parent, the U.S. business that is the subject of the transaction, and each entity of which the foreign person is a parent, append to the voluntary notice the most recent annual report of each such entity, in English. Separate reports are not required for any entity whose financial results are included within the consolidated financial results stated in the annual report of any parent of any such entity, unless the transaction involves the acquisition of a U.S. business whose parent is not being acquired, in which case the notice shall include the most recent audited financial statement of the U.S. business that is the subject of the transaction. If a U.S. business does not prepare an annual report and its financial results are not included within the consolidated financial results stated in the annual report of a parent, the filing shall include, if available, the entity's most recent audited financial statement (or, if an audited financial statement is not available, the unaudited financial statement).

(h) Persons filing a voluntary notice shall, during the time that the matter is pending before the Committee or the President, promptly advise the Staff Chairperson of any material changes in plans, facts and circumstances addressed in the notice, and information provided or required to be provided to the Committee under § 800.402, and shall file amendments to the notice to reflect such material changes. Such amendments shall become part of the notice filed by such persons under § 800.401, and the certification required under § 800.402(l) shall apply to such amendments. (See also § 800.701(d).)

(i) Persons filing a voluntary notice shall include a copy of the most recent asset or stock purchase agreement or other document establishing the agreed terms of the transaction.

(j) Persons filing a voluntary notice shall include:

(1) An organizational chart illustrating all of the entities or individuals above the foreign person that is a party to the transaction up to the person or persons having ultimate control of that person, including the percentage of shares held by each; and

(2) The opinion of the person regarding whether:

(i) It is a foreign person;

(ii) It is controlled by a foreign government; and

(iii) The transaction has resulted or could result in control of a U.S. business by a foreign person, and the reasons for its view, focusing in particular on any powers (for example, by virtue of a shareholders agreement, contract, statute, or regulation) that the foreign person will have with regard to the U.S. business, and how those powers can or will be exercised.

(k) Persons filing a voluntary notice shall include information as to whether:

(1) Any party to the transaction is, or has been, a party to a mitigation agreement entered into or condition imposed under section 721, and if so, shall specify the date and purpose of such agreement or condition and the United States Government signatories; and

(2) Any party to the transaction has been a party to a transaction previously notified to the Committee.

(l) Each party filing a voluntary notice shall provide a certification of the notice consistent with § 800.202. A sample certification may be found on the Committee's section of the Department of the Treasury Web site, available at *http://www.treas.gov/offices/international-affairs/cfius/index.shtml*.

(m) Persons filing a voluntary notice shall include with the notice a list identifying each document provided as part of the notice, including all documents provided as attachments or exhibits to the narrative response.

§ 800.403 Deferral, rejection, or disposition of certain voluntary notices.

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any voluntary notice that does not comply with § 800.402 and so inform the parties promptly in writing;

(2) Reject any voluntary notice at any time, and so inform the parties promptly in writing, if, after the notice has been submitted and before action by the Committee or the President has been concluded:

(i) There is a material change in the transaction as to which notification has been made; or

(ii) Information comes to light that contradicts material information provided in the notice by the parties;

(3) Reject any voluntary notice at any time after the notice has been accepted, and so inform the parties promptly in writing, if the party or parties that have submitted the voluntary notice do not provide follow-up information requested by the Staff Chairperson within three business days of the request, or within a longer time frame if the parties so request in writing and the Staff Chairperson grants that request in writing; or

(4) Reject any voluntary notice before the conclusion of a review or investigation, and so inform the parties promptly in writing, if one of the parties submitting the voluntary notice has not submitted the final certification required by § 800.701(d).

(b) Notwithstanding the authority of the Staff Chairperson under paragraph (a) of this section to reject an incomplete notice, the Staff Chairperson may defer acceptance of the notice, and the beginning of the thirty-day review period, to obtain any information required under this section that has not been submitted by the notifying party or parties or other parties to the transaction. Where necessary to obtain such information, the Staff Chairperson may inform any non-notifying party or parties that notice has been filed with respect to a proposed transaction involving the party, and request that certain information required under this section, as specified by the Staff Chairperson, be provided to the Committee within seven days after receipt of the Staff Chairperson's request.

(c) The Staff Chairperson shall notify the parties when the Committee has found that the transaction that is the subject of a voluntary notice is not a covered transaction.

Example 1. The Staff Chairperson receives a joint notice from Corporation A, a foreign person, and Corporation X, a company that is owned and controlled by U.S. nationals, with respect to Corporation A's intent to purchase all of the shares of Corporation X. The joint notice does not contain any information described under § 800.402(c)(3)(iii) and (iv) concerning classified materials and products or services supplied to the U.S. military services. The Staff Chairperson may reject the notice or defer the start of the thirty-day review period until the parties have supplied the omitted information.

Example 2. Same facts as in the first sentence of Example 1, except that the joint notice indicates that Corporation A does not intend to purchase Corporation X's Division Y, which is engaged in classified work for a U.S. Government agency. Corporations A and X notify the Committee on the 25th day of the 30-day notice period that Division Y will also be acquired by Corporation A. This fact constitutes a material change with respect to the transaction as originally notified, and the Staff Chairperson may reject the notice.

Example 3. The Staff Chairperson receives a joint notice by Corporation A, a foreign person, and Corporation X, a U.S. business, indicating that Corporation A intends to purchase five percent of the voting securities of Corporation X. Under the particular facts and circumstances presented, the Committee concludes that Corporation A's purchase of this interest in Corporation X could not result in foreign control of Corporation X. The Staff Chairperson shall advise the parties in writing that the transaction as presented is not subject to section 721.

Example 4. The Staff Chairperson receives a voluntary notice involving the acquisition by Company A, a foreign person, of the entire interest in Company X, a U.S. business. The notice mentions the involvement of a second foreign person in the transaction, Company B, but states that Company B is merely a passive investor in the transaction. During the course of the review, the parties provide information that clarifies that Company B has the right to appoint two members of Company X's board of directors. This information contradicts the material assertion in the notice that Company B is a passive investor. The Committee may reject this notice without concluding review under section 721.

Subpart E—Committee Procedures: Review and Investigation

§ 800.501 General.

(a) The Committee's review or investigation (if necessary) shall examine, as appropriate, whether:

(1) The transaction is by or with any foreign person and could result in foreign control of a U.S. business;

(2) There is credible evidence to support a belief that any foreign person exercising control of that U.S. business might take action that threatens to impair the national security of the United States; and

(3) Provisions of law, other than section 721 and the International Emergency Economic Powers Act, provide adequate and appropriate authority to protect the national security of the United States.

(b) During the thirty-day review period or during an investigation, the Staff Chairperson may invite the parties to a notified transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction. During an investigation, a party to the transaction under investigation may request a meeting with the Committee staff; such a request ordinarily will be granted.

(c) The Staff Chairperson shall be the point of contact for receiving material filed with the Committee, including notices.

(d) Where more than one lead agency is designated, communications on material matters between a party to the transaction and a lead agency shall include all lead agencies designated with regard to those matters.

§ 800.502 Beginning of thirty-day review period.

(a) The Staff Chairperson of the Committee shall accept a voluntary notice the next business day after the Staff Chairperson has:

(1) Determined that the notice complies with § 800.402; and

(2) Disseminated the notice to all members of the Committee.

(b) A thirty-day period for review of a transaction shall commence on the date on which the voluntary notice has been accepted, agency notice has been received by the Staff Chairperson of the Committee, or the Chairperson of the Committee has requested a review pursuant to § 800.401(b). Such review shall end no later than the thirtieth day after it has commenced, or if the thirtieth day is not a business day, no later than the next business day after the thirtieth day.

(c) The Staff Chairperson shall promptly and in writing advise all parties to a transaction that have filed a voluntary notice of:

(1) The acceptance of the notice;

(2) The date on which the review begins; and

(3) The designation of any lead agency or agencies.

(d) Within two business days after receipt of an agency notice by the Staff Chairperson, the Staff Chairperson shall send written advice of such notice to the parties to a covered transaction. Such written advice shall identify the date on which the review began.

(e) The Staff Chairperson shall promptly circulate to all Committee members any draft pre-filing notice, any agency notice, any complete notice, and any subsequent information filed by the parties.

§ 800.503 Determination of whether to undertake an investigation.

(a) After a review of a notified transaction under § 800.502, the Committee shall undertake an investigation of any transaction that it has determined to be a covered transaction if:

(1) A member of the Committee (other than a member designated as ex officio under section 721(k)) advises the Staff Chairperson that the member believes that the transaction threatens to impair the national security of the United States and that the threat has not been mitigated; or

(2) The lead agency recommends, and the Committee concurs, that an investigation be undertaken.

(b) The Committee shall also undertake, after a review of a covered transaction under § 800.502, an investigation to determine the effects on national security of any covered transaction that:

(1) Is a foreign government-controlled transaction; or

(2) Would result in control by a foreign person of critical infrastructure of or within the United States, if the Committee determines that the transaction could impair the national security and such impairment has not been mitigated.

(c) The Committee shall undertake an investigation as described in paragraph (b) of this section unless the Chairperson of the Committee (or the Deputy Secretary of the Treasury) and the head of any lead agency (or his or her delegee at the deputy level or equivalent) designated by the Chairperson determine on the basis of the review that the covered transaction will not impair the national security of the United States.

§ 800.504 Determination not to undertake an investigation.

If the Committee determines, during the review period described in § 800.502, not to undertake an investigation of a notified covered transaction, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly send written advice to the parties to a covered transaction of a determination of the Committee not to undertake an investigation and to conclude action under section 721.

§ 800.505 Commencement of investigation.

(a) If it is determined that an investigation should be undertaken, such investigation shall commence no later than the end of the thirty-day review period described in § 800.502.

(b) An official of the Department of the Treasury shall promptly send written advice to the parties to a covered transaction of the commencement of an investigation.

§ 800.506 Completion or termination of investigation and report to the President.

(a) The Committee shall complete an investigation no later than the 45th day after the date the investigation commences, or, if the 45th day is not a business day, no later than the next business day after the 45th day.

(b) Upon completion or termination of any investigation, the Committee shall send a report to the President requesting the President's decision if:

(1) The Committee recommends that the President suspend or prohibit the transaction;

(2) The members of the Committee (other than a member designated as ex officio under section 721(k)) are unable to reach a decision on whether to recommend that the President suspend or prohibit the transaction; or

(3) The Committee requests that the President make a determination with regard to the transaction.

(c) In circumstances when the Committee sends a report to the President requesting the President's decision with respect to a covered transaction, such report shall include information relevant to sections 721(d)(4)(A) and (B), and shall present the Committee's recommendation. If the Committee is unable to reach a decision to present a single recommendation to the President, the Chairperson of the Committee shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for decision.

(d) Upon completion or termination of an investigation, if the Committee determines to conclude all deliberative action under section 721 with regard to a notified covered transaction without

sending a report to the President, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly advise the parties to such a transaction in writing of a determination to conclude action.

§ 800.507 Withdrawal of notice.

(a) A party (or parties) to a transaction that has filed notice under § 800.401(a) may request in writing, at any time prior to conclusion of all action under section 721, that such notice be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made. Such requests will ordinarily be granted, unless otherwise determined by the Committee. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(b) Any request to withdraw an agency notice by the agency that filed it shall be in writing and shall be effective only upon approval by the Committee. An official of the Department of the Treasury shall advise the parties to the transaction in writing of the Committee's decision to approve the withdrawal request within two business days of the Committee's decision.

(c) In any case where a request to withdraw a notice is granted under paragraph (a) of this section:

(1) The Staff Chairperson, in consultation with the Committee, shall establish, as appropriate:

(i) A process for tracking actions that may be taken by any party to the covered transaction before notice is refiled under § 800.401; and

(ii) Interim protections to address specific national security concerns with the transaction identified during the review or investigation of the transaction.

(2) The Staff Chairperson shall specify a time frame, as appropriate, for the parties to resubmit a notice and shall advise the parties of that time frame in writing.

(d) A notice of a transaction that is submitted pursuant to paragraph (c)(2) of this section shall be deemed a new notice for purposes of the regulations in this part, including § 800.601.

§ 800.508 Role of the Secretary of Labor.

In response to a request from the Chairperson of the Committee, the Secretary of Labor shall identify for the Committee any risk mitigation provisions proposed to or by the Committee that would violate U.S. employment laws or require a party to violate U.S. employment laws. The Secretary of Labor shall serve no policy role on the Committee.

§ 800.509 Materiality.

The Committee generally will not consider as material minor inaccuracies, omissions, or changes relating to financial or commercial factors not having a bearing on national security.

Subpart F—Finality of Action

§ 800.601 Finality of actions under section 721.

(a) All authority available to the President or the Committee under section 721(d), including divestment authority, shall remain available at the discretion of the President with respect to covered transactions proposed or pending on or after August 23, 1988. Such authority shall not be exercised if:

(1) The Committee, through its Staff Chairperson, has advised a party (or the parties) in writing that a particular transaction with respect to which voluntary notice has been filed is not a covered transaction;

(2) The parties to the transaction have been advised in writing pursuant to § 800.504 or § 800.506(d) that the Committee has concluded all action under section 721 with respect to the covered transaction; or

(3) The President has previously announced, pursuant to section 721(d), his decision not to exercise his authority under section 721 with respect to the covered transaction.

(b) Divestment or other relief under section 721 shall not be available with respect to transactions that were completed prior to August 23, 1988.

Subpart G—Provision and Handling of Information

§ 800.701 Obligation of parties to provide information.

(a) Parties to a transaction that is notified under subpart D shall provide information to the Staff Chairperson that will enable the Committee to conduct a full review and/or investigation of the proposed transaction, and shall promptly advise the Staff Chairperson of any material changes in plans or information pursuant to § 800.402(h). If deemed necessary by the Committee, information may be obtained from parties to a transaction or other persons through subpoena or otherwise, pursuant to 50 U.S.C. App. 2155(a).

(b) Documentary materials or information required or requested to be filed with the Committee under this part shall be submitted in English. Supplementary materials, such as annual reports, written in a foreign language, shall be submitted in certified English translation.

(c) Any information filed with the Committee by a party to a covered transaction in connection with any action for which a report is required pursuant to section 721(l)(3)(B) with respect to the implementation of a mitigation agreement or condition described in section 721(l)(1)(A) shall be accompanied by a certification that complies with the requirements of section 721(n) and § 800.202. A sample certification may be found at the Committee's section of the Department of the Treasury Web site at *http://www.treas.gov/offices/international-affairs/cfius/index.shtml*.

(d) At the conclusion of a review or investigation, each party that has filed additional information subsequent to the original notice shall file a final certification. (See § 800.202.) A sample certification may be found at the Committee's section of the Department of the Treasury Web site at *http://www.treas.gov/offices/international-affairs/cfius/index.shtml*.

§ 800.702 Confidentiality.

(a) Any information or documentary material filed with the Committee pursuant to this part, including information or documentary material filed pursuant to § 800.401(f), shall be exempt from disclosure under 5 U.S.C. 552 and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this part shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress, in accordance with subsections (b)(3) and (g)(2)(A) of section 721.

(b) This section shall continue to apply with respect to information and documentary material filed with the Committee in any case where:

(1) Action has concluded under section 721 concerning a notified transaction;

(2) A request to withdraw notice is granted under § 800.507, or where notice has been rejected under § 800.403;

(3) The Committee determines that a notified transaction is not a covered transaction; or

(4) Such information or documentary material was filed pursuant to § 800.401(f) and the parties do not subsequently file a notice pursuant to § 800.401(a).

(c) Nothing in paragraph (a) of this section shall be interpreted to prohibit the public disclosure by a party of documentary material or information that it has filed with the Committee. Any such documentary material or information so disclosed may subsequently be reflected in the public statements of the Chairperson, who is authorized to communicate with the public and the Congress on behalf of the Committee, or of the Chairperson's designee.

(d) The provisions of 50 U.S.C. App. 2155(d) relating to fines and imprisonment shall apply with respect to the disclosure of information or documentary material filed with the Committee under these regulations.

Subpart H—Penalties

§ 800.801 Penalties.

(a) Any person who, after the effective date, intentionally or through gross negligence, submits a material misstatement or omission in a notice or makes a false certification under §§ 800.402(l) or 800.701(c) may be liable to

the United States for a civil penalty not to exceed $250,000 per violation. The amount of the penalty assessed for a violation shall be based on the nature of the violation.

(b) Any person who, after the effective date, intentionally or through gross negligence, violates a material provision of a mitigation agreement entered into with, or a material condition imposed by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed $250,000 per violation or the value of the transaction, whichever is greater. Any penalty assessed under this paragraph shall be based on the nature of the violation and shall be separate and apart from any damages sought pursuant to a mitigation agreement under section 721(l), or any action taken under section 721(b)(1)(D).

(c) A mitigation agreement entered into or amended under section 721(l) after the effective date may include a provision providing for liquidated or actual damages for breaches of the agreement by parties to the transaction. The Committee shall set the amount of any liquidated damages as a reasonable assessment of the harm to the national security that could result from a breach of the agreement. Any mitigation agreement containing a liquidated damages provision shall include a provision specifying that the Committee will consider the severity of the breach in deciding whether to seek a lesser amount than that stipulated in the contract.

(d) A determination to impose penalties under paragraph (a) or (b) of this section must be made by the named members of the Committee, except to the extent delegated by such official. Notice of the penalty, including a written explanation of the penalized conduct and the amount of the penalty, shall be sent to the penalized party by U.S. mail.

(e) Upon receiving notice of the imposition of a penalty under paragraph (a) or (b) of this section, the penalized party may, within 15 days of receipt of the notice of the penalty, submit a petition for reconsideration to the Staff Chairperson, including a defense, justification, or explanation for the penalized conduct. The Committee will review the petition and issue a final decision within 15 days of receipt of the petition.

(f) The penalties authorized in paragraphs (a) and (b) of this section may be recovered in a civil action brought by the United States in federal district court.

(g) The penalties available under this section are without prejudice to other penalties, civil or criminal, available under law.

CHAPTER IX—FEDERAL CLAIMS COLLECTION STANDARDS (DEPARTMENT OF THE TREASURY—DEPARTMENT OF JUSTICE)

Part		*Page*
900	Scope of standards	565
901	Standards for the administrative collection of claims	567
902	Standards for the compromise of claims	576
903	Standards for suspending or terminating collection activity	578
904	Referrals to the Department of Justice	580

PART 900—SCOPE OF STANDARDS

Sec.
900.1 Prescription of standards.
900.2 Definitions and construction.
900.3 Antitrust, fraud, and tax and interagency claims excluded.
900.4 Compromise, waiver, or disposition under other statutes not precluded.
900.5 Form of payment.
900.6 Subdivision of claims not authorized.
900.7 Required administrative proceedings.
900.8 No private rights created.

AUTHORITY: 31 U.S.C. 3711.

SOURCE: 65 FR 70395, Nov. 22, 2000, unless otherwise noted.

§ 900.1 Prescription of standards.

(a) The Secretary of the Treasury and the Attorney General of the United States are issuing the regulations in parts 900–904 of this chapter under the authority contained in 31 U.S.C. 3711(d)(2). The regulations in this chapter prescribe standards for Federal agency use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific Federal agency statutes or regulations apply to such activities or, as provided for by Title 11 of the United States Code, when the claims involve bankruptcy. Federal agencies include agencies of the executive, legislative, and judicial branches of the Government, including Government corporations. The regulations in this chapter also prescribe standards for referring debts to the Department of Justice for litigation. Additional guidance is contained in the Office of Management and Budget's Circular A–129 (Revised), ''Policies for Federal Credit Programs and Non-Tax Receivables,'' the Department of the Treasury's ''Managing Federal Receivables,'' and other publications concerning debt collection and debt management. These publications are available from the Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street SW., Room 151, Washington, DC 20227.

(b) Additional rules governing centralized administrative offset and the transfer of delinquent debt to the Department of the Treasury (Treasury) or Treasury-designated debt collection centers for collection (cross-servicing) under the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321, 1358 (April 26, 1996), are issued in separate regulations by Treasury. Rules governing the use of certain debt collection tools created under the Debt Collection Improvement Act of 1996, such as administrative wage garnishment, also are issued in separate regulations by Treasury. See generally 31 CFR part 285.

(c) Agencies are not limited to the remedies contained in parts 900–904 of this chapter and are encouraged to use all authorized remedies, including alternative dispute resolution and arbitration, to collect civil claims, to the extent that such remedies are not inconsistent with the Federal Claims Collection Act, as amended, Public Law 89–508, 80 Stat. 308 (July 19, 1966), the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (October 25, 1982), the Debt Collection Improvement Act of 1996, or other relevant statutes. The regulations in this chapter are not intended to impair agencies' common law rights to collect debts.

(d) Standards and policies regarding the classification of debt for accounting purposes (for example, write off of uncollectible debt) are contained in the Office of Management and Budget's Circular A–129 (Revised), ''Policies for Federal Credit Programs and Non-Tax Receivables.''

§ 900.2 Definitions and construction.

(a) For the purposes of the standards in this chapter, the terms ''claim'' and ''debt'' are synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716, the terms ''claim'' and ''debt'' include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the

Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(b) A debt is ''delinquent'' if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

(c) In parts 900–904 of this chapter, words in the plural form shall include the singular and vice versa, and words signifying the masculine gender shall include the feminine and vice versa. The terms ''includes'' and ''including'' do not exclude matters not listed but do include matters that are in the same general class.

(d) Recoupment is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

(e) For purposes of the standards in this chapter, unless otherwise stated, ''Secretary'' means the Secretary of the Treasury or the Secretary's delegate.

§ 900.3 Antitrust, fraud, and tax and interagency claims excluded.

(a) The standards in parts 900–904 of this chapter relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of the antitrust laws or to any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. Only the Department of Justice has the authority to compromise, suspend, or terminate collection activity on such claims. The standards in parts 900–904 of this chapter relating to the administrative collection of claims do apply, but only to the extent authorized by the Department of Justice in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, agencies shall promptly refer the case to the Department of Justice for action. At its discretion, the Department of Justice may return the claim to the forwarding agency for further handling in accordance with the standards in parts 900–904 of this chapter.

(b) Parts 900–904 of this chapter do not apply to tax debts.

(c) Parts 900–904 of this chapter do not apply to claims between Federal agencies. Federal agencies should attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR, 1980 Comp., pp. 409–412).

§ 900.4 Compromise, waiver, or disposition under other statutes not precluded.

Nothing in parts 900–904 of this chapter precludes agency disposition of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code (Claims of the United States Government) and the standards in this chapter. See, e.g., the Federal Medical Care Recovery Act, Public Law 87–693, 76 Stat. 593 (September 25, 1962) (codified at 42 U.S.C. 2651 et seq.), and applicable regulations, 28 CFR part 43. In such cases, the laws and regulations that are specifically applicable to claims collection activities of a particular agency generally take precedence over parts 900–904 of this chapter.

§ 900.5 Form of payment.

Claims may be paid in the form of money or, when a contractual basis exists, the Government may demand the return of specific property or the performance of specific services.

§ 900.6 Subdivision of claims not authorized.

Debts may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered a single debt in determining whether the debt is one of less than $100,000 (excluding interest, penalties, and administrative costs) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise

or suspension or termination of collection activity.

§900.7 Required administrative proceedings.

Agencies are not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

§900.8 No private rights created.

The standards in this chapter do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of an agency to comply with any of the provisions of parts 900–904 of this chapter be available to any debtor as a defense.

PART 901—STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

Sec.

901.1 Aggressive agency collection activity.
901.2 Demand for payment.
901.3 Collection by administrative offset.
901.4 Reporting debts.
901.5 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.
901.6 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.
901.7 Liquidation of collateral.
901.8 Collection in installments.
901.9 Interest, penalties, and administrative costs.
901.10 Analysis of costs.
901.11 Use and disclosure of mailing addresses.
901.12 Exemptions.

AUTHORITY: 31 U.S.C. 3701, 3711, 3716, 3717, 3718, and 3720B.

SOURCE: 65 FR 70396, Nov. 22, 2000, unless otherwise noted.

§901.1 Aggressive agency collection activity.

(a) Federal agencies shall aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency. Collection activities shall be undertaken promptly with follow-up action taken as necessary. Nothing contained in parts 900–904 of this chapter requires the Department of Justice, Treasury, or other Treasury-designated debt collection centers, to duplicate collection activities previously undertaken by other agencies or to perform collection activities that other agencies should have undertaken.

(b) Debts referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), shall be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(c) Agencies shall cooperate with one another in their debt collection activities.

(d) Agencies should consider referring debts that are less than 180 days delinquent to Treasury or to Treasury-designated ''debt collection centers'' to accomplish efficient, cost effective debt collection. Treasury is a debt collection center, is authorized to designate other Federal agencies as debt collection centers based on their performance in collecting delinquent debts, and may withdraw such designations. Referrals to debt collection centers shall be at the discretion of, and for a time period acceptable to, the Secretary. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

(e) Agencies shall transfer to the Secretary any debt that has been delinquent for a period of 180 days or more so that the Secretary may take appropriate action to collect the debt or terminate collection action. See 31 CFR 285.12 (Transfer of Debts to Treasury for Collection). This requirement does not apply to any debt that:

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sale program;

(3) Has been referred to a private collection contractor for a period of time acceptable to the Secretary;

(4) Is at a debt collection center for a period of time acceptable to the Secretary (see paragraph (d) of this section);

(5) Will be collected under internal offset procedures within three years after the debt first became delinquent; or

(6) Is exempt from this requirement based on a determination by the Secretary that exemption for a certain class of debt is in the best interest of the United States. Agencies may request that the Secretary exempt specific classes of debts.

(f) Agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost (see § 901.10).

§ 901.2 Demand for payment.

(a) Written demand as described in paragraph (b) of this section shall be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with the agency to resolve the debt. The specific content, timing, and number of demand letters shall depend upon the type and amount of the debt and the debtor's response, if any, to the agency's letters or telephone calls. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), agencies should give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with § 904.1 of this chapter or otherwise. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under parts 900–904 of this chapter, including immediate referral for litigation.

(b) Demand letters shall inform the debtor of:

(1) The basis for the indebtedness and the rights, if any, the debtor may have to seek review within the agency;

(2) The applicable standards for imposing any interest, penalties, or administrative costs;

(3) The date by which payment should be made to avoid late charges (i.e. interest, penalties, and administrative costs) and enforced collection, which generally should not be more than 30 days from the date that the demand letter is mailed or hand-delivered; and

(4) The name, address, and phone number of a contact person or office within the agency.

(c) Agencies should exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. There is no prescribed format for demand letters. Agencies should utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(d) Agencies should include in demand letters such items as the agency's willingness to discuss alternative methods of payment; its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; the agency's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days be transferred to the Department of the Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

(e) Agencies should respond promptly to communications from debtors, within 30 days whenever feasible, and should advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if an agency determines to pursue, or is required to pursue, offset, the procedures applicable to offset should be followed (see § 901.3). The availability of funds or money for debt satisfaction by offset and the agency's determination to pursue collection by offset shall release the agency from the necessity of further compliance with paragraphs (a), (b), (c), and (d) of this section.

(g) Prior to referring a debt for litigation, agencies should advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification should

comply with Executive Order 12988 (3 CFR, 1996 Comp., pp. 157–163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the Government should be advised that this notice has been given.

(h) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency should immediately seek legal advice from its agency counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the agency determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately.

(1) After seeking legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. Agencies should refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the agency is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, agencies should seek legal advice from their agency counsel to determine whether their payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. Agencies also should seek legal advice from their agency counsel to determine whether recoupment is available.

§901.3 Collection by administrative offset.

(a) *Scope*. (1) The term ''administrative offset'' has the meaning provided in 31 U.S.C. 3701(a)(1).

(2) This section does not apply to:

(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code (see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(4) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, agencies should seek legal advice from their agency counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset*. (1) Creditor agencies are required to refer past due, legally enforceable nontax debts which are over 180 days delinquent to the Secretary for collection by centralized administrative offset. Debts which are less than 180 days delinquent also may be

referred to the Secretary for this purpose. See § 901.3(b)(5) for debt certification requirements.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to the Secretary as described in paragraph (b)(1) of this section shall be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by the Secretary. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Federal disbursing officials will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice shall include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

(4)(i) Before referring a delinquent debt to the Secretary for administrative offset, agencies must have prescribed administrative offset regulations consistent with this section or have adopted this section without change by cross-reference.

(ii) Such regulations shall provide that offsets may be initiated only after the debtor:

(A) Has been sent written notice of the type and amount of the debt, the intention of the agency to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(B) The debtor has been given:

(*1*) The opportunity to inspect and copy agency records related to the debt;

(*2*) The opportunity for a review within the agency of the determination of indebtedness; and

(*3*) The opportunity to make a written agreement to repay the debt.

(iii) Agency regulations may provide for the omission of the procedures set forth in paragraph (a)(4)(ii) of this section when:

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in *Cecile Industries, Inc.* v. *Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, the agency first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the agency shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

(iv) When an agency previously has given a debtor any of the required notice and review opportunities with respect to a particular debt (see, e.g., § 901.2), the agency need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) Agencies referring delinquent debts to the Secretary must certify, in a form acceptable to the Secretary, that:

(i) The debt(s) is (are) past due and legally enforceable; and

(ii) The agency has complied with all due process requirements under 31 U.S.C. 3716(a) and the agency's regulations.

(6) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Secretary shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the head of the payment certifying or authorizing agency. Also, the Secretary may exempt other classes of payments from

centralized offset upon the written request of the head of the payment certifying or authorizing agency.

(7) Benefit payments made under the Social Security Act (42 U.S.C. 301 et seq.), part B of the Black Lung Benefits Act (30 U.S.C. 921 et seq.), and any law administered by the Railroad Retirement Board (other than tier 2 benefits), may be offset only in accordance with Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget. See 31 CFR 285.4.

(8) In accordance with 31 U.S.C. 3716(f), the Secretary may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and postmatch notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from a creditor agency that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (b)(5) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(c) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are *ad hoc* case-by-case offsets that an agency conducts, at the agency's discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset. In these cases, a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, it may be appropriate for a creditor agency to request that the Office of Personnel Management (OPM) offset a Federal employee's lump sum payment upon leaving Government service to satisfy an unpaid advance.

(2) Before requesting a payment authorizing agency to conduct a non-centralized administrative offset, agencies must adopt regulations providing that such offsets may occur only after:

(i) The debtor has been provided due process as set forth in paragraph (b)(4) of this section; and

(ii) The payment authorizing agency has received written certification from the creditor agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.

(3) Payment authorizing agencies shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(4) When collecting multiple debts by non-centralized administrative offset, agencies should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(d) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (b)(4) of this section, creditor agencies may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801–831.1808. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of

the time limitations referenced in paragraph (a)(4) of this section.

(e) *Review requirements.* (1) For purposes of this section, whenever an agency is required to afford a debtor a review within the agency, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the agency should carefully document all significant matters discussed at the hearing.

(3) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

(4) In those cases when an oral hearing is not required by this section, an agency shall accord the debtor a ''paper hearing,'' that is, a determination of the request for reconsideration based upon a review of the written record.

§ 901.4 Reporting debts.

(a) Agencies shall develop and implement procedures for reporting delinquent debts to credit bureaus and other automated databases. Agencies also may develop procedures to report nondelinquent debts to credit bureaus. See 31 U.S.C. 3711(e).

(1) In developing procedures for reporting debts to credit bureaus, agencies shall comply with the Bankruptcy Code and the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The provisions of the Privacy Act do not apply to credit bureaus.

(2) Agency procedures for reporting delinquent consumer debts to credit bureaus shall be consistent with the due process and other requirements contained in 31 U.S.C. 3711(e). When an agency has given a debtor any of the required notice and review opportunities with respect to a particular debt, the agency need not duplicate such notice and review opportunities before reporting that delinquent consumer debt to credit bureaus.

(b) Agencies should report delinquent debts to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS). For information about the CAIVRS program, agencies should contact the Director of Information Resources Management Policy and Management Division, Office of Information Technology, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

§ 901.5 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.

(a) Subject to the provisions of paragraph (b) of this section, Federal agencies may contract with private collection contractors, as defined in 31 U.S.C. 3701(f), to recover delinquent debts provided that:

(1) Agencies retain the authority to resolve disputes, compromise debts, suspend or terminate collection activity, and refer debts for litigation;

(2) The private collection contractor is not allowed to offer the debtor, as an incentive for payment, the opportunity to pay the debt less the private collection contractor's fee unless the agency has granted such authority prior to the offer;

(3) The contract provides that the private collection contractor is subject to the Privacy Act of 1974 to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and state laws and regulations pertaining to debt collection practices, including but not limited to the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(4) The private collection contractor is required to account for all amounts collected.

(b) Agencies shall use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors. However, agencies may refer debts to private collection contractors pursuant to a contract between the agency and the private collection contractor only if

such debts are not subject to the requirement to transfer debts to Treasury for debt collection. See 31 U.S.C. 3711(g); 31 CFR 285.12(e).

(c) Agencies may fund private collection contractor contracts in accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law.

(d) Agencies may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets. Agencies must establish procedures that are acceptable to the Secretary before entering into contracts to recover assets of the United States held by a state government or a financial institution.

(e) Agencies may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the agency for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

§ 901.6 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.

(a) Unless waived by the head of the agency, agencies are not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans. The authority to waive the application of this section may be delegated to the Chief Financial Officer and redelegated only to the Deputy Chief Financial Officer of the agency. Agencies may extend credit after the delinquency has been resolved. The Secretary may exempt classes of debts from this prohibition and has prescribed standards defining when a ''delinquency'' is ''resolved'' for purposes of this prohibition. See 31 CFR 285.13 (Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees).

(b) In non-bankruptcy cases, agencies seeking the collection of statutory penalties, forfeitures, or other types of claims should consider the suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with the agency's regulations or governing procedures. The debtor should be advised in the agency's written demand for payment of the agency's ability to suspend or revoke licenses, permits, or privileges. Any agency making, guaranteeing, insuring, acquiring, or participating in, loans should consider suspending or disqualifying any lender, contractor, or broker from doing further business with the agency or engaging in programs sponsored by the agency if such lender, contractor, or broker fails to pay its debts to the Government within a reasonable time or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 should be reported to the Treasury. The Treasury will forward to all interested agencies notification that a surety's certificate of authority to do business with the Government has been revoked by the Treasury.

(c) The suspension or revocation of licenses, permits, or privileges also should extend to Federal programs or activities that are administered by the states on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors. Therefore, states that manage Federal activities, pursuant to approval from the agencies, should ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or privileges to debtors who fail to pay their debts to the Federal Government.

(d) In bankruptcy cases, before advising the debtor of an agency's intention to suspend or revoke licenses, permits, or privileges, agencies should seek legal advice from their agency counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 901.7 Liquidation of collateral.

(a) Agencies should liquidate security or collateral through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay

the debt(s) within a reasonable time after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, the agency should seek legal advice from its agency counsel concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 901.8 Collection in installments.

(a) Whenever feasible, agencies shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, agencies may accept payment in regular installments. Agencies should obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (see § 902.2(g) of this chapter). Agencies that agree to accept payments in regular installments should obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments should be obtained in appropriate cases. Agencies may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the agency's option.

§ 901.9 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, agencies shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. An agency shall mail or hand-deliver a written notice to the debtor, at the debtor's most recent address available to the agency, explaining the agency's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) Agencies shall charge interest on debts owed the United States as follows:

(1) Interest shall accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by the Secretary in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, an agency may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The agency should document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the agency may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

(c) Agencies shall assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs should be based on actual costs incurred or upon estimated costs as determined by the assessing agency.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, agencies shall charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency.

(e) Agencies may increase an ''administrative debt'' by the cost of living adjustment in lieu of charging interest and penalties under this section. ''Administrative debt'' includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts shall be computed annually. Agencies should use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by the Government shall be applied first to any contingency fees added to the debt, second to outstanding penalties, third to administrative costs other than contingency fees, fourth to interest, and last to principal. For purposes of this paragraph (f), ''contingency fees'' are administrative costs resulting from fees paid by a Federal agency to other Federal agencies or private collection contractors for collection services rendered when the fees are paid from the amounts collected from a debtor.

(g) Agencies shall waive the collection of interest and administrative costs imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. Agencies may extend this 30-day period on a case-by-case basis. In addition, agencies may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if the agency determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

(h) Agencies shall set forth in their regulations the circumstances under which interest and related charges will not be imposed for periods during which collection activity has been suspended pending agency review.

(i) Agencies are authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with the common law.

[65 FR 70396, Nov. 22, 2000, as amended at 73 FR 12274, Mar. 7, 2008]

§ 901.10 Analysis of costs.

Agency collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken.

§ 901.11 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under parts 900–904 of this chapter or other authority, agencies may send a request to the Secretary (or designee) to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) Agencies are authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 901.12 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 et seq.); the Social Security Act (42 U.S.C. 301 et seq.), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting the use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in paragraph (a) of this section unless the debt arose under those laws.

PART 902—STANDARDS FOR THE COMPROMISE OF CLAIMS

Sec.

902.1 Scope and application.
902.2 Bases for compromise.
902.3 Enforcement policy.
902.4 Joint and several liability.
902.5 Further review of compromise offers.
902.6 Consideration of tax consequences to the Government.
902.7 Mutual releases of the debtor and the Government.

AUTHORITY: 31 U.S.C. 3711.

SOURCE: 65 FR 70402, Nov. 22, 2000, unless otherwise noted.

§ 902.1 Scope and application.

(a) The standards set forth in this part apply to the compromise of debts pursuant to 31 U.S.C. 3711. An agency may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, that agency when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed $100,000 or any higher amount authorized by the Attorney General. Agency heads may designate officials within their respective agencies to exercise the authorities in this section.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the Department of Justice. The agency should evaluate the compromise offer, using the factors set forth in this part. If an offer to compromise any debt in excess of $100,000 is acceptable to the agency, the agency shall refer the debt to the Civil Division or other appropriate litigating division in the Department of Justice using a Claims Collection Litigation Report (CCLR). Agencies may obtain the CCLR from the Department of Justice's National Central Intake Facility. The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. Justice Department approval is not required if the agency rejects a compromise offer.

§ 902.2 Bases for compromise.

(a) Agencies may compromise a debt if the Government cannot collect the full amount because:

(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information;

(2) The Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings;

(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning the Government's ability to prove its case in court.

(b) In determining the debtor's inability to pay, agencies should consider relevant factors such as the following:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor; and

(5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) Agencies should verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. Agencies should consider the applicable exemptions available to the debtor under state and Federal law in determining the Government's ability to enforce collection. Agencies also may consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for the Government's claim. In determining the litigative risks involved, agencies should consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.

(e) Agencies may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collecting justifies enforced collection of the full amount, agencies should consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(f) Agencies generally should not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, agencies should obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. Whenever possible, agencies also should obtain security for repayment in the manner set forth in part 901 of this chapter.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, agencies should obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income and expenses. Agencies also may obtain credit reports or other financial information to assess compromise offers. Agencies may use their own financial information form or may request suitable forms from the Department of Justice or the local United States Attorney's Office.

§ 902.3 Enforcement policy.

Pursuant to this part, agencies may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if the agency's enforcement policy in terms of deterrence and securing compliance, present and future, will be

adequately served by the agency's acceptance of the sum to be agreed upon.

§ 902.4 Joint and several liability.

(a) When two or more debtors are jointly and severally liable, agencies should pursue collection activity against all debtors, as appropriate. Agencies should not attempt to allocate the burden of payment between the debtors but should proceed to liquidate the indebtedness as quickly as possible.

(b) Agencies should ensure that a compromise agreement with one debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 902.5 Further review of compromise offers.

If an agency is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the agency's delegated compromise authority, it may refer the offer to the Civil Division or other appropriate litigating division in the Department of Justice, using a CCLR accompanied by supporting data and particulars concerning the debt. The Department of Justice may act upon such an offer or return it to the agency with instructions or advice.

§ 902.6 Consideration of tax consequences to the Government.

In negotiating a compromise, agencies should consider the tax consequences to the Government. In particular, agencies should consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on discharge of indebtedness reporting requirements see § 903.5 of this chapter.

§ 902.7 Mutual releases of the debtor and the Government.

In all appropriate instances, a compromise that is accepted by an agency should be implemented by means of a mutual release, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

PART 903—STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTIVITY

Sec.
903.1 Scope and application.
903.2 Suspension of collection activity.
903.3 Termination of collection activity.
903.4 Exception to termination.
903.5 Discharge of indebtedness; reporting requirements.

AUTHORITY: 31 U.S.C. 3711.

SOURCE: 65 FR 70403, Nov. 22, 2000, unless otherwise noted.

§ 903.1 Scope and application.

(a) The standards set forth in this part apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the Department of Justice for litigation, agencies may suspend or terminate collection under this part with respect to debts arising out of activities of, or referred or transferred for collection services to, that agency.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the agency believes that suspension or termination of any

debt in excess of $100,000 may be appropriate, the agency shall refer the debt to the Civil Division or other appropriate litigating division in the Department of Justice, using the CCLR. The referral should specify the reasons for the agency's recommendation. If, prior to referral to the Department of Justice, an agency determines that a debt is plainly erroneous or clearly without legal merit, the agency may terminate collection activity regardless of the amount involved without obtaining Department of Justice concurrence.

§ 903.2 Suspension of collection activity.

(a) Agencies may suspend collection activity on a debt when:

(1) The agency cannot locate the debtor;

(2) The debtor's financial condition is expected to improve; or

(3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, agencies may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and:

(1) The applicable statute of limitations has not expired; or

(2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(c)(1) Agencies shall suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt if the statute under which the request is sought prohibits the agency from collecting the debt during that time.

(2) If the statute under which the request is sought does not prohibit collection activity pending consideration of the request, agencies may use discretion, on a case-by-case basis, to suspend collection. Further, an agency ordinarily should suspend collection action upon a request for waiver or review if the agency is prohibited by statute or regulation from issuing a refund of amounts collected prior to agency consideration of the debtor's request. However, an agency should not suspend collection when the agency determines that the request for waiver or review is frivolous or was made primarily to delay collection.

(d) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, in most cases the collection activity on a debt must be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless the agency can clearly establish that the automatic stay has been lifted or is no longer in effect. Agencies should seek legal advice immediately from their agency counsel and, if legally permitted, take the necessary legal steps to ensure that no funds or money are paid by the agency to the debtor until relief from the automatic stay is obtained.

§ 903.3 Termination of collection activity.

(a) Agencies may terminate collection activity when:

(1) The agency is unable to collect any substantial amount through its own efforts or through the efforts of others;

(2) The agency is unable to locate the debtor;

(3) Costs of collection are anticipated to exceed the amount recoverable;

(4) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(5) The debt cannot be substantiated; or

(6) The debt against the debtor has been discharged in bankruptcy.

(b) Before terminating collection activity, the agency should have pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude the agency

from retaining a record of the account for purposes of:

(1) Selling the debt, if the Secretary determines that such sale is in the best interests of the United States;

(2) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time of termination of collection activity; or

(4) Screening future applicants for prior indebtedness.

(c) Generally, agencies shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. Agencies may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, the claims of an agency that it is a known creditor of a debtor may survive a discharge if the agency did not receive formal notice of the proceedings. Agencies should seek legal advice from their agency counsel if they believe they have claims or offsets that may survive the discharge of a debtor.

§ 903.4 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, agencies may refer debts for litigation even though termination of collection activity may otherwise be appropriate.

§ 903.5 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), agencies shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury, Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under part 903 of this title and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this chapter. When an agency discharges a debt in full or in part, further collection action is prohibited. Therefore, agencies should make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, agencies must terminate debt collection action.

(b) Section 3711(i), title 31, United States Code, requires agencies to sell a delinquent nontax debt upon termination of collection action if the Secretary determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), agencies may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

(c) Upon discharge of an indebtedness, agencies must report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. An agency may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on the agency's behalf.

(d) When discharging a debt, agencies must request that litigation counsel release any liens of record securing the debt.

PART 904—REFERRALS TO THE DEPARTMENT OF JUSTICE

Sec.
904.1 Prompt referral.
904.2 Claims Collection Litigation Report.
904.3 Preservation of evidence.
904.4 Minimum amount of referrals to the Department of Justice.

AUTHORITY: 31 U.S.C. 3711.

SOURCE: 65 FR 70404, Nov. 22, 2000, unless otherwise noted.

§ 904.1 Prompt referral.

(a) Agencies shall promptly refer to the Department of Justice for litigation debts on which aggressive collection activity has been taken in accordance with part 901 of this chapter and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with parts 902 and 903 of this chapter. Agencies may refer those debts arising out of activities of, or referred or transferred for collection services to, that agency. Debts for which the principal amount is over $1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, shall be referred to the Civil Division or other division responsible for litigating such debts at the Department of Justice, Washington, D.C. Debts for which the principal amount is $1,000,000, or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, shall be referred to the Department of Justice's Nationwide Central Intake Facility as required by the CCLR instructions. Debts should be referred as early as possible, consistent with aggressive agency collection activity and the observance of the standards contained in parts 900–904 of this chapter, and, in any event, well within the period for initiating timely lawsuits against the debtors. Agencies shall make every effort to refer delinquent debts to the Department of Justice for litigation within one year of the date such debts last became delinquent. In the case of guaranteed or insured loans, agencies should make every effort to refer these delinquent debts to the Department of Justice for litigation within one year from the date the loan was presented to the agency for payment or re-insurance.

(b) The Department of Justice has exclusive jurisdiction over the debts referred to it pursuant to this section. The referring agency shall immediately terminate the use of any administrative collection activities to collect a debt at the time of the referral of that debt to the Department of Justice. The agency should advise the Department of Justice of the collection activities which have been utilized to date, and their result. The referring agency shall refrain from having any contact with the debtor and shall direct all debtor inquiries concerning the debt to the Department of Justice. The referring agency shall immediately notify the Department of Justice of any payments credited by the agency to the debtor's account after referral of a debt under this section. The Department of Justice shall notify the referring agency, in a timely manner, of any payments it receives from the debtor.

§ 904.2 Claims Collection Litigation Report.

(a) Unless excepted by the Department of Justice, agencies shall complete the CCLR (see § 902.1(b) of this chapter), accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to the Department of Justice for litigation. Referring agencies shall complete all of the sections of the CCLR appropriate to each claim as required by the CCLR instructions and furnish such other information as may be required in specific cases.

(b) Agencies shall indicate clearly on the CCLR the actions they wish the Department of Justice to take with respect to the referred claim. The CCLR permits the agency to indicate specifically any of a number of litigative activities which the Department of Justice may pursue, including enforced collection, judgment lien only, renew judgment lien only, renew judgment lien and enforce collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) Agencies also shall use the CCLR to refer claims to the Department of Justice to obtain approval of any proposals to compromise the claims or to suspend or terminate agency collection activity.

§ 904.3 Preservation of evidence.

Referring agencies must take care to preserve all files and records that may be needed by the Department of Justice to prove their claims in court. Agencies ordinarily should include certified copies of the documents that form the basis for the claim in the packages referring their claims to the Department of Justice for litigation. Agencies shall provide originals of such documents

immediately upon request by the Department of Justice.

§ 904.4 Minimum amount of referrals to the Department of Justice.

(a) Agencies shall not refer for litigation claims of less than $2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. The Department of Justice shall promptly notify referring agencies if the Attorney General changes this minimum amount.

(b) Agencies shall not refer claims of less than the minimum amount unless:

(1) Litigation to collect such smaller claims is important to ensure compliance with the agency's policies or programs;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to the referring agency for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under state and Federal law and the judicial remedies available to the Government.

(c) Agencies should consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in the Department of Justice prior to referring claims valued at less than the minimum amount.

CHAPTER X—FINANCIAL CRIMES ENFORCEMENT NETWORK, DEPARTMENT OF THE TREASURY

Part		*Page*
1000–1009	[Reserved]	
1010	General provisions	585
1011–1019	[Reserved]	
1020	Rule for banks	640
1021	Rules for casinos and card clubs	655
1022	Rules for money services businesses	663
1023	Rules for brokers or dealers in securities	672
1024	Rules for mutual funds	682
1025	Rules for insurance companies	689
1026	Rules for futures commission merchants and introducing brokers in commodities	695
1027	Rules for dealers in precious metals, precious stones, or jewels	704
1028	Rules for operators of credit card systems	708
1029–1099	[Reserved]	

PARTS 1000–1009[RESERVED]

PART 1010—GENERAL PROVISIONS

Subpart A—General Definitions

Sec.
1010.100 General definitions.

Subpart B—Programs

1010.200 General.
1010.205 Exempted anti-money laundering programs for certain financial institutions.
1010.210 Anti-money laundering programs.
1010.220 Customer identification program requirements.

Subpart C—Reports Required To Be Made

1010.300 General.
1010.301 Determination by the Secretary.
1010.305 [Reserved]
1010.306 Filing of reports.
1010.310 Reports of transactions in currency.
1010.311 Filing obligations for reports of transactions in currency.
1010.312 Identification required.
1010.313 Aggregation.
1010.314 Structured transactions.
1010.315 Exemptions for non-bank financial institutions.
1010.320 Reports of suspicious transactions.
1010.330 Reports relating to currency in excess of $10,000 received in a trade or business.
1010.340 Reports of transportation of currency or monetary instruments.
1010.350 Reports of foreign financial accounts.
1010.360 Reports of transactions with foreign financial agencies.
1010.370 Reports of certain domestic coin and currency transactions.

Subpart D—Records Required To Be Maintained

1010.400 General.
1010.401 Determination by the Secretary.
1010.405 [Reserved]
1010.410 Records to be made and retained by financial institutions.
1010.415 Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.
1010.420 Records to be made and retained by persons having financial interests in foreign financial accounts.
1010.430 Nature of records and retention period.
1010.440 Person outside the United States.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1010.500 General.
1010.505 Definitions.
1010.520 Information sharing between government agencies and financial institutions.
1010.530 [Reserved]
1010.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures

1010.600 General.

SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS

1010.605 Definitions.
1010.610 Due diligence programs for correspondent accounts for foreign financial institutions.
1010.620 Due diligence programs for private banking accounts.
1010.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.
1010.640 [Reserved]

SPECIAL MEASURES UNDER SECTION 311 OF THE USA PATRIOT ACT AND LAW ENFORCEMENT ACCESS TO FOREIGN BANK RECORDS

1010.651 Special measures against Burma.
1010.652 Special measures against Myanmar Mayflower Bank and Asia Wealth Bank.
1010.653 Special measures against Commercial Bank of Syria.
1010.654 Special measures against VEF Bank.
1010.655 Special measures against Banco Delta Asia.
1010.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

Subpart G—Administrative Rulings

1010.710 Scope.
1010.711 Submitting requests.
1010.712 Nonconforming requests.
1010.713 Oral communications.
1010.714 Withdrawing requests.
1010.715 Issuing rulings.
1010.716 Modifying or rescinding rulings.
1010.717 Disclosing information.

Subpart H—Enforcement; Penalties; and Forfeiture

1010.810 Enforcement.
1010.820 Civil penalty.

1010.830 Forfeiture of currency or monetary instruments.
1010.840 Criminal penalty.
1010.850 Enforcement authority with respect to transportation of currency or monetary instruments.

Subpart I—Summons

1010.911 General.
1010.912 Persons who may issue summons.
1010.913 Contents of summons.
1010.914 Service of summons.
1010.915 Examination of witnesses and records.
1010.916 Enforcement of summons.
1010.917 Payment of expenses.

Subpart J—Miscellaneous

1010.920 Access to records.
1010.930 Rewards for informants.
1010.940 Photographic or other reproductions of Government obligations.
1010.950 Availability of information.
1010.960 Disclosure.
1010.970 Exceptions, exemptions, and reports.
1010.980 Dollars as including foreign currency.

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—General Definitions

§ 1010.100 General definitions.

When used in this chapter and in forms prescribed under this chapter, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this subpart. Terms applicable to a particular type of financial institution or specific part or subpart of this chapter are located in that part or subpart. Terms may have different meanings in different parts or subparts.

(a) *Accept.* A receiving financial institution, other than the recipient's financial institution, accepts a transmittal order by executing the transmittal order. A recipient's financial institution accepts a transmittal order by paying the recipient, by notifying the recipient of the receipt of the order or by otherwise becoming obligated to carry out the order.

(b) *At one time.* For purposes of § 1010.340 of this part, a person who transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so ''at one time'' if:

(1) That person either alone, in conjunction with or on behalf of others;

(2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;

(3) Monetary instruments;

(4) Into the United States or out of the United States;

(5) Totaling more than $10,000;

(6)(i) On one calendar day; or

(ii) If for the purpose of evading the reporting requirements of § 1010.340, on one or more days.

(c) *Attorney General.* The Attorney General of the United States.

(d) *Bank.* Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A commercial bank or trust company organized under the laws of any State or of the United States;

(2) A private bank;

(3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;

(4) An insured institution as defined in section 401 of the National Housing Act;

(5) A savings bank, industrial bank or other thrift institution;

(6) A credit union organized under the law of any State or of the United States;

(7) Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State;

(8) A bank organized under foreign law;

(9) Any national banking association or corporation acting under the provisions of section 25(a) of the Act of Dec. 23, 1913, as added by the Act of Dec. 24, 1919, ch. 18, 41 Stat. 378, as amended (12 U.S.C. 611–32).

(e) *Bank Secrecy Act.* The Currency and Foreign Transactions Reporting

Act, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the Bank Secrecy Act. These statutes are codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto.

(f) *Beneficiary*. The person to be paid by the beneficiary's bank.

(g) *Beneficiary's bank*. The bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(h) *Broker or dealer in securities*. A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

(i) *Business day*. As used in this chapter with respect to banks, business day means that day, as normally communicated to its depository customers, on which a bank routinely posts a particular transaction to its customer's account.

(j) *Commodity*. Any good, article, service, right, or interest described in section 1a(4) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 1a(4).

(k) *Common carrier*. Any person engaged in the business of transporting individuals or goods for a fee who holds himself out as ready to engage in such transportation for hire and who undertakes to do so indiscriminately for all persons who are prepared to pay the fee for the particular service offered.

(l) *Contract of sale*. Any sale, agreement of sale, or agreement to sell as described in section 1a(7) of the CEA, 7 U.S.C. 1a(7).

(m) *Currency*. The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(n) *Deposit account*. Deposit accounts include transaction accounts described in paragraph (ccc) of this section, savings accounts, and other time deposits.

(o) *Domestic*. When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

(p) *Established customer*. A person with an account with the financial institution, including a loan account or deposit or other asset account, or a person with respect to which the financial institution has obtained and maintains on file the person's name and address, as well as taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information.

(q) *Execution date*. The day on which the receiving financial institution may properly issue a transmittal order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received, and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the recipient on the payment date.

(r) *Federal functional regulator*.

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Office of Thrift Supervision;

(5) The National Credit Union Administration;

(6) The Securities and Exchange Commission; or

(7) The Commodity Futures Trading Commission.

(s) *FinCEN*. FinCEN means the Financial Crimes Enforcement Network, a bureau of the Department of the Treasury.

(t) *Financial institution*. Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:

(1) A bank (except bank credit card systems);

(2) A broker or dealer in securities;

(3) A money services business as defined in paragraph (ff) of this section;

(4) A telegraph company;

(5)(i) *Casino*. A casino or gambling casino that: Is duly licensed or authorized to do business as such in the United States, whether under the laws of a State or of a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other Federal, State, or tribal law or arrangement affecting Indian lands (including, without limitation, a casino operating on the assumption or under the view that no such authorization is required for casino operation on Indian lands); and has gross annual gaming revenue in excess of $1 million. The term includes the principal headquarters and every domestic branch or place of business of the casino.

(ii) For purposes of this paragraph (t)(5), ''gross annual gaming revenue'' means the gross gaming revenue received by a casino, during either the previous business year or the current business year of the casino. A casino or gambling casino which is a casino for purposes of this chapter solely because its gross annual gaming revenue exceeds $1,000,000 during its current business year, shall not be considered a casino for purposes of this chapter prior to the time in its current business year that its gross annual gaming revenue exceeds $1,000,000.

(iii) Any reference in this chapter, other than in this paragraph (t)(5) and in paragraph (t)(6) of this section, to a casino shall also include a reference to a card club, unless the provision in question contains specific language varying its application to card clubs or excluding card clubs from its application;

(6)(i) *Card club*. A card club, gaming club, card room, gaming room, or similar gaming establishment that is duly licensed or authorized to do business as such in the United States, whether under the laws of a State, of a Territory or Insular Possession of the United States, or of a political subdivision of any of the foregoing, or under the Indian Gaming Regulatory Act or other Federal, State, or tribal law or arrangement affecting Indian lands (including, without limitation, an establishment operating on the assumption or under the view that no such authorization is required for operation on Indian lands for an establishment of such type), and that has gross annual gaming revenue in excess of $1,000,000. The term includes the principal headquarters and every domestic branch or place of business of the establishment. The term ''casino,'' as used in this chapter shall include a reference to ''card club'' to the extent provided in paragraph (t)(5)(iii) of this section.

(ii) For purposes of this paragraph (t)(6), ''gross annual gaming revenue'' means the gross revenue derived from or generated by customer gaming activity (whether in the form of per-game or per-table fees, however computed, rentals, or otherwise) and received by an establishment, during either the establishment's previous business year or its current business year. A card club that is a financial institution for purposes of this chapter solely because its gross annual revenue exceeds $1,000,000 during its current business year, shall not be considered a financial institution for purposes of this chapter prior to the time in its current business year when its gross annual revenue exceeds $1,000,000;

(7) A person subject to supervision by any state or Federal bank supervisory authority;

(8) A futures commission merchant;

(9) An introducing broker in commodities; or

(10) A mutual fund.

(u) *Foreign bank*. A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

(v) *Foreign financial agency*. A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(w) *Funds transfer*. The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(x) *Futures commission merchant*. Any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission (''CFTC'') under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(y) *Indian Gaming Regulatory Act*. The Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. 2701–2721 and 18 U.S.C. 1166–68.

(z) *Intermediary bank*. A receiving bank other than the originator's bank or the beneficiary's bank.

(aa) *Intermediary financial institution*. A receiving financial institution, other than the transmittor's financial institution or the recipient's financial institution. The term intermediary financial institution includes an intermediary bank.

(bb) *Introducing broker-commodities*. Any person registered or required to be registered as an introducing broker with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(cc) *Investment security*. An instrument which:

(1) Is issued in bearer or registered form;

(2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;

(3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(4) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(dd) *Monetary instruments*. (1) Monetary instruments include:

(i) Currency;

(ii) Traveler's checks in any form;

(iii) All negotiable instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes of §1010.340), or otherwise in such form that title thereto passes upon delivery;

(iv) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) signed but with the payee's name omitted; and

(v) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(2) Monetary instruments do not include warehouse receipts or bills of lading.

(ee) [Reserved]

(ff) *Money services business*. Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(6) of this section. Notwithstanding

the preceding sentence, the term ''money services business'' shall not include a bank, nor shall it include a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(1) *Currency dealer or exchanger*. A currency dealer or exchanger (other than a person who does not exchange currency in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(2) *Check casher*. A person engaged in the business of a check casher (other than a person who does not cash checks in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(3) *Issuer of traveler's checks, money orders, or stored value*. An issuer of traveler's checks, money orders, or, stored value (other than a person who does not issue such checks or money orders or stored value in an amount greater than $1,000 in currency or monetary or other instruments to any person on any day in one or more transactions).

(4) *Seller or redeemer of traveler's checks, money orders, or stored value*. A seller or redeemer of traveler's checks, money orders, or stored value (other than a person who does not sell such checks or money orders or stored value in an amount greater than $1,000 in currency or monetary or other instruments to or redeem such instruments for an amount greater than $1,000 in currency or monetary or other instruments from, any person on any day in one or more transactions).

(5) *Money transmitter*—(i) *In general*. Money transmitter:

(A) Any person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) Any other person engaged as a business in the transfer of funds.

(ii) *Facts and circumstance: Limitation*. Whether a person ''engages as a business'' in the activities described in paragraph (ff)(5)(i) of this section is a matter of facts and circumstances. Generally, the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with a bona fide sale of securities or other property), will not cause a person to be a money transmitter within the meaning of paragraph (ff)(5)(i) of this section.

(6) *U.S. Postal Service*. The United States Postal Service, except with respect to the sale of postage or philatelic products.

(gg) *Mutual fund*. An ''investment company'' (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3)) that is an ''open-end company'' (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) that is registered or is required to register with the Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

(hh) *Option on a commodity*. Any agreement, contract, or transaction described in section 1a(26) of the CEA, 7 U.S.C. 1a(26).

(ii) *Originator*. The sender of the first payment order in a funds transfer.

(jj) *Originator's bank*. The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank, or the originator if the originator is a bank or foreign bank.

(kk) *Payment date*. The day on which the amount of the transmittal order is payable to the recipient by the recipient's financial institution. The payment date may be determined by instruction of the sender, but cannot be earlier than the day the order is received by the recipient's financial institution and, unless otherwise prescribed by instruction, is the date the order is received by the recipient's financial institution.

(ll) *Payment order*. An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to

pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:

(1) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

(mm) *Person*. An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

(nn) *Receiving bank*. The bank or foreign bank to which the sender's instruction is addressed.

(oo) *Receiving financial institution*. The financial institution or foreign financial agency to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

(pp) *Recipient*. The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary, except where the recipient's financial institution is a financial institution other than a bank.

(qq) *Recipient's financial institution*. The financial institution or foreign financial agency identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank, except where the beneficiary is a recipient's financial institution.

(rr) *Secretary*. The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(ss) *Security*. Security means any instrument or interest described in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).

(tt) *Self-regulatory organization:*

(1) Shall have the same meaning as provided in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)); and

(2) Means a ''registered entity'' or a ''registered futures association'' as provided in section 1a(29) or 17, respectively, of the Commodity Exchange Act (7 U.S.C. 1a(29), 21).

(uu) *Sender*. The person giving the instruction to the receiving financial institution.

(vv) *State*. The States of the United States and, wherever necessary to carry out the provisions of this chapter, the District of Columbia.

(ww) *Stored value*. Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

(xx) *Structure (structuring)*. For purposes of § 1010.314, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under §§ 1010.311, 1010.313, 1020.315, 1021.311 and 1021.313 of this chapter. ''In any manner'' includes, but is not limited to, the breaking down of a single sum of currency exceeding $10,000 into smaller sums, including sums at or below $10,000, or the conduct of a transaction, or series of currency transactions at or below $10,000. The transaction or transactions need not exceed the $10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.

(yy) *Taxpayer Identification Number*. Taxpayer Identification Number (''TIN'') is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(zz) *Territories and Insular Possessions.* The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and all other territories and possessions of the United States other than the Indian lands and the District of Columbia.

(aaa) [Reserved]

(bbb) *Transaction.* (1) Except as provided in paragraph (bbb)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, security, contract of sale of a commodity for future delivery, option on any contract of sale of a commodity for future delivery, option on a commodity, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(2) For purposes of §§ 1010.311, 1010.313, 1020.315, 1021.311, 1021.313, and other provisions of this chapter relating solely to the report required by those sections, the term ''transaction in currency'' shall mean a transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency, is not a transaction in currency for this purpose.

(ccc) *Transaction account.* Transaction accounts include those accounts described in 12 U.S.C. 461(b)(1)(C), money market accounts and similar accounts that take deposits and are subject to withdrawal by check or other negotiable order.

(ddd) *Transmittal of funds.* A series of transactions beginning with the transmittor's transmittal order, made for the purpose of making payment to the recipient of the order. The term includes any transmittal order issued by the transmittor's financial institution or an intermediary financial institution intended to carry out the transmittor's transmittal order. The term transmittal of funds includes a funds transfer. A transmittal of funds is completed by acceptance by the recipient's financial institution of a transmittal order for the benefit of the recipient of the transmittor's transmittal order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(eee) *Transmittal order.* The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient if:

(1) The instruction does not state a condition to payment to the recipient other than time of payment;

(2) The receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution.

(fff) *Transmittor.* The sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator, except where the transmittor's financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.

(ggg) *Transmittor's financial institution.* The receiving financial institution to which the transmittal order of the transmittor is issued if the transmittor is not a financial institution or foreign financial agency, or the transmittor if the transmittor is a financial institution or foreign financial agency. The term transmittor's financial institution includes an originator's

bank, except where the originator is a transmittor's financial institution other than a bank or foreign bank.

(hhh) *United States*. The States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

(iii) *U.S. person*. (1) A United States citizen; or (2) A person other than an individual (such as a corporation, partnership or trust), that is established or organized under the laws of a State or the United States. Non-U.S. person means a person that is not a U.S. person.

(jjj) *U.S. Postal Service*. The United States Postal Service, except with respect to the sale of postage or philatelic products.

Subpart B—Programs

§ 1010.200 General.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to subpart B of its chapter X Part for any additional program requirements. Unless otherwise indicated, the program requirements contained in this subpart B apply to all financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)).

§ 1010.205 Exempted anti-money laundering programs for certain financial institutions.

(a) *Exempt financial institutions*. Subject to the provisions of paragraphs (c) and (d) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

(1) An agency of the United States Government, or of a State or local government, carrying out a duty or power of a business described in 31 U.S.C. 5312(a)(2); and

(2) [Reserved]

(b) *Temporary exemption for certain financial institutions*. (1) Subject to the provisions of paragraphs (c) and (d) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

(i) Pawnbroker;

(ii) Loan or finance company;

(iii) Travel agency;

(iv) Telegraph company;

(v) Seller of vehicles, including automobiles, airplanes, and boats;

(vi) Person involved in real estate closings and settlements;

(vii) Private banker;

(viii) Commodity pool operator;

(ix) Commodity trading advisor; or

(x) Investment company.

(2) Subject to the provisions of paragraphs (c) and (d) of this section, a bank (as defined in § 1010.100(d)) that is not subject to regulation by a Federal functional regulator (as defined in § 1010.100(r)) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(3) Subject to the provisions of paragraphs (c) and (d) of this section, a person described in § 1010.100(t)(7) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(c) *Limitation on exemption*. The exemptions described in paragraph (b) of this section shall not apply to any financial institution that is otherwise required to establish an anti-money laundering program by this chapter.

(d) *Compliance obligations of deferred financial institutions*. Nothing in this section shall be deemed to relieve an exempt financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the U.S.C. and this chapter.

§ 1010.210 Anti-money laundering programs.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to subpart B of its chapter X part for any additional anti-money laundering program requirements.

§ 1010.220 Customer identification program requirements.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to subpart B of its chapter X part for any additional customer identification program requirements.

Subpart C—Reports Required To Be Made

§ 1010.300 General.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its chapter X part for any additional reporting requirements. Unless otherwise indicated, the reporting requirements contained in this subpart C apply to all financial institutions.

§ 1010.301 Determination by the Secretary.

The Secretary hereby determines that the reports required by this chapter have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 1010.305 [Reserved]

§ 1010.306 Filing of reports.

(a)(1) A report required by § 1010.311 or § 1021.311, shall be filed by the financial institution within 15 days following the day on which the reportable transaction occurred.

(2) A copy of each report filed pursuant to §§ 1010.311, 1010.313, 1020.315, 1021.311 and 1021.313, shall be retained by the financial institution for a period of five years from the date of the report.

(3) All reports required to be filed by §§ 1010.311, 1010.313, 1020.315, 1021.311 and 1021.313, shall be filed with the Commissioner of Internal Revenue, unless otherwise specified.

(b)(1) A report required by § 1010.340(a) shall be filed at the time of entry into the United States or at the time of departure, mailing or shipping from the United States, unless otherwise specified by the Commissioner of Customs and Border Protection.

(2) A report required by § 1010.340(b) shall be filed within 15 days after receipt of the currency or other monetary instruments.

(3) All reports required by § 1010.340 shall be filed with the Customs officer in charge at any port of entry or departure, or as otherwise specified by the Commissioner of Customs and Border Protection. Reports required by § 1010.340(a) for currency or other monetary instruments not physically accompanying a person entering or departing from the United States, may be filed by mail on or before the date of entry, departure, mailing or shipping. All reports required by § 1010.340(b) may also be filed by mail. Reports filed by mail shall be addressed to the Commissioner of Customs and Border Protection, Attention: Currency Transportation Reports, Washington, DC 20229.

(c) Reports required to be filed by § 1010.350 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial accounts exceeding $10,000 maintained during the previous calendar year.

(d) Reports required by § 1010.311, § 1010.313, § 1010.340, § 1010.350, § 1020.315, § 1021.311 or § 1021.313 of this chapter shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.

(e) Forms to be used in making the reports required by § 1010.311, § 1010.313, § 1010.350, § 1020.315, § 1021.311 or § 1021.313 of this chapter may be obtained from the Internal Revenue Service. Forms to be used in making the reports required by § 1010.340 may be obtained from the U.S. Customs and Border Protection.

§ 1010.310 Reports of transactions in currency.

Sections 1010.310 through 1010.314 set forth the rules for the reporting by financial institutions of transactions in currency. Unless otherwise indicated, the transactions in currency reporting requirements in §§ 1010.310 through 1010.314 apply to all financial institutions. Each financial institution should refer to subpart C of its chapter X part for any additional transactions in currency reporting requirements.

§ 1010.311 Filing obligations for reports of transactions in currency.

Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than $10,000, except as otherwise provided in this section. In the case of the U.S. Postal Service,

the obligation contained in the preceding sentence shall not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products.

§ 1010.312 Identification required.

Before concluding any transaction with respect to which a report is required under § 1010.311, § 1010.313, § 1020.315, § 1021.311 or § 1021.313 of this chapter, a financial institution shall verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity on whose behalf such transaction is to be effected. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (*e.g.*, a driver's license or credit card). A bank signature card may be relied upon only if it was issued after documents establishing the identity of the individual were examined and notation of the specific information was made on the signature card. In each instance, the specific identifying information (*i.e.*, the account number of the credit card, the driver's license number, *etc.*) used in verifying the identity of the customer shall be recorded on the report, and the mere notation of ''known customer'' or ''bank signature card on file'' on the report is prohibited.

§ 1010.313 Aggregation.

(a) *Multiple branches.* A financial institution includes all of its domestic branch offices, and any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic offices, for purposes of the transactions in currency reporting requirements in this chapter.

(b) *Multiple transactions.* In the case of financial institutions other than casinos, for purposes of the transactions in currency reporting requirements in this chapter, multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any one business day (or in the case of the U.S. Postal Service, any one day). Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

§ 1010.314 Structured transactions.

No person shall for the purpose of evading the transactions in currency reporting requirements of this chapter with respect to such transaction:

(a) Cause or attempt to cause a domestic financial institution to fail to file a report required under the transactions in currency reporting requirements of this chapter;

(b) Cause or attempt to cause a domestic financial institution to file a report required under the transactions in currency reporting requirements of this chapter that contains a material omission or misstatement of fact; or

(c) Structure (as that term is defined in § 1010.100(xx)) or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

§ 1010.315 Exemptions for non-bank financial institutions.

A non-bank financial institution is not required to file a report otherwise required by § 1010.311 with respect to a transaction in currency between the institution and a commercial bank.

§ 1010.320 Reports of suspicious transactions.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to subpart C of its financial institution part in this chapter for any additional suspicious transaction reporting requirements.

§ 1010.330 Reports relating to currency in excess of $10,000 received in a trade or business.

(a) *Reporting requirement*—(1) *Reportable transactions*—(i) *In general.* Any person (solely for purposes of section 5331 of title 31, United States Code and this section, ''person'' shall have the same meaning as under 26 U.S.C.7701(a)(1)) who, in the course of a trade or business in which such person is engaged, receives currency in excess of $10,000 in 1 transaction (or 2 or more related transactions) shall, except as otherwise provided, make a report of information with respect to the receipt of currency. This section does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and § 1010.311, § 1010.313, § 1020.315, § 1021.311 or § 1021.313 of this chapter.

(ii) *Certain financial transactions.* Section 6050I of title 26 of the United States Code requires persons to report information about financial transactions to the IRS, and 31 U.S.C. 5331 requires persons to report similar information about certain transactions to FinCEN. This information shall be reported on the same form as prescribed by the Secretary.

(2) *Currency received for the account of another.* Currency in excess of $10,000 received by a person for the account of another must be reported under this section. Thus, for example, a person who collects delinquent accounts receivable for an automobile dealer must report with respect to the receipt of currency in excess of $10,000 from the collection of a particular account even though the proceeds of the collection are credited to the account of the automobile dealer (*i.e.,* where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis).

(3) *Currency received by agents*— (i) *General rule.* Except as provided in paragraph (a)(3)(ii) of this section, a person who in the course of a trade or business acts as an agent (or in some other similar capacity) and receives currency in excess of $10,000 from a principal must report the receipt of currency under this section.

(ii) *Exception.* An agent who receives currency from a principal and uses all of the currency within 15 days in a currency transaction (the ''second currency transaction'') which is reportable under section 5312 of title 31, or 31 U.S.C. 5331 and this section, and who discloses the name, address, and TIN of the principal to the recipient in the second currency transaction need not report the initial receipt of currency under this section. An agent will be deemed to have met the disclosure requirements of this paragraph (a)(3)(ii) if the agent discloses only the name of the principal and the agent knows that the recipient has the principal's address and taxpayer identification number.

(iii) *Example.* The following example illustrates the application of the rules in paragraphs (a)(3)(i) and (ii) of this section:

Example. B, the principal, gives D, an attorney, $75,000 in currency to purchase real property on behalf of B. Within 15 days D purchases real property for currency from E, a real estate developer, and discloses to E, B's name, address, and taxpayer identification number. Because the transaction qualifies for the exception provided in paragraph (a)(3)(ii) of this section, D need not report with respect to the initial receipt of currency under this section. The exception does not apply, however, if D pays E by means other than currency, or effects the purchase more than 15 days following receipt of the currency from B, or fails to disclose B's name, address, and taxpayer identification number (assuming D does not know that E already has B's address and taxpayer identification number), or purchases the property from a person whose sale of the property is not in the course of that person's trade or business. In any such case, D is required to report the receipt of currency from B under this section.

(b) *Multiple payments.* The receipt of multiple currency deposits or currency installment payments (or other similar payments or prepayments) relating to a single transaction (or two or more related transactions), is reported as set forth in paragraphs (b)(1) through (b)(3) of this section.

(1) *Initial payment in excess of $10,000.* If the initial payment exceeds $10,000, the recipient must report the initial payment within 15 days of its receipt.

(2) *Initial payment of $10,000 or less.* If the initial payment does not exceed $10,000, the recipient must aggregate the initial payment and subsequent

payments made within one year of the initial payment until the aggregate amount exceeds $10,000, and report with respect to the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed $10,000.

(3) *Subsequent payments*. In addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the aggregate, exceed $10,000. The report must be made within 15 days after receiving the payment in excess of $10,000 or the payment that causes the aggregate amount received in the 12-month period to exceed $10,000. (If more than one report would otherwise be required for multiple currency payments within a 15-day period that relate to a single transaction (or two or more related transactions), the recipient may make a single combined report with respect to the payments. The combined report must be made no later than the date by which the first of the separate reports would otherwise be required to be made.)

(4) *Example*. The following example illustrates the application of the rules in paragraphs (b)(1) through (b)(3) of this section:

Example. On January 10, Year 1, M receives an initial payment in currency of $11,000 with respect to a transaction. M receives subsequent payments in currency with respect to the same transaction of $4,000 on February 15, Year 1, $6,000 on March 20, Year 1, and $12,000 on May 15, Year 1. M must make a report with respect to the payment received on January 10, Year 1, by January 25, Year 1. M must also make a report with respect to the payments totaling $22,000 received from February 15, Year 1, through May 15, Year 1. This report must be made by May 30, Year 1, that is, within 15 days of the date that the subsequent payments, all of which were received within a 12-month period, exceeded $10,000.

(c) *Meaning of terms*. The following definitions apply for purposes of this section—

(1) *Currency*. Solely for purposes of 31 U.S.C. 5331 and this section, *currency* means—

(i) The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued; and

(ii) A cashier's check (by whatever name called, including ''treasurer's check'' and ''bank check''), bank draft, traveler's check, or money order having a face amount of not more than $10,000—

(A) Received in a designated reporting transaction as defined in paragraph (c)(2) of this section (except as provided in paragraphs (c)(3), (4), and (5) of this section), or

(B) Received in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the reporting of the transaction under section 5331 and this section.

(2) *Designated reporting transaction*. A designated reporting transaction is a retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of—

(i) A consumer durable,

(ii) A collectible, or

(iii) A travel or entertainment activity.

(3) *Exception for certain loans*. A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument constitutes the proceeds of a loan from a bank. The recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation (such as a written lien instruction from the issuer of the instrument) to substantiate that the instrument constitutes loan proceeds.

(4) *Exception for certain installment sales*. A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received in payment on a promissory note or an installment sales contract (including a lease that is considered to be a sale for Federal income tax purposes). However, the preceding sentence applies only if—

(i) Promissory notes or installment sales contracts with the same or substantially similar terms are used in the ordinary course of the recipient's trade or business in connection with sales to ultimate consumers; and

(ii) The total amount of payments with respect to the sale that are received on or before the 60th day after the date of the sale does not exceed 50 percent of the purchase price of the sale.

(5) *Exception for certain down payment plans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received pursuant to a payment plan requiring one or more down payments and the payment of the balance of the purchase price by a date no later than the date of the sale (in the case of an item of travel or entertainment, a date no later than the earliest date that any item of travel or entertainment pertaining to the same trip or event is furnished). However, the preceding sentence applies only if—

(i) The recipient uses payment plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers; and

(ii) The instrument is received more than 60 days prior to the date of the sale (in the case of an item of travel or entertainment, the date on which the final payment is due).

(6) *Examples.* The following examples illustrate the definition of ''currency'' set forth in paragraphs (c)(1) through (c)(5) of this section:

Example 1. D, an individual, purchases gold coins from M, a coin dealer, for $13,200. D tenders to M in payment United States currency in the amount of $6,200 and a cashier's check in the face amount of $7,000 which D had purchased. Because the sale is a designated reporting transaction, the cashier's check is treated as currency for purposes of 31 U.S.C. 5331 and this section. Therefore, because M has received more than $10,000 in currency with respect to the transaction, M must make the report required by 31 U.S.C. 5331 and this section.

Example 2. E, an individual, purchases an automobile from Q, an automobile dealer, for $11,500. E tenders to Q in payment United States currency in the amount of $2,000 and a cashier's check payable to E and Q in the amount of $9,500. The cashier's check constitutes the proceeds of a loan from the bank issuing the check. The origin of the proceeds is evident from provisions inserted by the bank on the check that instruct the dealer to cause a lien to be placed on the vehicle as security for the loan. The sale of the automobile is a designated reporting transaction. However, under paragraph (c)(3) of this section, because E has furnished Q documentary information establishing that the cashier's check constitutes the proceeds of a loan from the bank issuing the check, the cashier's check is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section.

Example 3. F, an individual, purchases an item of jewelry from S, a retail jeweler, for $12,000. F gives S traveler's checks totaling $2,400 and pays the balance with a personal check payable to S in the amount of $9,600. Because the sale is a designated reporting transaction, the traveler's checks are treated as currency for purposes of section 5331 and this section. However, because the personal check is not treated as currency for purposes of section 5331 and this section, S has not received more than $10,000 in currency in the transaction and no report is required to be filed under section 5331 and this section.

Example 4. G, an individual, purchases a boat from T, a boat dealer, for $16,500. G pays T with a cashier's check payable to T in the amount of $16,500. The cashier's check is not treated as currency because the face amount of the check is more than $10,000. Thus, no report is required to be made by T under section 5331 and this section.

Example 5. H, an individual, arranges with W, a travel agent, for the chartering of a passenger aircraft to transport a group of individuals to a sports event in another city. H also arranges with W for hotel accommodations for the group and for admission tickets to the sports event. In payment, H tenders to W money orders which H had previously purchased. The total amount of the money orders, none of which individually exceeds $10,000 in face amount, exceeds $10,000. Because the transaction is a designated reporting transaction, the money orders are treated as currency for purposes of section 5331 and this section. Therefore, because W has received more than $10,000 in currency with respect to the transaction, W must make the report required by section 5331 and this section.

(7) *Consumer durable.* The term *consumer durable* means an item of tangible personal property of a type that is suitable under ordinary usage for personal consumption or use, that can reasonably be expected to be useful for at least 1 year under ordinary usage,

and that has a sales price of more than $10,000. Thus, for example, a $20,000 automobile is a consumer durable (whether or not it is sold for business use), but a $20,000 dump truck or a $20,000 factory machine is not.

(8) *Collectible*. The term *collectible* means an item described in paragraphs (A) through (D) of section 408 (m)(2) of title 26 of the United States Code (determined without regard to section 408 (m)(3) of title 26 of the United States Code).

(9) *Travel or entertainment activity*. The term *travel or entertainment activity* means an item of travel or entertainment (within the meaning of 26 CFR 1.274–2(b)(1)) pertaining to a single trip or event where the aggregate sales price of the item and all other items pertaining to the same trip or event that are sold in the same transaction (or related transactions) exceeds $10,000.

(10) *Retail sale*. The term *retail sale* means any sale (whether for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

(11) *Trade or business*. The term *trade or business* has the same meaning as under section 162 of title 26, United States Code.

(12) *Transaction*. (i) Solely for purposes of 31 U.S.C. 5331 and this section, the term *transaction* means the underlying event precipitating the payer's transfer of currency to the recipient. In this context, transactions include (but are not limited to) a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of currency for other currency; the establishment or maintenance of or contribution to a custodial, trust, or escrow arrangement; a payment of a preexisting debt; a conversion of currency to a negotiable instrument; a reimbursement for expenses paid; or the making or repayment of a loan. A transaction may not be divided into multiple transactions in order to avoid reporting under this section.

(ii) The term *related transactions* means any transaction conducted between a payer (or its agent) and a recipient of currency in a 24-hour period. Additionally, transactions conducted between a payer (or its agent) and a currency recipient during a period of more than 24 hours are related if the recipient knows or has reason to know that each transaction is one of a series of connected transactions.

(iii) The following examples illustrate the definition of paragraphs (c)(12)(i) and (ii) of this section:

Example 1. A person has a tacit agreement with a gold dealer to purchase $36,000 in gold bullion. The $36,000 purchase represents a single transaction under paragraph (c)(12)(i) of this section and the reporting requirements of this section cannot be avoided by recasting the single sales transaction into 4 separate $9,000 sales transactions.

Example 2. An attorney agrees to represent a client in a criminal case with the attorney's fee to be determined on an hourly basis. In the first month in which the attorney represents the client, the bill for the attorney's services comes to $8,000 which the client pays in currency. In the second month in which the attorney represents the client, the bill for the attorney's services comes to $4,000, which the client again pays in currency. The aggregate amount of currency paid ($12,000) relates to a single transaction as defined in paragraph (c)(12)(i) of this section, the sale of legal services relating to the criminal case, and the receipt of currency must be reported under this section.

Example 3. A person intends to contribute a total of $45,000 to a trust fund, and the trustee of the fund knows or has reason to know of that intention. The $45,000 contribution is a single transaction under paragraph (c)(12)(i) of this section and the reporting requirement of this section cannot be avoided by the grantor's making five separate $9,000 contributions of currency to a single fund or by making five $9,000 contributions of currency to five separate funds administered by a common trustee.

Example 4. K, an individual, attends a one day auction and purchases for currency two items, at a cost of $9,240 and $1,732.50 respectively (tax and buyer's premium included). Because the transactions are related transactions as defined in paragraph (c)(12)(ii) of this section, the auction house is required to report the aggregate amount of currency received from the related sales ($10,972.50), even though the auction house accounts separately on its books for each item sold and presents the purchaser with separate bills for each item purchased.

Example 5. F, a coin dealer, sells for currency $9,000 worth of gold coins to an individual on three successive days. Under paragraph (c)(12)(ii) of this section the three $9,000 transactions are related transactions aggregating $27,000 if F knows, or has reason

to know, that each transaction is one of a series of connected transactions.

(13) *Recipient.* (i) The term *recipient* means the person receiving the currency. Except as provided in paragraph (c)(13)(ii) of this section, each store, division, branch, department, headquarters, or office (''branch'') (regardless of physical location) comprising a portion of a person's trade or business shall for purposes of this section be deemed a separate recipient.

(ii) A branch that receives currency payments will not be deemed a separate recipient if the branch (or a central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identity of payers making currency payments to other branches of such person.

(iii) *Examples.* The following examples illustrate the application of the rules in paragraphs (c)(13)(i) and (ii) of this section:

Example 1. N, an individual, purchases regulated futures contracts at a cost of $7,500 and $5,000, respectively, through two different branches of Commodities Broker X on the same day. N pays for each purchase with currency. Each branch of Commodities Broker X transmits the sales information regarding each of N's purchases to a central unit of Commodities Broker X (which settles the transactions against N's account). Under paragraph (c)(13)(ii) of this section the separate branches of Commodities Broker X are not deemed to be separate recipients; therefore, Commodities Broker X must report with respect to the two related regulated futures contracts sales in accordance with this section.

Example 2. P, a corporation, owns and operates a racetrack. P's racetrack contains 100 betting windows at which pari-mutuel wagers may be made. R, an individual, places currency wagers of $3,000 each at five separate betting windows. Assuming that in the ordinary course of business each betting window (or a central unit linking windows) does not have reason to know the identity of persons making wagers at other betting windows, each betting window would be deemed to be a separate currency recipient under paragraph (c)(13)(i) of this section. As no individual recipient received currency in excess of $10,000, no report need be made by P under this section.

(d) *Exceptions to the reporting requirements of 31 U.S.C. 5331*—(1) *Receipt is made with respect to a foreign currency transaction*—(i) *In general.* Generally, there is no requirement to report with respect to a currency transaction if the entire transaction occurs outside the United States (the fifty states and the District of Columbia). An entire transaction consists of both the transaction as defined in paragraph (c)(12)(i) of this section and the receipt of currency by the recipient. If, however, any part of an entire transaction occurs in the Commonwealth of Puerto Rico or a possession or territory of the United States and the recipient of currency in that transaction is subject to the general jurisdiction of the Internal Revenue Service under title 26 of the United States Code, the recipient is required to report the transaction under this section.

(ii) *Example.* The following example illustrates the application of the rules in paragraph (d)(1)(i) of this section:

Example. W, an individual engaged in the trade or business of selling aircraft, reaches an agreement to sell an airplane to a U.S. citizen living in Mexico. The agreement, no portion of which is formulated in the United States, calls for a purchase price of $125,000 and requires delivery of and payment for the airplane to be made in Mexico. Upon delivery of the airplane in Mexico, W receives $125,000 in currency. W is not required to report under 31 U.S.C. 5331 or this section because the exception provided in paragraph (d)(1)(i) of this section (''foreign transaction exception'') applies. If, however, any part of the agreement to sell had been formulated in the United States, the foreign transaction exception would not apply and W would be required to report the receipt of currency under 31 U.S.C. 5331 and this section.

(2) *Receipt of currency not in the course of the recipient's trade or business.* The receipt of currency in excess of $10,000 by a person other than in the course of the person's trade or business is not reportable under 31 U.S.C. 5331. Thus, for example, F, an individual in the trade or business of selling real estate, sells a motorboat for $12,000, the purchase price of which is paid in currency. F did not use the motorboat in any trade or business in which F was engaged. F is not required to report under 31 U.S.C. 5331 or this section because the exception provided in this paragraph (d)(2) applies.

(e) *Time, manner, and form of reporting*—(1) *In general.* The reports required by paragraph (a) of this section must

be made by filing a Form 8300, as specified in 26 CFR 1.6050I–1(e)(2). The reports must be filed at the time and in the manner specified in 26 CFR 1.6050I–1(e)(1) and (3) respectively.

(2) *Verification*. A person making a report of information under this section must verify the identity of the person from whom the reportable currency is received. Verification of the identity of a person who purports to be an alien must be made by examination of such person's passport, alien identification card, or other official document evidencing nationality or residence. Verification of the identity of any other person may be made by examination of a document normally acceptable as a means of identification when cashing or accepting checks (for example, a driver's license or a credit card). In addition, a report will be considered incomplete if the person required to make a report knows (or has reason to know) that an agent is conducting the transaction for a principal, and the return does not identify both the principal and the agent.

(3) *Retention of reports*. A person required to make a report under this section must keep a copy of each report filed for five years from the date of filing.

§ 1010.340 Reports of transportation of currency or monetary instruments.

(a) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped, or attempts to physically transport, mail or ship, or attempts to cause to be physically transported, mailed or shipped, currency or other monetary instruments in an aggregate amount exceeding $10,000 at one time from the United States to any place outside the United States, or into the United States from any place outside the United States, shall make a report thereof. A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person.

(b) Each person who receives in the U.S. currency or other monetary instruments in an aggregate amount exceeding $10,000 at one time which have been transported, mailed, or shipped to such person from any place outside the United States with respect to which a report has not been filed under paragraph (a) of this section, whether or not required to be filed thereunder, shall make a report thereof, stating the amount, the date of receipt, the form of monetary instruments, and the person from whom received.

(c) This section shall not require reports by:

(1) A Federal Reserve;

(2) A bank, a foreign bank, or a broker or dealer in securities, in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier;

(3) A commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned;

(4) A person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier;

(5) A common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers;

(6) A common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper;

(7) A travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public;

(8) By a person with respect to a restrictively endorsed traveler's check that is in the collection and reconciliation process after the traveler's check has been negotiated;

(9) Nor by a person engaged as a business in the transportation of currency,

monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

(d) A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or monetary instruments is not required to be reported by this section. This section does not require that more than one report be filed covering a particular transportation, mailing or shipping of currency or other monetary instruments with respect to which a complete and truthful report has been filed by a person. However, no person required by paragraph (a) or (b) of this section to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed.

§ 1010.350 Reports of foreign financial accounts.

(a) *In general.* Each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists and shall provide such information as shall be specified in a reporting form prescribed under 31 U.S.C. 5314 to be filed by such persons. The form prescribed under section 5314 is the Report of Foreign Bank and Financial Accounts (TD–F 90–22.1), or any successor form. *See* paragraphs (g)(1) and (g)(2) of this section for a special rule for persons with a financial interest in 25 or more accounts, or signature or other authority over 25 or more accounts.

(b) *United States person.* For purposes of this section, the term ''United States person'' means—

(1) A citizen of the United States;

(2) A resident of the United States. A resident of the United States is an individual who is a resident alien under 26 U.S.C. 7701(b) and the regulations thereunder but using the definition of ''United States'' provided in 31 CFR 1010.100(hhh) rather than the definition of ''United States'' in 26 CFR 301.7701(b)–1(c)(2)(ii); and

(3) An entity, including but not limited to, a corporation, partnership, trust, or limited liability company created, organized, or formed under the laws of the United States, any State, the District of Columbia, the Territories and Insular Possessions of the United States, or the Indian Tribes.

(c) *Types of reportable accounts.* For purposes of this section—

(1) *Bank account.* The term ''bank account'' means a savings deposit, demand deposit, checking, or any other account maintained with a person engaged in the business of banking.

(2) *Securities account.* The term ''securities account'' means an account with a person engaged in the business of buying, selling, holding or trading stock or other securities.

(3) *Other financial account.* The term ''other financial account'' means—

(i) An account with a person that is in the business of accepting deposits as a financial agency;

(ii) An account that is an insurance or annuity policy with a cash value;

(iii) An account with a person that acts as a broker or dealer for futures or options transactions in any commodity on or subject to the rules of a commodity exchange or association; or

(iv) An account with—

(A) *Mutual fund or similar pooled fund.* A mutual fund or similar pooled fund which issues shares available to the general public that have a regular net asset value determination and regular redemptions; or

(B) *Other investment fund.* [Reserved]

(4) *Exceptions for certain accounts.* (i) An account of a department or agency of the United States, an Indian Tribe, or any State or any political subdivision of a State, or a wholly-owned entity, agency or instrumentality of any of the foregoing is not required to be reported. In addition, reporting is not required with respect to an account of an entity established under the laws of the United States, of an Indian Tribe, of any State, or of any political subdivision of any State, or under an intergovernmental compact between two or more States or Indian Tribes, that exercises governmental authority

on behalf of the United States, an Indian Tribe, or any such State or political subdivision. For this purpose, an entity generally exercises governmental authority on behalf of the United States, an Indian Tribe, a State, or a political subdivision only if its authorities include one or more of the powers to tax, to exercise the power of eminent domain, or to exercise police powers with respect to matters within its jurisdiction.

(ii) An account of an international financial institution of which the United States government is a member is not required to be reported.

(iii) An account in an institution known as a ''United States military banking facility'' (or ''United States military finance facility'') operated by a United States financial institution designated by the United States Government to serve United States government installations abroad is not required to be reported even though the United States military banking facility is located in a foreign country.

(iv) Correspondent or nostro accounts that are maintained by banks and used solely for bank-to-bank settlements are not required to be reported.

(d) *Foreign country*. A foreign country includes all geographical areas located outside of the United States as defined in 31 CFR 1010.100(hhh).

(e) *Financial interest*. A financial interest in a bank, securities or other financial account in a foreign country means an interest described in this paragraph (e):

(1) *Owner of record or holder of legal title*. A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which he is the owner of record or has legal title whether the account is maintained for his own benefit or for the benefit of others. If an account is maintained in the name of more than one person, each United States person in whose name the account is maintained has a financial interest in that account.

(2) *Other financial interest*. A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which the owner of record or holder of legal title is—

(i) A person acting as an agent, nominee, attorney or in some other capacity on behalf of the United States person with respect to the account;

(ii) A corporation in which the United States person owns directly or indirectly more than 50 percent of the voting power or the total value of the shares, a partnership in which the United States person owns directly or indirectly more than 50 percent of the interest in profits or capital, or any other entity (other than an entity in paragraphs (e)(2)(iii) through (iv) of this section) in which the United States person owns directly or indirectly more than 50 percent of the voting power, total value of the equity interest or assets, or interest in profits;

(iii) A trust, if the United States person is the trust grantor and has an ownership interest in the trust for United States Federal tax purposes. *See* 26 U.S.C. 671–679 and the regulations thereunder to determine if a grantor has an ownership interest in the trust for the year; or

(iv) A trust in which the United States person either has a present beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.

(3) *Anti-avoidance rule*. A United States person that causes an entity, including but not limited to a corporation, partnership, or trust, to be created for a purpose of evading this section shall have a financial interest in any bank, securities, or other financial account in a foreign country for which the entity is the owner of record or holder of legal title.

(f) *Signature or other authority*—(1) *In general*. Signature or other authority means the authority of an individual (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained.

(2) *Exceptions*—(i) An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation,

the Office of Thrift Supervision, or the National Credit Union Administration need not report that he has signature or other authority over a foreign financial account owned or maintained by the bank if the officer or employee has no financial interest in the account.

(ii) An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission need not report that he has signature or other authority over a foreign financial account owned or maintained by such financial institution if the officer or employee has no financial interest in the account.

(iii) An officer or employee of an Authorized Service Provider need not report that he has signature or other authority over a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission if the officer or employee has no financial interest in the account. ''Authorized Service Provider'' means an entity that is registered with and examined by the Securities and Exchange Commission and that provides services to an investment company registered under the Investment Company Act of 1940.

(iv) An officer or employee of an entity with a class of equity securities listed (or American depository receipts listed) on any United States national securities exchange need not report that he has signature or other authority over a foreign financial account of such entity if the officer or employee has no financial interest in the account. An officer or employee of a United States subsidiary of a United States entity with a class of equity securities listed on a United States national securities exchange need not file a report concerning signature or other authority over a foreign financial account of the subsidiary if he has no financial interest in the account and the United States subsidiary is included in a consolidated report of the parent filed under this section.

(v) An officer or employee of an entity that has a class of equity securities registered (or American depository receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange Act need not report that he has signature or other authority over the foreign financial accounts of such entity or if he has no financial interest in the accounts.

(g) *Special rules*—(1) *Financial interest in 25 or more foreign financial accounts.* A United States person having a financial interest in 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

(2) *Signature or other authority over 25 or more foreign financial accounts.* A United States person having signature or other authority over 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

(3) *Consolidated reports.* An entity that is a United States person and which owns directly or indirectly more than a 50 percent interest in one or more other entities required to report under this section will be permitted to file a consolidated report on behalf of itself and such other entities.

(4) *Participants and beneficiaries in certain retirement plans.* Participants and beneficiaries in retirement plans under sections 401(a), 403(a) or 403(b) of the Internal Revenue Code as well as owners and beneficiaries of individual retirement accounts under section 408 of the Internal Revenue Code or Roth IRAs under section 408A of the Internal Revenue Code are not required to file an FBAR with respect to a foreign financial account held by or on behalf of the retirement plan or IRA.

(5) *Certain trust beneficiaries.* A beneficiary of a trust described in paragraph (e)(2)(iv) of this section is not required to report the trust's foreign financial accounts if the trust, trustee of the trust, or agent of the trust is a United States person that files a report

under this section disclosing the trust's foreign financial accounts.

[76 FR 10245, Feb. 24, 2011, as amended at 76 FR 37000, June 24, 2011]

§ 1010.360 Reports of transactions with foreign financial agencies.

(a) *Promulgation of reporting requirements.* The Secretary, when he deems appropriate, may promulgate regulations requiring specified financial institutions to file reports of certain transactions with designated foreign financial agencies. If any such regulation is issued as a final rule without notice and opportunity for public comment, then a finding of good cause for dispensing with notice and comment in accordance with 5 U.S.C. 553(b) will be included in the regulation. If any such regulation is not published in the FEDERAL REGISTER, then any financial institution subject to the regulation will be named and personally served or otherwise given actual notice in accordance with 5 U.S.C. 553(b). If a financial institution is given notice of a reporting requirement under this section by means other than publication in the FEDERAL REGISTER, the Secretary may prohibit disclosure of the existence or provisions of that reporting requirement to the designated foreign financial agency or agencies and to any other party.

(b) *Information subject to reporting requirements.* A regulation promulgated pursuant to paragraph (a) of this section shall designate one or more of the following categories of information to be reported:

(1) Checks or drafts, including traveler's checks, received by respondent financial institution for collection or credit to the account of a foreign financial agency, sent by respondent financial institution to a foreign country for collection or payment, drawn by respondent financial institution on a foreign financial agency, drawn by a foreign financial agency on respondent financial institution—including the following information.

(i) Name of maker or drawer;

(ii) Name of drawee or drawee financial institution;

(iii) Name of payee;

(iv) Date and amount of instrument;

(v) Names of all endorsers.

(2) Transmittal orders received by a respondent financial institution from a foreign financial agency or sent by respondent financial institution to a foreign financial agency, including all information maintained by that institution pursuant to §§ 1010.410 and 1020.410.

(3) Loans made by respondent financial institution to or through a foreign financial agency—including the following information:

(i) Name of borrower;

(ii) Name of person acting for borrower;

(iii) Date and amount of loan;

(iv) Terms of repayment;

(v) Name of guarantor;

(vi) Rate of interest;

(vii) Method of disbursing proceeds;

(viii) Collateral for loan.

(4) Commercial paper received or shipped by the respondent financial institution—including the following information:

(i) Name of maker;

(ii) Date and amount of paper;

(iii) Due date;

(iv) Certificate number;

(v) Amount of transaction.

(5) Stocks received or shipped by respondent financial institution—including the following information:

(i) Name of corporation;

(ii) Type of stock;

(iii) Certificate number;

(iv) Number of shares;

(v) Date of certificate;

(vi) Name of registered holder;

(vii) Amount of transaction.

(6) Bonds received or shipped by respondent financial institution—including the following information:

(i) Name of issuer;

(ii) Bond number;

(iii) Type of bond series;

(iv) Date issued;

(v) Due date;

(vi) Rate of interest;

(vii) Amount of transaction;

(viii) Name of registered holder.

(7) Certificates of deposit received or shipped by respondent financial institution—including the following information:

(i) Name and address of issuer;

(ii) Date issued;

(iii) Dollar amount;

(iv) Name of registered holder;

(v) Due date;

(vi) Rate of interest;

(vii) Certificate number;

(viii) Name and address of issuing agent.

(c) *Scope of reports.* In issuing regulations as provided in paragraph (a) of this section, the Secretary will prescribe:

(1) A reasonable classification of financial institutions subject to or exempt from a reporting requirement;

(2) A foreign country to which a reporting requirement applies if the Secretary decides that applying the requirement to all foreign countries is unnecessary or undesirable;

(3) The magnitude of transactions subject to a reporting requirement; and

(4) The kind of transaction subject to or exempt from a reporting requirement.

(d) *Form of reports.* Regulations issued pursuant to paragraph (a) of this section may prescribe the manner in which the information is to be reported. However, the Secretary may authorize a designated financial institution to report in a different manner if the institution demonstrates to the Secretary that the form of the required report is unnecessarily burdensome on the institution as prescribed; that a report in a different form will provide all the information the Secretary deems necessary; and that submission of the information in a different manner will not unduly hinder the effective administration of this chapter.

(e) *Limitations.* (1) In issuing regulations under paragraph (a) of this section, the Secretary shall consider the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency.

(2) The Secretary shall not issue a regulation under paragraph (a) of this section for the purpose of obtaining individually identifiable account information concerning a customer, as defined by the Right to Financial Privacy Act (12 U.S.C. 3401 *et seq.*), where that customer is already the subject of an ongoing investigation for possible violation of the Currency and Foreign Transactions Reporting Act, or is known by the Secretary to be the subject of an investigation for possible violation of any other Federal law.

(3) The Secretary may issue a regulation pursuant to paragraph (a) of this section requiring a financial institution to report transactions completed prior to the date it received notice of the reporting requirement. However, with respect to completed transactions, a financial institution may be required to provide information only from records required to be maintained pursuant to the requirements of this chapter, or any other provision of state or Federal law, or otherwise maintained in the regular course of business.

§ 1010.370 Reports of certain domestic coin and currency transactions.

(a) If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and/or reporting requirements are necessary to carry out the purposes of this chapter and to prevent persons from evading the reporting/recordkeeping requirements of this chapter, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions in a geographic area and any other person participating in the type of transaction to file a report in the manner and to the extent specified in such order. The order shall contain such information as the Secretary may describe concerning any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.

(b) An order issued under paragraph (a) of this section shall be directed to the Chief Executive Officer of the financial institution and shall designate one or more of the following categories of information to be reported: Each deposit, withdrawal, exchange of currency or other payment or transfer, by,

through or to such financial institution specified in the order, which involves all or any class of transactions in currency and/or monetary instruments equal to or exceeding an amount to be specified in the order.

(c) In issuing an order under paragraph (a) of this section, the Secretary will prescribe:

(1) The dollar amount of transactions subject to the reporting requirement in the order;

(2) The type of transaction or transactions subject to or exempt from a reporting requirement in the order;

(3) The appropriate form for reporting the transactions required in the order;

(4) The address to which reports required in the order are to be sent or from which they will be picked up;

(5) The starting and ending dates by which such transactions specified in the order are to be reported;

(6) The name of a Treasury official to be contacted for any additional information or questions;

(7) The amount of time the reports and records of reports generated in response to the order will have to be retained by the financial institution; and

(8) Any other information deemed necessary to carry out the purposes of the order.

(d)(1) No order issued pursuant to paragraph (a) of this section shall prescribe a reporting period of more than 60 days unless renewed pursuant to the requirements of paragraph (a).

(2) Any revisions to an order issued under this section will not be effective until made in writing by the Secretary.

(3) Unless otherwise specified in the order, a bank receiving an order under this section may continue to use the exemptions granted under § 1020.315 of this chapter prior to the receipt of the order, but may not grant additional exemptions.

(4) For purposes of this section, the term *geographic area* means any area in one or more States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, the territories and possessions of the United States, and/or political subdivision or subdivisions thereof, as specified in an order issued pursuant to paragraph (a) of this section.

Subpart D—Records Required To Be Maintained

§ 1010.400 General.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its chapter X part for any additional recordkeeping requirements. Unless otherwise indicated, the recordkeeping requirements contained in this subpart D apply to all financial institutions.

§ 1010.401 Determination by the Secretary.

The Secretary hereby determines that the records required to be kept by this chapter have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 1010.405 [Reserved]

§ 1010.410 Records to be made and retained by financial institutions.

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of $10,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received or given regarding any transaction resulting (or intended to result and later canceled if such a record is normally made) in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit, of more than $10,000 to or from any person, account, or place outside the United States.

(c) A record of each advice, request, or instruction given to another financial institution or other person located within or without the United States,

regarding a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States.

(d) A record of such information for such period of time as the Secretary may require in an order issued under § 1010.370(a), not to exceed five years.

(e) *Nonbank financial institutions.* Each agent, agency, branch, or office located within the United States of a financial institution other than a bank is subject to the requirements of this paragraph (e) with respect to a transmittal of funds in the amount of $3,000 or more:

(1) *Recordkeeping requirements.* (i) For each transmittal order that it accepts as a transmittor's financial institution, a financial institution shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the transmittal order:

(A) The name and address of the transmittor;

(B) The amount of the transmittal order;

(C) The execution date of the transmittal order;

(D) Any payment instructions received from the transmittor with the transmittal order;

(E) The identity of the recipient's financial institution;

(F) As many of the following items as are received with the transmittal order:[1]

(*1*) The name and address of the recipient;

(*2*) The account number of the recipient; and

(*3*) Any other specific identifier of the recipient; and

(G) Any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.

(ii) For each transmittal order that it accepts as an intermediary financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(iii) For each transmittal order that it accepts as a recipient's financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(2) *Transmittors other than established customers.* In the case of a transmittal order from a transmittor that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(i) of this section:

(i) If the transmittal order is made in person, prior to acceptance the transmittor's financial institution shall verify the identity of the person placing the transmittal order. If it accepts the transmittal order, the transmittor's financial institution shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the transmittor's financial institution has knowledge that the person placing the transmittal order is not the transmittor, the transmittor's financial institution shall obtain and retain a record of the transmittor's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(ii) If the transmittal order accepted by the transmittor's financial institution is not made in person, the transmittor's financial institution shall obtain and retain a record of the name and address of the person placing the transmittal order, as well as the

[1] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a domestic broker or dealers in securities, only one of the items is required to be retained, if received with the transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (*e.g.*, check or credit card transaction) for the transmittal of funds. If the transmittor's financial institution has knowledge that the person placing the transmittal order is not the transmittor, the transmittor's financial institution shall obtain and retain a record of the transmittor's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(3) *Recipients other than established customers*. For each transmittal order that it accepts as a recipient's financial institution for a recipient that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(iii) of this section:

(i) If the proceeds are delivered in person to the recipient or its representative or agent, the recipient's financial institution shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the recipient's financial institution has knowledge that the person receiving the proceeds is not the recipient, the recipient's financial institution shall obtain and retain a record of the recipient's name and address, as well as the recipient's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the recipient's financial institution shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability*. The information that a transmittor's financial institution must retain under paragraphs (e)(1)(i) and (e)(2) of this section shall be retrievable by the transmittor's financial institution by reference to the name of the transmittor. If the transmittor is an established customer of the transmittor's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. The information that a recipient's financial institution must retain under paragraphs (e)(1)(iii) and (e)(3) of this section shall be retrievable by the recipient's financial institution by reference to the name of the recipient. If the recipient is an established customer of the recipient's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the financial institution is able to retrieve the information required by this paragraph, either by accessing transmittal of funds records directly or through reference to some other record maintained by the financial institution.

(5) *Verification*. Where verification is required under paragraphs (e)(2) and (e)(3) of this section, a financial institution shall verify a person's identity by examination of a document (other than a customer signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other

official document evidencing nationality or residence (*e.g.*, a foreign driver's license with indication of home address).

(6) *Exceptions.* The following transmittals of funds are not subject to the requirements of this section:

(i) Transmittals of funds where the transmittor and the recipient are any of the following:

(A) A bank;

(B) A wholly-owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a broker or dealer in securities;

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

(G) The United States;

(H) A state or local government; or

(I) A Federal, State or local government agency or instrumentality; or

(J) A mutual fund; and

(ii) Transmittals of funds where both the transmittor and the recipient are the same person and the transmittor's financial institution and the recipient's financial institution are the same broker or dealer in securities.

(f) Any transmittor's financial institution or intermediary financial institution located within the United States shall include in any transmittal order for a transmittal of funds in the amount of $3,000 or more, information as required in this paragraph (f):

(1) A transmittor's financial institution shall include in a transmittal order, at the time it is sent to a receiving financial institution, the following information:

(i) The name and, if the payment is ordered from an account, the account number of the transmittor;

(ii) The address of the transmittor, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:[2]

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmittor's financial institution.

(2) A receiving financial institution that acts as an intermediary financial institution, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

(i) The name and the account number of the transmittor;

(ii) The address of the transmittor, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:[3]

[2] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

[3] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmittor's financial institution.

(3) *Safe harbor for transmittals of funds prior to conversion to the expanded Fedwire message format.* The following provisions apply to transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system or otherwise by a financial institution before the bank that sends the order to the Federal Reserve Bank or otherwise completes its conversion to the expanded Fedwire message format.

(i) *Transmittor's financial institution.* A transmittor's financial institution will be deemed to be in compliance with the provisions of paragraph (f)(1) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (f)(1)(iii) through (v), and the information specified in paragraph (f)(1)(vi) of this section to the extent that such information has been received by the financial institution, and

(B) Provides the information specified in paragraphs (f)(1)(i), (ii) and (vii) of this section to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a Federal, State, or local law enforcement or financial regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(ii) *Intermediary financial institution.* An intermediary financial institution will be deemed to be in compliance with the provisions of paragraph (f)(2) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (f)(2)(iii) through (f)(2)(vi) of this section, to the extent that such information has been received by the intermediary financial institution; and

(B) Provides the information specified in paragraphs (f)(2)(i), (ii) and (vii) of this section, to the extent that such information has been received by the intermediary financial institution, to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a Federal, State, or local law enforcement or regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(iii) *Obligation of requesting financial institution.* Any information requested under paragraph (f)(3)(i)(B) or (f)(3)(ii)(B) of this section shall be treated by the requesting institution, once received, as if it had been included in the transmittal order to which such information relates.

(4) *Exceptions.* The requirements of this paragraph (f) shall not apply to transmittals of funds that are listed in paragraph (e)(6) of this section or § 1020.410(a)(6) of this chapter.

conversion to the expanded Fedwire message format.

§ 1010.415 Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.

(a) No financial institution may issue or sell a bank check or draft, cashier's check, money order or traveler's check for $3,000 or more in currency unless it maintains records of the following information, which must be obtained for each issuance or sale of one or more of these instruments to any individual purchaser which involves currency in amounts of $3,000–$10,000 inclusive:

(1) If the purchaser has a deposit account with the financial institution:

(i)(A) The name of the purchaser;

(B) The date of purchase;

(C) The type(s) of instrument(s) purchased;

(D) The serial number(s) of each of the instrument(s) purchased; and

(E) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution must verify that the individual is a deposit accountholder or must verify the individual's identity. Verification may be either through a signature card or other file or record at the financial institution provided the deposit accountholder's name and address were verified previously and that information was recorded on the signature card or other file or record; or by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser. If the deposit accountholder's identity has not been verified previously, the financial institution shall verify the deposit accountholder's identity by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (*e.g.*, State of issuance and number of driver's license).

(2) If the purchaser does not have a deposit account with the financial institution:

(i)(A) The name and address of the purchaser;

(B) The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, the alien identification number;

(C) The date of birth of the purchaser;

(D) The date of purchase;

(E) The type(s) of instrument(s) purchased;

(F) The serial number(s) of the instrument(s) purchased; and

(G) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution shall verify the purchaser's name and address by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (*e.g.*, State of issuance and number of driver's license).

(b) Contemporaneous purchases of the same or different types of instruments totaling $3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling $3,000 or more shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred.

(c) Records required to be kept shall be retained by the financial institution for a period of five years and shall be made available to the Secretary upon request at any time.

§ 1010.420 Records to be made and retained by persons having financial interests in foreign financial accounts.

Records of accounts required by § 1010.350 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

§ 1010.430 Nature of records and retention period.

(a) Wherever it is required that there be retained either the original or a microfilm or other copy or reproduction of a check, draft, monetary instrument, investment security, or other similar instrument, there shall be retained a copy of both front and back of each such instrument or document, except that no copy need be retained of the back of any instrument or document which is entirely blank or which contains only standardized printed information, a copy of which is on file.

(b) Records required by this chapter to be retained by financial institutions may be those made in the ordinary course of business by a financial institution. If no record is made in the ordinary course of business of any transaction with respect to which records are required to be retained by this chapter, then such a record shall be prepared in writing by the financial institution.

(c) The rules and regulations issued by the Internal Revenue Service under 26 U.S.C. 6109 determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(d) All records that are required to be retained by this chapter shall be retained for a period of five years. Records or reports required to be kept pursuant to an order issued under § 1010.370 of this chapter shall be retained for the period of time specified in such order, not to exceed five years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made.

§ 1010.440 Person outside the United States.

For the purposes of this chapter, a remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit to the domestic account of a person whose address is known by the person making the remittance or transfer, to be outside the United States, shall be deemed to be a remittance or transfer to a person outside the United States, except that, unless otherwise directed by the Secretary, this section shall not apply to a transaction on the books of a domestic financial institution involving the account of a customer of such institution whose address is within approximately 50 miles of the location of the institution, or who is known to be temporarily outside the United States.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1010.500 General.

Sections 1010.505 through 1010.540 of this subpart E were issued pursuant to the requirements of section 314 of the USA PATRIOT Act. Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its chapter X part for any additional special information sharing procedures.

§ 1010.505 Definitions.

For purposes of this subpart E, the following definitions apply:

(a) *Account* means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions, and includes, but is not limited to, a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

(b) *Money laundering* means an activity criminalized by 18 U.S.C. 1956 or 1957, or an activity that would be criminalized by 18 U.S.C. 1956 or 1957 if it occurred in the United States.

(c) *Terrorist activity* means an act of domestic terrorism or international terrorism as those terms are defined in 18 U.S.C. 2331.

(d) *Transaction*. (1) Except as provided in paragraph (d)(2) of this section, the term ''transaction'' shall have the same meaning as provided in § 1010.100(bbb).

(2) For purposes of § 1010.520, a transaction shall not mean any transaction conducted through an account.

§ 1010.520 Information sharing between government agencies and financial institutions.

(a) *Definitions.* For purposes of this section:

(1) *Financial institution* means any financial institution described in 31 U.S.C. 5312(a)(2).

(2) *Law enforcement agency* means a Federal, State, local, or foreign law enforcement agency with criminal investigative authority, provided that in the case of a foreign law enforcement agency, such agency is from a jurisdiction that is a party to a treaty that provides, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States reciprocal access to information comparable to that obtained under this section.

(b) *Information requests based on credible evidence concerning terrorist activity or money laundering*—(1) *In general.* A law enforcement agency investigating terrorist activity or money laundering may request that FinCEN solicit, on the investigating agency's behalf, certain information from a financial institution or a group of financial institutions. When submitting such a request to FinCEN, the law enforcement agency shall provide FinCEN with a written certification, in such form and manner as FinCEN may prescribe. At a minimum, such certification must: State that each individual, entity, or organization about which the law enforcement agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering; include enough specific identifiers, such as date of birth, address, and social security number, that would permit a financial institution to differentiate between common or similar names; and identify one person at the agency who can be contacted with any questions relating to its request. Upon receiving the requisite certification from the requesting law enforcement agency, FinCEN may require any financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization.

(2) *Requests from FinCEN.* FinCEN may solicit, on its own behalf and on behalf of appropriate components of the Department of the Treasury, whether a financial institution or a group of financial institutions maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization. Before an information request under this section is made to a financial institution, FinCEN or the appropriate Treasury component shall certify in writing in the same manner as a requesting law enforcement agency that each individual, entity or organization about which FinCEN or the appropriate Treasury component is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering. The certification also must include enough specific identifiers, such as date of birth, address, and social security number, that would permit a financial institution to differentiate between common or similar names, and identify one person at FinCEN or the appropriate Treasury component who can be contacted with any questions relating to its request.

(3) *Obligations of a financial institution receiving an information request*—(i) *Record search.* Upon receiving an information request from FinCEN under this section, a financial institution shall expeditiously search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, each individual, entity, or organization named in FinCEN's request. A financial institution may contact the law enforcement agency, FinCEN or requesting Treasury component representative, or U.S. law enforcement attaché in the case of a request by a foreign law enforcement agency, which has been named in the information request provided to the institution by FinCEN with any questions relating to the scope or terms of the request. Except as otherwise provided in the information request, a financial institution shall only be required to search its records for:

(A) Any current account maintained for a named suspect;

(B) Any account maintained for a named suspect during the preceding twelve months; and

(C) Any transaction, as defined by § 1010.505(d), conducted by or on behalf of a named suspect, or any transmittal of funds conducted in which a named suspect was either the transmittor or the recipient, during the preceding six months that is required under law or regulation to be recorded by the financial institution or is recorded and maintained electronically by the institution.

(ii) *Report to FinCEN.* If a financial institution identifies an account or transaction identified with any individual, entity, or organization named in a request from FinCEN, it shall report to FinCEN, in the manner and in the time frame specified in FinCEN's request, the following information:

(A) The name of such individual, entity, or organization;

(B) The number of each such account, or in the case of a transaction, the date and type of each such transaction; and

(C) Any Social Security number, taxpayer identification number, passport number, date of birth, address, or other similar identifying information provided by the individual, entity, or organization when each such account was opened or each such transaction was conducted.

(iii) *Designation of contact person.* Upon receiving an information request under this section, a financial institution shall designate one person to be the point of contact at the institution regarding the request and to receive similar requests for information from FinCEN in the future. When requested by FinCEN, a financial institution shall provide FinCEN with the name, title, mailing address, e-mail address, telephone number, and facsimile number of such person, in such manner as FinCEN may prescribe. A financial institution that has provided FinCEN with contact information must promptly notify FinCEN of any changes to such information.

(iv) *Use and security of information request.* (A) A financial institution shall not use information provided by FinCEN pursuant to this section for any purpose other than:

(*1*) Reporting to FinCEN as provided in this section;

(*2*) Determining whether to establish or maintain an account, or to engage in a transaction; or

(*3*) Assisting the financial institution in complying with any requirement of this chapter.

(B)(*1*) A financial institution shall not disclose to any person, other than FinCEN or the requesting Treasury component, the law enforcement agency on whose behalf FinCEN is requesting information, or U.S. law enforcement attaché in the case of a request by a foreign law enforcement agency, which has been named in the information request, the fact that FinCEN has requested or has obtained information under this section, except to the extent necessary to comply with such an information request.

(*2*) Notwithstanding paragraph (b)(3)(iv)(B)(*1*) of this section, a financial institution authorized to share information under § 1010.540 may share information concerning an individual, entity, or organization named in a request from FinCEN in accordance with the requirements of such section. However, such sharing shall not disclose the fact that FinCEN has requested information concerning such individual, entity, or organization.

(C) Each financial institution shall maintain adequate procedures to protect the security and confidentiality of requests from FinCEN for information under this section. The requirements of this paragraph (b)(3)(iv)(C) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

(v) *No other action required.* Nothing in this section shall be construed to require a financial institution to take any action, or to decline to take any action, with respect to an account established for, or a transaction engaged in with, an individual, entity, or organization named in a request from FinCEN, or to decline to establish an

account for, or to engage in a transaction with, any such individual, entity, or organization. Except as otherwise provided in an information request under this section, such a request shall not require a financial institution to report on future account opening activity or transactions or to treat a suspect list received under this section as a government list for purposes of section 326 of Public Law 107–56.

(4) *Relation to the Right to Financial Privacy Act and the Gramm-Leach-Bliley Act.* The information that a financial institution is required to report pursuant to paragraph (b)(3)(ii) of this section is information required to be reported in accordance with a Federal statute or rule promulgated thereunder, for purposes of subsection 3413(d) of the Right to Financial Privacy Act (12 U.S.C. 3413(d)) and subsection 502(e)(8) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(8)).

(5) *No effect on law enforcement or regulatory investigations.* Nothing in this subpart affects the authority of a Federal, State, or local law enforcement agency or officer, or FinCEN or another component of the Department of the Treasury, to obtain information directly from a financial institution.

§ 1010.530 [Reserved]

§ 1010.540 Voluntary information sharing among financial institutions.

(a) *Definitions.* For purposes of this section:

(1) *Financial institution.* (i) Except as provided in paragraph (a)(1)(ii) of this section, the term ''financial institution'' means any financial institution described in 31 U.S.C. 5312(a)(2) that is required under this chapter to establish and maintain an anti-money laundering program, or is treated under this chapter as having satisfied the requirements of 31 U.S.C. 5318(h)(1).

(ii) For purposes of this section, a financial institution shall not mean any institution included within a class of financial institutions that FinCEN has designated as ineligible to share information under this section.

(2) *Association of financial institutions* means a group or organization the membership of which is comprised entirely of financial institutions as defined in paragraph (a)(1) of this section.

(b) *Voluntary information sharing among financial institutions*—(1) *In general.* Subject to paragraphs (b)(2), (b)(3), and (b)(4) of this section, a financial institution or an association of financial institutions may, under the protection of the safe harbor from liability described in paragraph (b)(5) of this section, transmit, receive, or otherwise share information with any other financial institution or association of financial institutions regarding individuals, entities, organizations, and countries for purposes of identifying and, where appropriate, reporting activities that the financial institution or association suspects may involve possible terrorist activity or money laundering.

(2) *Notice requirement.* A financial institution or association of financial institutions that intends to share information as described in paragraph (b)(1) of this section shall submit to FinCEN a notice described on FinCEN's Internet Web site, *http://www.fincen.gov.* Each notice provided pursuant to this paragraph (b)(2) shall be effective for the one year period beginning on the date of the notice. In order to continue to engage in the sharing of information after the end of the one year period, a financial institution or association of financial institutions must submit a new notice. Completed notices may be submitted to FinCEN by accessing FinCEN's Internet Web site, *http://www.fincen.gov.*, and entering the appropriate information as directed, or, if a financial institution does not have Internet access, by mail to: FinCEN, P.O. Box 39, Vienna, VA 22183.

(3) *Verification requirement.* Prior to sharing information as described in paragraph (b)(1) of this section, a financial institution or an association of financial institutions must take reasonable steps to verify that the other financial institution or association of financial institutions with which it intends to share information has submitted to FinCEN the notice required by paragraph (b)(2) of this section. A financial institution or an association of financial institutions may satisfy this paragraph (b)(3) by confirming that the other financial institution or association of financial institutions appears

on a list that FinCEN will periodically make available to financial institutions or associations of financial institutions that have filed a notice with it, or by confirming directly with the other financial institution or association of financial institutions that the requisite notice has been filed.

(4) *Use and security of information.* (i) Information received by a financial institution or an association of financial institutions pursuant to this section shall not be used for any purpose other than:

(A) Identifying and, where appropriate, reporting on money laundering or terrorist activities;

(B) Determining whether to establish or maintain an account, or to engage in a transaction; or

(C) Assisting the financial institution in complying with any requirement of this chapter.

(ii) Each financial institution or association of financial institutions that engages in the sharing of information pursuant to this section shall maintain adequate procedures to protect the security and confidentiality of such information. The requirements of this paragraph (b)(4)(ii) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

(5) *Safe harbor from certain liability*—(i) *In general.* A financial institution or association of financial institutions that shares information pursuant to paragraph (b) of this section shall be protected from liability for such sharing, or for any failure to provide notice of such sharing, to an individual, entity, or organization that is identified in such sharing, to the full extent provided in subsection 314(b) of Public Law 107–56.

(ii) *Limitation.* Paragraph (b)(5)(i) of this section shall not apply to a financial institution or association of financial institutions to the extent such institution or association fails to comply with paragraphs (b)(2), (b)(3), or (b)(4) of this section.

(c) *Information sharing between financial institutions and the Federal Government.* If, as a result of information shared pursuant to this section, a financial institution knows, suspects, or has reason to suspect that an individual, entity, or organization is involved in, or may be involved in terrorist activity or money laundering, and such institution is subject to a suspicious activity reporting requirement under this chapter or other applicable regulations, the institution shall file a Suspicious Activity Report in accordance with those regulations. In situations involving violations requiring immediate attention, such as when a reportable violation involves terrorist activity or is ongoing, the financial institution shall immediately notify, by telephone, an appropriate law enforcement authority and financial institution supervisory authorities in addition to filing timely a Suspicious Activity Report. A financial institution that is not subject to a suspicious activity reporting requirement is not required to file a Suspicious Activity Report or otherwise to notify law enforcement of suspicious activity that is detected as a result of information shared pursuant to this section. Such a financial institution is encouraged, however, to voluntarily report such activity to FinCEN.

(d) *No effect on financial institution reporting obligations.* Nothing in this subpart affects the obligation of a financial institution to file a Suspicious Activity Report pursuant to this chapter or any other applicable regulations, or to otherwise contact directly a Federal agency concerning individuals or entities suspected of engaging in terrorist activity or money laundering.

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures

§ 1010.600 General.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its Chapter X Part for any additional special standards of diligence; prohibitions; and special measures requirements.

SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS

§ 1010.605 Definitions.

Except as otherwise provided, the following definitions apply for purposes of §§ 1010.610 through 1010.630 and § 1010.670:

(a) *Beneficial owner* of an account means an individual who has a level of control over, or entitlement to, the funds or assets in the account that, as a practical matter, enables the individual, directly or indirectly, to control, manage or direct the account. The ability to fund the account or the entitlement to the funds of the account alone, however, without any corresponding authority to control, manage or direct the account (such as in the case of a minor child beneficiary), does not cause the individual to be a beneficial owner.

(b) *Certification and recertification* mean the certification and recertification forms regarding correspondent accounts for foreign banks located on FinCEN's Internet Web site, *http://www.fincen.gov*.

(c) *Correspondent account*. (1) The term *correspondent account* means:

(i) For purposes of § 1010.610(a), (d) and (e), an account established for a foreign financial institution to receive deposits from, or to make payments or other disbursements on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution; and

(ii) For purposes of §§ 1010.610(b) and (c), 1010.630 and 1010.670, an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank.

(2) For purposes of this definition, the term *account:*

(i) As applied to banks (as set forth in paragraphs (e)(1)(i) through (vii) of this section):

(A) Means any formal banking or business relationship established by a bank to provide regular services, dealings, and other financial transactions; and

(B) Includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit;

(ii) As applied to brokers or dealers in securities (as set forth in paragraph (e)(1)(viii) of this section) means any formal relationship established with a broker or dealer in securities to provide regular services to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral;

(iii) As applied to futures commission merchants and introducing brokers (as set forth in paragraph (e)(1)(ix) of this section) means any formal relationship established by a futures commission merchant to provide regular services, including, but not limited to, those established to effect transactions in contracts of sale of a commodity for future delivery, options on any contract of sale of a commodity for future delivery, or options on a commodity; and

(iv) As applied to mutual funds (as set forth in paragraph (e)(1)(x) of this section) means any contractual or other business relationship established between a person and a mutual fund to provide regular services to effect transactions in securities issued by the mutual fund, including the purchase or sale of securities.

(d) *Correspondent relationship* has the same meaning as correspondent account for purposes of §§ 1010.630 and 1010.670.

(e) *Covered financial institution* means: (1) For purposes of § 1010.610 and 1010.620:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

(iii) An agency or branch of a foreign bank in the United States;

(iv) A federally insured credit union;

(v) A savings association;

(vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund;

(2) For purposes of §§ 1010.630 and 1010.670:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank or trust company;

(iii) A private banker;

(iv) An agency or branch of a foreign bank in the United States;

(v) A credit union;

(vi) A savings association;

(vii) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); and

(viii) A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

(f) *Foreign financial institution*. (1) The term *foreign financial institution* means:

(i) A foreign bank;

(ii) Any branch or office located outside the United States of any covered financial institution described in paragraphs (e)(1)(viii) through (x) of this section;

(iii) Any other person organized under foreign law (other than a branch or office of such person in the United States) that, if it were located in the United States, would be a covered financial institution described in paragraphs (e)(1)(viii) through (x) of this section; and

(iv) Any person organized under foreign law (other than a branch or office of such person in the United States) that is engaged in the business of, and is readily identifiable as:

(A) A currency dealer or exchanger; or

(B) A money transmitter.

(2) For purposes of paragraph (f)(1)(iv) of this section, a person is not ''engaged in the business'' of a currency dealer, a currency exchanger or a money transmitter if such transactions are merely incidental to the person's business.

(g) *Foreign shell bank* means a foreign bank without a physical presence in any country.

(h) *Non-United States person or non-U.S. person* means a natural person who is neither a United States citizen nor is accorded the privilege of residing permanently in the United States pursuant to title 8 of the United States Code. For purposes of this paragraph (h), the definition of *person* in § 1010.100(mm) does not apply, notwithstanding paragraph (k) of this section.

(i) *Offshore banking license* means a license to conduct banking activities that prohibits the licensed entity from conducting banking activities with the citizens of, or in the local currency of, the jurisdiction that issued the license.

(j) *Owner*. (1) The term *owner* means any person who, directly or indirectly:

(i) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities or other voting interests of a foreign bank; or

(ii) Controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of a foreign bank.

(2) For purposes of this definition:

(i) Members of the same family shall be considered to be one person.

(ii) The term *same family* means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, stepchildren, stepsiblings, parents-in-law, and spouses of any of the foregoing.

(iii) Each member of the same family who has an ownership interest in a foreign bank must be identified if the family is an owner as a result of aggregating the ownership interests of the members of the family. In determining the ownership interests of the same

family, any voting interest of any family member shall be taken into account.

(iv) *Voting securities or other voting interests* means securities or other interests that entitle the holder to vote for or to select directors (or individuals exercising similar functions).

(k) *Person* has the meaning provided in § 1010.100(mm).

(l) *Physical presence* means a place of business that:

(1) Is maintained by a foreign bank;

(2) Is located at a fixed address (other than solely an electronic address or a post-office box) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank:

(i) Employs one or more individuals on a full-time basis; and

(ii) Maintains operating records related to its banking activities; and

(3) Is subject to inspection by the banking authority that licensed the foreign bank to conduct banking activities.

(m) *Private banking account* means an account (or any combination of accounts) maintained at a covered financial institution that:

(1) Requires a minimum aggregate deposit of funds or other assets of not less than $1,000,000;

(2) Is established on behalf of or for the benefit of one or more non-U.S. persons who are direct or beneficial owners of the account; and

(3) Is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a covered financial institution acting as a liaison between the covered financial institution and the direct or beneficial owner of the account.

(n) *Regulated affiliate*. (1) The term *regulated affiliate* means a foreign shell bank that:

(i) Is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

(ii) Is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank.

(2) For purposes of this definition:

(i) *Affiliate* means a foreign bank that is controlled by, or is under common control with, a depository institution, credit union, or foreign bank.

(ii) *Control* means:

(A) Ownership, control, or power to vote 50 percent or more of any class of voting securities or other voting interests of another company; or

(B) Control in any manner the election of a majority of the directors (or individuals exercising similar functions) of another company.

(o) *Secretary* means the Secretary of the Treasury.

(p) *Senior foreign political figure*. (1) The term *senior foreign political figure* means:

(i) A current or former:

(A) Senior official in the executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not);

(B) Senior official of a major foreign political party; or

(C) Senior executive of a foreign government-owned commercial enterprise;

(ii) A corporation, business, or other entity that has been formed by, or for the benefit of, any such individual;

(iii) An immediate family member of any such individual; and

(iv) A person who is widely and publicly known (or is actually known by the relevant covered financial institution) to be a close associate of such individual.

(2) For purposes of this definition:

(i) *Senior official or executive* means an individual with substantial authority over policy, operations, or the use of government-owned resources; and

(ii) *Immediate family member* means spouses, parents, siblings, children and a spouse's parents and siblings.

§ 1010.610 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) *In general*. A covered financial institution shall establish a due diligence program that includes appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to enable the covered financial institution to detect and report, on an ongoing basis, any known or suspected money laundering activity conducted

through or involving any correspondent account established, maintained, administered, or managed by such covered financial institution in the United States for a foreign financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this chapter. Such policies, procedures, and controls shall include:

(1) Determining whether any such correspondent account is subject to paragraph (b) of this section;

(2) Assessing the money laundering risk presented by such correspondent account, based on a consideration of all relevant factors, which shall include, as appropriate:

(i) The nature of the foreign financial institution's business and the markets it serves;

(ii) The type, purpose, and anticipated activity of such correspondent account;

(iii) The nature and duration of the covered financial institution's relationship with the foreign financial institution (and any of its affiliates);

(iv) The anti-money laundering and supervisory regime of the jurisdiction that issued the charter or license to the foreign financial institution, and, to the extent that information regarding such jurisdiction is reasonably available, of the jurisdiction in which any company that is an owner of the foreign financial institution is incorporated or chartered; and

(v) Information known or reasonably available to the covered financial institution about the foreign financial institution's anti-money laundering record; and

(3) Applying risk-based procedures and controls to each such correspondent account reasonably designed to detect and report known or suspected money laundering activity, including a periodic review of the correspondent account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account.

(b) *Enhanced due diligence for certain foreign banks.* In the case of a correspondent account established, maintained, administered, or managed in the United States for a foreign bank described in paragraph (c) of this section, the due diligence program required by paragraph (a) of this section shall include enhanced due diligence procedures designed to ensure that the covered financial institution, at a minimum, takes reasonable steps to:

(1) Conduct enhanced scrutiny of such correspondent account to guard against money laundering and to identify and report any suspicious transactions in accordance with applicable law and regulation. This enhanced scrutiny shall reflect the risk assessment of the account and shall include, as appropriate:

(i) Obtaining and considering information relating to the foreign bank's anti-money laundering program to assess the risk of money laundering presented by the foreign bank's correspondent account;

(ii) Monitoring transactions to, from, or through the correspondent account in a manner reasonably designed to detect money laundering and suspicious activity; and

(iii)(A) Obtaining information from the foreign bank about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owner of funds or other assets in the payable-through account.

(B) For purposes of paragraph (b)(1)(iii)(A) of this section, a *payable-through account* means a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

(2) Determine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the covered financial institution and, if so, take reasonable steps to obtain information relevant to assess and mitigate money laundering risks associated with the foreign bank's correspondent accounts

for other foreign banks, including, as appropriate, the identity of those foreign banks.

(3)(i) Determine, for any correspondent account established or maintained for a foreign bank whose shares are not publicly traded, the identity of each owner of the foreign bank and the nature and extent of each owner's ownership interest.

(ii) For purposes of paragraph (b)(3)(i) of this section:

(A) *Owner* means any person who directly or indirectly owns, controls, or has the power to vote 10 percent or more of any class of securities of a foreign bank. For purposes of this paragraph (b)(3)(ii)(A):

(*1*) Members of the same family shall be considered to be one person; and

(*2*) *Same family* has the meaning provided in § 1010.605(j)(2)(ii).

(B) *Publicly traded* means shares that are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

(c) *Foreign banks to be accorded enhanced due diligence*. The due diligence procedures described in paragraph (b) of this section are required for any correspondent account maintained for a foreign bank that operates under:

(1) An offshore banking license;

(2) A banking license issued by a foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to the group or organization concurs; or

(3) A banking license issued by a foreign country that has been designated by the Secretary as warranting special measures due to money laundering concerns.

(d) *Special procedures when due diligence or enhanced due diligence cannot be performed*. The due diligence program required by paragraphs (a) and (b) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence or enhanced due diligence with respect to a correspondent account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

(e) *Applicability rules for general due diligence*. The provisions of paragraph (a) of this section apply to covered financial institutions as follows:

(1) *General rules*—(i) *Correspondent accounts established on or after July 5, 2006*. Effective July 5, 2006, the requirements of paragraph (a) of this section shall apply to each correspondent account established on or after that date.

(ii) *Correspondent accounts established before July 5, 2006*. Effective October 2, 2006, the requirements of paragraph (a) of this section shall apply to each correspondent account established before July 5, 2006.

(2) *Special rules for certain banks*. Until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section, the due diligence requirements of 31 U.S.C. 5318(i)(1) shall continue to apply to any covered financial institution listed in § 1010.605(e)(1)(i) through (vi).

(3) *Special rules for all other covered financial institutions*. The due diligence requirements of 31 U.S.C. 5318(i)(1) shall not apply to a covered financial institution listed in § 1010.605(e)(1)(vii) through (x) until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section.

(f) *Applicability rules for enhanced due diligence*. The provisions of paragraph (b) of this section apply to covered financial institutions as follows:

(1) *General rules*—(i) *Correspondent accounts established on or after February 5, 2008*. Effective February 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established on or after such date.

(ii) *Correspondent accounts established before February 5, 2008*. Effective May 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established before February 5, 2008.

(2) *Special rules for certain banks*. Until the requirements of paragraph (b)

of this section become applicable as set forth in paragraph (f)(1) of this section, the enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall continue to apply to any covered financial institutions listed in §1010.605(e)(1)(i) through (vi).

(3) *Special rules for all other covered financial institutions.* The enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall not apply to a covered financial institution listed in §1010.605(e)(1)(vii) through (x) until the requirements of paragraph (b) of this section become applicable, as set forth in paragraph (f)(1) of this section.

(g) *Exemptions*—(1) *Exempt financial institutions.* Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1), or §1010.100(t) is exempt from the requirements of 31 U.S.C. 5318(i)(1) and (i)(2) pertaining to correspondent accounts.

(2) *Other compliance obligations of financial institutions unaffected.* Nothing in paragraph (g) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this chapter.

§1010.620 Due diligence programs for private banking accounts.

(a) *In general.* A covered financial institution shall maintain a due diligence program that includes policies, procedures, and controls that are reasonably designed to detect and report any known or suspected money laundering or suspicious activity conducted through or involving any private banking account that is established, maintained, administered, or managed in the United States by such financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this chapter.

(b) *Minimum requirements.* The due diligence program required by paragraph (a) of this section shall be designed to ensure, at a minimum, that the financial institution takes reasonable steps to:

(1) Ascertain the identity of all nominal and beneficial owners of a private banking account;

(2) Ascertain whether any person identified under paragraph (b)(1) of this section is a senior foreign political figure;

(3) Ascertain the source(s) of funds deposited into a private banking account and the purpose and expected use of the account; and

(4) Review the activity of the account to ensure that it is consistent with the information obtained about the client's source of funds, and with the stated purpose and expected use of the account, as needed to guard against money laundering, and to report, in accordance with applicable law and regulation, any known or suspected money laundering or suspicious activity conducted to, from, or through a private banking account.

(c) *Special requirements for senior foreign political figures.* (1) In the case of a private banking account for which a senior foreign political figure is a nominal or beneficial owner, the due diligence program required by paragraph (a) of this section shall include enhanced scrutiny of such account that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

(2) For purposes of this paragraph (c), the term *proceeds of foreign corruption* means any asset or property that is acquired by, through, or on behalf of a senior foreign political figure through misappropriation, theft, or embezzlement of public funds, the unlawful conversion of property of a foreign government, or through acts of bribery or extortion, and shall include any other property into which any such assets have been transformed or converted.

(d) *Special procedures when due diligence cannot be performed.* The due diligence program required by paragraph (a) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence with respect to a private banking account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

(e) *Applicability rules.* The provisions of this section apply to covered financial institutions as follows:

(1) *General rules*—(i) Private banking accounts established on or after July 5, 2006. Effective July 5, 2006, the requirements of this section shall apply to each private banking account established on or after such date.

(ii) Private banking accounts established before July 5, 2006. Effective October 2, 2006, the requirements of this section shall apply to each private banking account established before July 5, 2006.

(2) *Special rules for certain banks and for brokers or dealers in securities, futures commission merchants, and introducing brokers.* Until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall continue to apply to a covered financial institution listed in §1010.605(e)(1)(i) through (vi), (viii), or (ix).

(3) *Special rules for federally regulated trust banks or trust companies, and mutual funds.* Until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall not apply to a covered financial institution listed in §1010.605(e)(1)(vii) or (x).

(4) *Exemptions*—(i) *Exempt financial institutions.* Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) or §1010.100(t) is exempt from the requirements of 31 U.S.C. 5318(i)(3) pertaining to private banking accounts.

(ii) *Other compliance obligations of financial institutions unaffected.* Nothing in paragraph (e)(4) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this chapter.

§1010.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts for foreign shell banks.* (i) A covered financial institution shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign shell bank.

(ii) A covered financial institution shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank.

(iii) Nothing in paragraph (a)(1) of this section prohibits a covered financial institution from providing a correspondent account or banking services to a regulated affiliate.

(2) *Records of owners and agents.* (i) Except as provided in paragraph (a)(2)(ii) of this section, a covered financial institution that maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of each such foreign bank whose shares are not publicly traded and the name and street address of a person who resides in the United States and is authorized, and has agreed to be an agent to accept service of legal process for records regarding each such account.

(ii) A covered financial institution need not maintain records of the owners of any foreign bank that is required to have on file with the Federal Reserve Board a Form FR Y–7 that identifies the current owners of the foreign bank as required by such form.

(iii) For purposes of paragraph (a)(2)(i) of this section, *publicly traded* refers to shares that are traded on an exchange or on an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

(b) *Safe harbor.* Subject to paragraphs (c) and (d) of this section, a covered financial institution will be deemed to be in compliance with the requirements of paragraph (a) of this section with respect to a foreign bank if the covered financial institution obtains, at least once every three years, a certification or recertification from the foreign bank.

(c) *Interim verification.* If at any time a covered financial institution knows, suspects, or has reason to suspect, that

any information contained in a certification or recertification provided by a foreign bank, or otherwise relied upon by the covered financial institution for purposes of this section, is no longer correct, the covered financial institution shall request that the foreign bank verify or correct such information, or shall take other appropriate measures to ascertain the accuracy of the information or to obtain correct information, as appropriate. See paragraph (d)(3) of this section for additional requirements if a foreign bank fails to verify or correct the information or if a covered financial institution cannot ascertain the accuracy of the information or obtain correct information.

(d) *Closure of correspondent accounts*—(1) *Accounts existing on October 28, 2002.* In the case of any correspondent account that was in existence on October 28, 2002, if the covered financial institution has not obtained a certification (or recertification) from the foreign bank, or has not otherwise obtained documentation of the information required by such certification (or recertification), on or before March 31, 2003, and at least once every three years thereafter, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(2) *Accounts established after October 28, 2002.* In the case of any correspondent account established after October 28, 2002, if the covered financial institution has not obtained a certification (or recertification), or has not otherwise obtained documentation of the information required by such certification (or recertification) within 30 calendar days after the date the account is established, and at least once every three years thereafter, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(3) *Verification of previously provided information.* In the case of a foreign bank with respect to which the covered financial institution undertakes to verify information pursuant to paragraph (c) of this section, if the covered financial institution has not obtained, from the foreign bank or otherwise, verification of the information or corrected information within 90 calendar days after the date of undertaking the verification, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(4) *Reestablishment of closed accounts and establishment of new accounts.* A covered financial institution shall not reestablish any account closed pursuant to this paragraph (d), and shall not establish any other correspondent account with the concerned foreign bank, until it obtains from the foreign bank the certification or the recertification, as appropriate.

(5) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent account in accordance with this paragraph (d).

(e) *Recordkeeping requirement.* A covered financial institution shall retain the original of any document provided by a foreign bank, and the original or a copy of any document otherwise relied upon by the covered financial institution, for purposes of this section, for at least 5 years after the date that the covered financial institution no longer maintains any correspondent account for such foreign bank. A covered financial institution shall retain such records with respect to any foreign bank for such longer period as the Secretary may direct.

(f) *Special rules concerning information requested prior to October 28, 2002*—(1) *Definition.* For purposes of this paragraph (f) the term ''Interim Guidance'' means:

(i) The Interim Guidance of the Department of the Treasury dated November 20, 2001 and published in the FEDERAL REGISTER on November 27, 2001; or

(ii) The guidance issued in a document published in the FEDERAL REGISTER on December 28, 2001.

(2) *Use of Interim Guidance certification.* In the case of a correspondent account in existence on October 28, 2002, the term ''certification'' as used in paragraphs (b), (c), (d)(1), and (d)(3) of this section shall also include the certification appended to the Interim Guidance, provided that such certification was requested prior to October 28, 2002 and obtained by the covered financial institution on or before December 26, 2002.

(3) *Recordkeeping requirement.* Paragraph (e) of this section shall apply to any document provided by a foreign bank, or otherwise relied upon by a covered financial institution, for purposes of the Interim Guidance.

§ 1010.640 [Reserved]

SPECIAL MEASURES UNDER SECTION 311 OF THE USA PATRIOT ACT AND LAW ENFORCEMENT ACCESS TO FOREIGN BANK RECORDS

§ 1010.651 Special measures against Burma.

(a) *Definitions.* For purposes of this section:

(1) *Burmese banking institution* means any foreign bank, as that term is defined in § 1010.100(u), chartered or licensed by Burma, including branches and offices located outside Burma.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c).

(3) *Covered financial institution* has the same meaning as provided in § 1010.605(e)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, a Burmese banking institution.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to a Burmese banking institution, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to a Burmese banking institution.

(3) *Exception.* The provisions of paragraphs (b)(1) and (2) of this section shall not apply to a correspondent account provided that the operation of such account is not prohibited by Executive Order 13310 and the transactions involving Burmese banking institutions that are conducted through the correspondent account are limited solely to transactions that are exempted from, or otherwise authorized by regulation, order, directive, or license pursuant to, Executive Order 13310.

(4) *Reporting and recordkeeping not required*. Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or report any information not otherwise required by law or regulation.

§ 1010.652 Special measures against Myanmar Mayflower Bank and Asia Wealth Bank.

(a) *Definitions*. For purposes of this section:

(1) *Asia Wealth Bank* means all headquarters, branches, and offices of Asia Wealth Bank operating in Burma or in any jurisdiction.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c).

(3) *Covered financial institution* has the same meaning as provided in § 1010.605(e)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq*.); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(4) *Myanmar Mayflower Bank* means all headquarters, branches, and offices of Myanmar Mayflower Bank operating in Burma or in any jurisdiction.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts*. A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank.

(2) *Prohibition on indirect correspondent accounts*. (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank.

(3) *Reporting and recordkeeping not required*. Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or to report any information not otherwise required by law or regulation.

§ 1010.653 Special measures against Commercial Bank of Syria.

(a) *Definitions*. For purposes of this section:

(1) *Commercial Bank of Syria* means any branch, office, or subsidiary of Commercial Bank of Syria operating in Syria or in any other jurisdiction, including Syrian Lebanese Commercial Bank.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c)(1)(ii).

(3) *Covered financial institution* includes:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

(iii) An agency or branch of a foreign bank in the United States;

(iv) A federally insured credit union;

(v) A savings association;

(vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 ((''Investment Company Act'') (15 U.S.C. 80a–3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a–5(a)(1))) and that is registered, or is required to register with the Securities and Exchange Commission pursuant to the Investment Company Act.

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is open or maintained in the United States for, or on behalf of, Commercial Bank of Syria.

(2) *Due diligence of correspondent accounts to prohibit indirect use.* (i) A covered financial institution shall apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Commercial Bank of Syria. At a minimum, that due diligence must include:

(A) Notifying correspondent account holders that the correspondent account may not be used to provide Commercial Bank of Syria with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by Commercial Bank of Syria, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Commercial Bank of Syria.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to Commercial Bank of Syria shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to Commercial Bank of Syria.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

§ 1010.654 Special measures against VEF Bank.

(a) *Definitions.* For purposes of this section:

(1) *Correspondent account* has the same meaning as provided in § 1010.605(c)(1)(ii).

(2) *Covered financial institution* includes:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

(iii) An agency or branch of a foreign bank in the United States;

(iv) A federally insured credit union;

(v) A savings association;

(vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 (("Investment Company Act") (15 U.S.C. 80a–3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a–5(a)(1))) and that is registered, or is required to register with the Securities and Exchange Commission pursuant to the Investment Company Act.

(3) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(4) *VEF Bank* means any branch, office, or subsidiary of joint stock company VEF Banka operating in the Republic of Latvia or in any other jurisdiction. The one known VEF Bank subsidiary, Veiksmes lzings, and any branches or offices, are included in the definition.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is opened or maintained in the United States for, or on behalf of, VEF Bank.

(2) *Due diligence of correspondent accounts to prohibit indirect use.* (i) A covered financial institution shall apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by VEF Bank. At a minimum, that due diligence must include:

(A) Notifying correspondent accountholders that the correspondent account may not be used to provide VEF Bank with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by VEF Bank, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by VEF Bank.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to VEF Bank shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to VEF Bank.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

§ 1010.655 Special measures against Banco Delta Asia.

(a) *Definitions.* For purposes of this section:

(1) *Banco Delta Asia* means all branches, offices, and subsidiaries of Banco Delta Asia operating in any jurisdiction, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c)(1)(ii).

(3) *Covered financial institution* includes:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

(iii) An agency or branch of a foreign bank in the United States;

(iv) A federally insured credit union;

(v) A savings association;

(vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a–3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a–5(a)(1))) and that is registered, or is required to register with the Securities and Exchange Commission pursuant to the Investment Company Act.

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Banco Delta Asia.

(2) *Due diligence of correspondent accounts to prohibit indirect use.* (i) A covered financial institution shall apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Banco Delta Asia. At a minimum, that due diligence must include:

(A) Notifying correspondent accountholders the correspondent account may not be used to provide Banco Delta Asia with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by Banco Delta Asia, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Banco Delta Asia.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by

the foreign bank to provide indirect access to Banco Delta Asia shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to Banco Delta Asia.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

§ 1010.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

(a) *Definitions.* The definitions in § 1010.605 apply to this section.

(b) *Issuance to foreign banks.* The Secretary or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and may request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank. The summons or subpoena may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

(c) *Issuance to covered financial institutions.* Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained by a covered financial institution under paragraph (a)(2) of § 1010.630, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

(d) *Termination upon receipt of notice.* A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed:

(1) To comply with a summons or subpoena issued under paragraph (b) of this section; or

(2) To initiate proceedings in a United States court contesting such summons or subpoena.

(e) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with paragraph (d) of this section.

(f) *Failure to terminate relationship.* Failure to terminate a correspondent relationship in accordance with this section shall render the covered financial institution liable for a civil penalty of up to $10,000 per day until the correspondent relationship is so terminated.

Subpart G—Administrative Rulings

§ 1010.710 Scope.

This subpart provides that the Director, FinCEN, or his designee, either unilaterally or upon request, may issue administrative rulings interpreting the application of this chapter.

§ 1010.711 Submitting requests.

(a) Each request for an administrative ruling must be in writing and contain the following information:

(1) A complete description of the situation for which the ruling is requested,

(2) A complete statement of all material facts related to the subject transaction,

(3) A concise and unambiguous question to be answered,

(4) A statement certifying, to the best of the requestor's knowledge and belief, that the question to be answered is not applicable to any ongoing state or Federal investigation, litigation, grand jury proceeding, or proceeding before any other governmental body involving either the requestor, any other party to the subject transaction, or any other party with whom the requestor has an agency relationship,

(5) A statement identifying any information in the request that the requestor considers to be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, and the reason therefor,

(6) If the subject situation is hypothetical, a statement justifying why the particular situation described warrants the issuance of a ruling,

(7) The signature of the person making the request, or

(8) If an agent makes the request, the signature of the agent and a statement certifying the authority under which the request is made.

(b) A request filed by a corporation shall be signed by a corporate officer and a request filed by a partnership shall be signed by a partner.

(c) A request may advocate a particular proposed interpretation and may set forth the legal and factual basis for that interpretation.

(d) Requests shall be addressed to: Director, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183.

(e) The requester shall advise the Director, FinCEN, immediately in writing of any subsequent change in any material fact or statement submitted with a ruling request in conformity with paragraph (a) of this section.

§ 1010.712 Nonconforming requests.

The Director, FinCEN, or his designee shall notify the requester if the ruling request does not conform with the requirements of § 1010.711. The notice shall be in writing and shall describe the requirements that have not been met. A request that is not brought into conformity with such requirements within 30 days from the date of such notice, unless extended for good cause by FinCEN, shall be treated as though it were withdrawn.

§ 1010.713 Oral communications.

(a) The Director of FinCEN or his designee will not issue administrative rulings in response to oral requests. Oral opinions or advice by Treasury, Customs and Border Protection, the Internal Revenue Service, the Office of the Comptroller of the Currency, or any other bank supervisory agency personnel, regarding the interpretation and application of this chapter, do not bind FinCEN and carry no precedential value.

(b) A person who has made a ruling request in conformity with § 1010.711 may request an opportunity for oral discussion of the issues presented in the request. The request should be made to the Director, FinCEN, and any decision to grant such a conference is wholly within the discretion of the Director. Personal conferences or telephone conferences may be scheduled only for the purpose of affording the requester an opportunity to discuss freely and openly the matters set forth in the administrative ruling request. Accordingly, the conferees will not be bound by any argument or position advocated or agreed to, expressly or impliedly, during the conference. Any new arguments or facts put forth by the requester at the meeting must be reduced to writing by the requester and submitted in conformity with § 1010.711 before they may be considered in connection with the request.

§ 1010.714 Withdrawing requests.

A person may withdraw a request for an administrative ruling at any time before the ruling has been issued.

§ 1010.715 Issuing rulings.

The Director, FinCEN, or his designee may issue a written ruling interpreting the relationship between this chapter and each situation for which such a ruling has been requested in conformity with § 1010.711. A ruling issued under this section shall bind FinCEN only in the event that the request describes a specifically identified actual situation. A ruling issued under this section shall have precedential value, and hence may be relied upon by

others similarly situated, only if FinCEN makes it available to the public through publication on the FinCEN Web site under the heading ''Administrative rulings'' or other appropriate forum. All rulings with precedential value will be available by mail to any person upon written request specifically identifying the ruling sought. FinCEN will make every effort to respond to each requestor within 90 days of receiving a request.

(Approved by the Office of Management and Budget under control number 1506–0009)

§ 1010.716 Modifying or rescinding rulings.

(a) The Director, FinCEN, or his designee may modify or rescind any ruling made pursuant to § 1010.715:

(1) When, in light of changes in the statute or regulations, the ruling no longer sets forth the interpretation of the Director, FinCEN with respect to the described situation,

(2) When any fact or statement submitted in the original ruling request is found to be materially inaccurate or incomplete, or

(3) For other good cause.

(b) Any person may submit to the Director, FinCEN a written request that an administrative ruling be modified or rescinded. The request should conform to the requirements of § 1010.711, explain why rescission or modification is warranted, and refer to any reasons in paragraph (a) of this section that are relevant. The request may advocate an alternative interpretation and may set forth the legal and factual basis for that interpretation.

(c) FinCEN shall modify an existing administrative ruling by issuing a new ruling that rescinds the relevant prior ruling. Once rescinded, an administrative ruling shall no longer have any precedential value.

(d) An administrative ruling may be modified or rescinded retroactively with respect to one or more parties to the original ruling request if the Director, FinCEN, determines that:

(1) A fact or statement in the original ruling request was materially inaccurate or incomplete,

(2) The requestor failed to notify in writing FinCEN of a material change to any fact or statement in the original request, or

(3) A party to the original request acted in bad faith when relying upon the ruling.

§ 1010.717 Disclosing information.

(a) Any part of any administrative ruling, including names, addresses, or information related to the business transactions of private parties, may be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552. If the request for an administrative ruling contains information which the requestor wishes to be considered for exemption from disclosure under the Freedom of Information Act, the requestor should clearly identify such portions of the request and the reasons why such information should be exempt from disclosure.

(b) A requestor claiming an exemption from disclosure will be notified, at least 10 days before the administrative ruling is issued, of a decision not to exempt any of such information from disclosure so that the underlying request for an administrative ruling can be withdrawn if the requestor so chooses.

Subpart H—Enforcement; Penalties; and Forfeiture

§ 1010.810 Enforcement.

(a) Overall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter, is delegated to the Director, FinCEN.

(b) Authority to examine institutions to determine compliance with the requirements of this chapter is delegated as follows:

(1) To the Comptroller of the Currency with respect to those financial institutions regularly examined for safety and soundness by national bank examiners;

(2) To the Board of Governors of the Federal Reserve System with respect to those financial institutions regularly examined for safety and soundness by Federal Reserve bank examiners;

(3) To the Federal Deposit Insurance Corporation with respect to those financial institutions regularly examined for safety and soundness by FDIC bank examiners;

(4) To the Federal Home Loan Bank Board with respect to those financial institutions regularly examined for safety and soundness by FHLBB bank examiners;

(5) To the Chairman of the Board of the National Credit Union Administration with respect to those financial institutions regularly examined for safety and soundness by NCUA examiners.

(6) To the Securities and Exchange Commission with respect to brokers and dealers in securities and investment companies as that term is defined in the Investment Company Act of 1940 (15 U.S.C. 80–1 *et seq.*);

(7) To the Commissioner of Customs and Border Protection with respect to §§ 1010.340 and 1010.830;

(8) To the Commissioner of Internal Revenue with respect to all financial institutions, except brokers or dealers in securities, mutual funds, futures commission merchants, introducing brokers in commodities, and commodity trading advisors, not currently examined by Federal bank supervisory agencies for soundness and safety; and

(9) To the Commodity Futures Trading Commission with respect to futures commission merchants, introducing brokers in commodities, and commodity trading advisors.

(c) Authority for investigating criminal violations of this chapter is delegated as follows:

(1) To the Commissioner of Customs and Border Protection with respect to § 1010.340;

(2) To the Commissioner of Internal Revenue except with respect to § 1010.340.

(d) Authority for the imposition of civil penalties for violations of this chapter lies with the Director of FinCEN.

(e) Periodic reports shall be made to the Director, FinCEN by each agency to which compliance authority has been delegated under paragraph (b) of this section. These reports shall be in such a form and submitted at such intervals as the Director, FinCEN may direct. Evidence of specific violations of any of the requirements of this chapter may be submitted to the Director, FinCEN at any time.

(f) The Director, FinCEN or his delegate, and any agency to which compliance has been delegated under paragraph (b) of this section, may examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this chapter.

(g) The authority to enforce the provisions of 31 U.S.C. 5314 and §§ 1010.350 and 1010.420 of this chapter has been redelegated from FinCEN to the Commissioner of Internal Revenue by means of a Memorandum of Agreement between FinCEN and IRS. Such authority includes, with respect to 31 U.S.C. 5314 and 1010.350 and 1010.420 of this chapter, the authority to: assess and collect civil penalties under 31 U.S.C. 5321 and 31 CFR 1010.820; investigate possible civil violations of these provisions (in addition to the authority already provided at paragraph (c)(2)) of this section); employ the summons power of subpart I of this part 1010; issue administrative rulings under subpart G of this part 1010; and take any other action reasonably necessary for the enforcement of these and related provisions, including pursuit of injunctions.

§ 1010.820 Civil penalty.

(a) For any willful violation, committed on or before October 12, 1984, of any reporting requirement for financial institutions under this chapter or of any recordkeeping requirements of §§ 1010.311, 1010.313, 1020.315, 1021.311 or 1021.313, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

(b) For any willful violation committed after October 12, 1984 and before October 28, 1986, of any reporting requirement for financial institutions under this chapter or of the recordkeeping requirements of § 1010.420, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $10,000.

(c) For any willful violation of any recordkeeping requirement for financial institutions, except violations of § 1010.420, under this chapter, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

(d) For any failure to file a report required under § 1010.340 or for filing such a report containing any material omission or misstatement, the Secretary may assess a civil penalty up to the amount of the currency or monetary instruments transported, mailed or shipped, less any amount forfeited under § 1010.830.

(e) For any willful violation of § 1010.314 committed after January 26, 1987, the Secretary may assess upon any person a civil penalty not to exceed the amount of coins and currency involved in the transaction with respect to which such penalty is imposed. The amount of any civil penalty assessed under this paragraph shall be reduced by the amount of any forfeiture to the United States in connection with the transaction for which the penalty was imposed.

(f) For any willful violation committed after October 27, 1986, of any reporting requirement for financial institutions under this chapter (except § 1010.350, § 1010.360 or § 1010.420), the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000.

(g) For any willful violation committed after October 27, 1986, of any requirement of § 1010.350, § 1010.360 or § 1010.420, the Secretary may assess upon any person, a civil penalty:

(1) In the case of a violation of § 1010.360 involving a transaction, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) of the transaction, or $25,000; and

(2) In the case of a violation of § 1010.350 or § 1010.420 involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) equal to the balance in the account at the time of the violation, or $25,000.

(h) For each negligent violation of any requirement of this chapter, committed after October 27, 1986, the Secretary may assess upon any financial institution a civil penalty not to exceed $500.

§ 1010.830 Forfeiture of currency or monetary instruments.

Any currency or other monetary instruments which are in the process of any transportation with respect to which a report is required under § 1010.340 are subject to seizure and forfeiture to the United States if such report has not been filed as required in § 1010.360, or contains material omissions or misstatements. The Secretary may, in his sole discretion, remit or mitigate any such forfeiture in whole or in part upon such terms and conditions as he deems reasonable.

§ 1010.840 Criminal penalty.

(a) Any person who willfully violates any provision of Title I of Public Law 91–508, or of this chapter authorized thereby may, upon conviction thereof, be fined not more than $1,000 or be imprisoned not more than 1 year, or both. Such person may in addition, if the violation is of any provision authorized by Title I of Public Law 91–508 and if the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than 1 year, be fined not more than $10,000 or be imprisoned not more than 5 years, or both.

(b) Any person who willfully violates any provision of Title II of Public Law 91–508, or of this chapter authorized thereby, may, upon conviction thereof, be fined not more than $250,000 or be imprisoned not more than 5 years, or both.

(c) Any person who willfully violates any provision of Title II of Public Law 91–508, or of this chapter authorized thereby, where the violation is either

(1) Committed while violating another law of the United States, or

(2) Committed as part of a pattern of any illegal activity involving more than $100,000 in any 12-month period, may, upon conviction thereof, be fined not more than $500,000 or be imprisoned not more than 10 years, or both.

(d) Any person who knowingly makes any false, fictitious or fraudulent statement or representation in any report required by this chapter may, upon conviction thereof, be fined not more than $10,000 or be imprisoned not more than 5 years, or both.

§ 1010.850 Enforcement authority with respect to transportation of currency or monetary instruments.

(a) If a customs officer has reasonable cause to believe that there is a monetary instrument being transported without the filing of the report required by §§ 1010.340 and 1010.360 of this chapter, he may stop and search, without a search warrant, a vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States with respect to which or whom the officer reasonably believes is transporting such instrument.

(b) If the Secretary has reason to believe that currency or monetary instruments are in the process of transportation and with respect to which a report required under § 1010.340 has not been filed or contains material omissions or misstatements, he may apply to any court of competent jurisdiction for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

(1) One or more designated persons.

(2) One or more designated or described places or premises.

(3) One or more designated or described letters, parcels, packages, or other physical objects.

(4) One or more designated or described vehicles. Any application for a search warrant pursuant to this section shall be accompanied by allegations of fact supporting the application.

(c) This section is not in derogation of the authority of the Secretary under any other law or regulation.

Subpart I—Summons

§ 1010.911 General.

For any investigation for the purpose of civil enforcement of violations of the Bank Secrecy Act, or any regulation issued pursuant to the Bank Secrecy Act, the Secretary or delegate of the Secretary may summon a financial institution or an officer or employee of a financial institution (including a former officer or employee), or any person having possession, custody, or care of any of the records and reports required under the Bank Secrecy Act or this chapter to appear before the Secretary or his delegate, at a time and place named in the summons, and to give testimony, under oath, and be examined, and to produce such books, papers, records, or other data as may be relevant or material to such investigation.

§ 1010.912 Persons who may issue summons.

For purposes of this chapter, the following officials are hereby designated as delegates of the Secretary who are authorized to issue a summons under § 1010.911, solely for the purposes of civil enforcement of this chapter:

(a) *FinCEN*. The Director, FinCEN.

(b) *Internal Revenue Service*. Except with respect to § 1010.340 of this chapter, the Commissioner, the Deputy Commissioner, or a delegate of either official, and, for the purposes of perfecting seizures and forfeitures related to civil enforcement of this chapter, the Chief (Criminal Investigation) or a delegate.

(c) *Customs and Border Protection*. With respect to § 1010.340 of this chapter, the Commissioner, the Deputy Commissioner, the Assistant Commissioner (Enforcement), Regional Commissioners, Assistant Regional Commissioners (Enforcement), and Special Agents in Charge.

§ 1010.913 Contents of summons.

(a) *Summons for testimony*. Any summons issued under § 1010.911 of this chapter to compel the appearance and testimony of a person shall state:

(1) The name, title, address, and telephone number of the person before whom the appearance shall take place

(who may be a person other than the persons who are authorized to issue such a summons under § 1010.912 of this chapter);

(2) The address to which the person summoned shall report for the appearance;

(3) The date and time of the appearance; and

(4) The name, title, address, and telephone number of the person who has issued the summons.

(b) *Summons of books, papers, records, or data.* Any summons issued under § 1010.911 of this chapter to require the production of books, papers, records, or other data shall describe the materials to be produced with reasonable specificity, and shall state:

(1) The name, title, address, and telephone number of the person to whom the materials shall be produced (who may be a person other than the persons who are authorized to issue such a summons under § 1010.912 of this chapter);

(2) The address at which the person summoned shall produce the materials, not to exceed 500 miles from any place where the financial institution operates or conducts business in the United States;

(3) The specific manner of production, whether by personal delivery, by mail, or by messenger service;

(4) The date and time for production; and

(5) The name, title, address, and telephone number of the person who has issued the summons.

§ 1010.914 Service of summons.

(a) *Who may serve.* Any delegate of the Secretary authorized under § 1010.912 of this chapter to issue a summons, or any other person authorized by law to serve summonses or other process, is hereby authorized to serve a summons issued under this chapter.

(b) *Manner of service.* Service of a summons may be made—

(1) Upon any person, by registered mail, return receipt requested, directed to the person summoned;

(2) Upon a natural person by personal delivery; or

(3) Upon any other person by delivery to an officer, managing or general agent, or any other agent authorized to receive service of process.

(c) *Certificate of service.* The summons shall contain a certificate of service to be signed by the server of the summons. On the hearing of an application for enforcement of the summons, the certificate of service signed by the person serving the summons shall be evidence of the facts it states.

§ 1010.915 Examination of witnesses and records.

(a) *General.* Any delegate of the Secretary authorized under § 1010.912 of this chapter to issue a summons, or any officer or employee of the Treasury Department or any component thereof who is designated by that person (whether in the summons or otherwise), is hereby authorized to receive evidence and to examine witnesses pursuant to the summons. Any person authorized by law may administer any oaths and affirmations that may be required under this subpart.

(b) *Testimony taken under oath.* Testimony of any person under this chapter may be taken under oath, and shall be taken down in writing by the person examining the person summoned or shall be otherwise transcribed. After the testimony of a witness has been transcribed, a copy of that transcript shall be made available to the witness upon request, unless for good cause the person issuing the summons determines, under 5 U.S.C. 555, that a copy should not be provided. If such a determination has been made, the witness shall be limited to inspection of the official transcript of the testimony.

(c) *Disclosure of summons, testimony, or records.* Unless the Secretary or a delegate of the Secretary listed under § 1010.912(a) of this chapter so authorizes in writing, or it is otherwise required by law, no delegate of the Secretary listed under § 1010.912 (b) or (c) of this chapter or other officer or employee of the Treasury Department or any component thereof shall—

(1) Make public the name of any person to whom a summons has been issued under this chapter, or release any information to the public concerning that person or the issuance of a summons to that person prior to the

time and date set for that person's appearance or production of records; or

(2) Disclose any testimony taken (including the name of the witness) or material presented pursuant to the summons, to any person other than an officer or employee of the Treasury Department or of any component thereof. Nothing in the preceding sentence shall preclude a delegate of the Secretary, or other officer or employee of the Treasury Department or any component thereof, from disclosing testimony taken, or material presented pursuant to a summons issued under this chapter, to any person in order to obtain necessary information for investigative purposes relating to the performance of official duties, or to any officer or employee of the Department of Justice in connection with a possible violation of Federal law.

§ 1010.916 Enforcement of summons.

In the case of contumacy by, or refusal to obey a summons issued to, any person under this chapter, the Secretary or any delegate of the Secretary listed under § 1010.912 of this chapter shall refer the matter to the Attorney General or delegate of the Attorney General (including any United States Attorney or Assistant United States Attorney, as appropriate), who may bring an action to compel compliance with the summons in any court of the United States within the jurisdiction of which the investigation which gave rise to the summons being or has been carried on, the jurisdiction in which the person summoned is a resident, or the jurisdiction in which the person summoned carries on business or may be found. When a referral is made by a delegate of the Secretary other than a delegate named in § 1010.912(a) of this chapter, prompt notification of the referral must be made to the Director, FinCEN. The court may issue an order requiring the person summoned to appear before the Secretary or delegate of the Secretary to produce books, papers, records, or other data, to give testimony as may be necessary in order to explain how such material was compiled and maintained, and to pay the costs of the proceeding. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any case under this section may be served in any judicial district in which such person may be found.

§ 1010.917 Payment of expenses.

Persons summoned under this chapter shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. The United States shall not be liable for any other expense incurred in connection with the production of books, papers, records, or other data under this chapter.

Subpart J—Miscellaneous

§ 1010.920 Access to records.

Except as provided in §§ 1020.410(b)(1), 1021.410(a), and 1023.410(a)(1), and except for the purpose of assuring compliance with the recordkeeping and reporting requirements of this chapter, this chapter does not authorize the Secretary or any other person to inspect or review the records required to be maintained by this chapter. Other inspection, review or access to such records is governed by other applicable law.

§ 1010.930 Rewards for informants.

(a) If an individual provides original information which leads to a recovery of a criminal fine, civil penalty, or forfeiture, which exceeds $50,000, for a violation of the provisions of the Bank Secrecy Act or of this chapter, the Secretary may pay a reward to that individual.

(b) The Secretary shall determine the amount of the reward to be paid under this section; however, any reward paid may not be more than 25 percent of the net amount of the fine, penalty or forfeiture collected, or $150,000, whichever is less.

(c) An officer or employee of the United States, a State, or a local government who provides original information described in paragraph (a) in the performance of official duties is not eligible for a reward under this section.

§ 1010.940 Photographic or other reproductions of Government obligations.

Nothing herein contained shall require or authorize the microfilming or other reproduction of:

(a) Currency or other obligation or security of the United States as defined in 18 U.S.C. 8, or

(b) Any obligation or other security of any foreign government, the reproduction of which is prohibited by law.

§ 1010.950 Availability of information.

(a) The Secretary may within his discretion disclose information reported under this chapter for any reason consistent with the purposes of the Bank Secrecy Act, including those set forth in paragraphs (b) through (d) of this section.

(b) The Secretary may make any information set forth in any report received pursuant to this chapter available to another agency of the United States, to an agency of a state or local government or to an agency of a foreign government, upon the request of the head of such department or agency made in writing and stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.

(c) The Secretary may make any information set forth in any report received pursuant to this chapter available to the Congress, or any committee or subcommittee thereof, upon a written request stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.

(d) The Secretary may make any information set forth in any report received pursuant to this chapter available to any other department or agency of the United States that is a member of the Intelligence Community, as defined by Executive Order 12333 or any succeeding executive order, upon the request of the head of such department or agency made in writing and stating the particular information desired, the national security matter with which the information is sought and the official need therefor.

(e) Any information made available under this section to other department or agencies of the United States, any state or local government, or any foreign government shall be received by them in confidence, and shall not be disclosed to any person except for official purposes relating to the investigation, proceeding or matter in connection with which the information is sought.

(f) The Secretary may require that a State or local government department or agency requesting information under paragraph (b) of this section pay fees to reimburse the Department of the Treasury for costs incidental to such disclosure. The amount of such fees will be set in accordance with the statute on fees for government services, 31 U.S.C. 9701.

§ 1010.960 Disclosure.

All reports required under this chapter and all records of such reports are specifically exempted from disclosure under section 552 of Title 5, United States Code.

§ 1010.970 Exceptions, exemptions, and reports.

(a) The Secretary, in his sole discretion, may by written order or authorization make exceptions to or grant exemptions from the requirements of this chapter. Such exceptions or exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to particular transactions or classes of transactions. They shall, however, be applicable only as expressly Stated in the order of authorization, and they shall be revocable in the sole discretion of the Secretary.

(b) The Secretary shall have authority to further define all terms used herein.

(c)(1) The Secretary may, as an alternative to the reporting and recordkeeping requirements for casinos in §§ 1010.306(a), 1021.311, and 1021.410, grant exemptions to the casinos in any State whose regulatory system substantially meets the reporting and recordkeeping requirements of this chapter.

(2) In order for a State regulatory system to qualify for an exemption on

behalf of its casinos, the State must provide:

(i) That the Treasury Department be allowed to evaluate the effectiveness of the State's regulatory system by periodic oversight review of that system;

(ii) That the reports required under the State's regulatory system be submitted to the Treasury Department within 15 days of receipt by the State;

(iii) That any records required to be maintained by the casinos relevant to any matter under this chapter and to which the State has access or maintains under its regulatory system be made available to the Treasury Department within 30 days of request;

(iv) That the Treasury Department be provided with periodic status reports on the State's compliance efforts and findings;

(v) That all but minor violations of the State requirements be reported to Treasury within 15 days of discovery; and

(vi) That the State will initiate compliance examinations of specific institutions at the request of Treasury within a reasonable time, not to exceed 90 days where appropriate, and will provide reports of these examinations to Treasury within 15 days of completion or periodically during the course of the examination upon the request of the Secretary. If for any reason the State were not able to conduct an investigation within a reasonable time, the State will permit Treasury to conduct the investigation.

(3) Revocation of any exemption under this subsection shall be in the sole discretion of the Secretary.

§ 1010.980 Dollars as including foreign currency.

Wherever in this chapter an amount is Stated in dollars, it shall be deemed to mean also the equivalent amount in any foreign currency.

PARTS 1011–1019 [Reserved]

PART 1020—RULE FOR BANKS

Subpart A—Definitions

Sec.

1020.100 Definitions.

Subpart B—Programs

1020.200 General.
1020.210 Anti-money laundering program requirements for financial institutions regulated only by a Federal functional regulator, including banks, savings associations, and credit unions.
1020.220 Customer identification programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

Subpart C—Reports Required To Be Made by Banks

1020.300 General.
1020.310 Reports of transactions in currency.
1020.311 Filing obligations.
1020.312 Identification required.
1020.313 Aggregation.
1020.314 Structured transactions.
1020.315 Transactions of exempt persons.
1020.320 Reports by banks of suspicious transactions.

Subpart D—Records Required To Be Maintained by Banks

1020.400 General.
1020.410 Records to be made and retained by banks.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1020.500 General.
1020.520 Special information sharing procedures to deter money laundering and terrorist activity for banks.
1020.530 [Reserved]
1020.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Banks

1020.600 General.
1020.610 Due diligence programs for correspondent accounts for foreign financial institutions.
1020.620 Due diligence programs for private banking accounts.
1020.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.
1020.640 [Reserved]
1020.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted

Subpart A—Definitions

§ 1020.100 Definitions.

Refer to § 1010.100 of this Chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this chapter, the definition in this Section is what applies to part 1020. Unless otherwise indicated, for purposes of this part:

(a) *Account*. For purposes of § 1020.220:

(1) *Account* means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. *Account* also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.

(2) *Account* does not include:

(i) A product or service where a formal banking relationship is not established with a person, such as check-cashing, wire transfer, or sale of a check or money order;

(ii) An account that the bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities; or

(iii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) *Bank*. For the purposes of § 1020.220, means:

(1) A bank, as that term is defined in § 1010.100(d), that is subject to regulation by a Federal functional regulator; and

(2) A credit union, private bank, and trust company, as set forth in § 1010.100(d) of this chapter, that does not have a Federal functional regulator.

(c) *Customer*. For the purposes of § 1020.220:

(1) *Customer* means:

(i) A person that opens a new account; and

(ii) An individual who opens a new account for:

(A) An individual who lacks legal capacity, such as a minor; or

(B) An entity that is not a legal person, such as a civic club.

(2) *Customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;

(ii) A person described in § 1020.315(b)(2) through (b)(4); or

(iii) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

(d) *Financial institution* means:

(1) For the purposes of § 1020.210, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) that is subject to regulation by a Federal functional regulator or a self-regulatory organization.

(2) For the purposes of § 1020.220, financial institution is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

Subpart B—Programs

§ 1020.200 General.

Banks are subject to the program requirements set forth and cross referenced in this subpart. Banks should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to banks.

§ 1020.210 Anti-money laundering program requirements for financial institutions regulated only by a Federal functional regulator, including banks, savings associations, and credit unions.

A financial institution regulated by a Federal functional regulator that is not subject to the regulations of a self regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains an anti-money laundering program that complies with the requirements of §§ 1010.610 and 1010.620 and the regulation of its Federal functional regulator governing such programs.

§ 1020.220 Customer identification programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

(a) *Customer Identification Program: minimum requirements*—(1) *In general.* A bank must implement a written Customer Identification Program (CIP) appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. If a bank is required to have an anti-money laundering compliance program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1), then the CIP must be a part of the anti-money laundering compliance program. Until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer. These procedures must be based on the bank's assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base. At a minimum, these procedures must contain the elements described in this paragraph (a)(2).

(i) *Customer information required*—(A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. Except as permitted by paragraphs (a)(2)(i)(B) and (C) of this section, the bank must obtain, at a minimum, the following information from the customer prior to opening an account:

(1) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and

(*4*) Identification number, which shall be:

(i) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: A taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

NOTE TO PARAGRAPH(a)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening the account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(C) *Credit card accounts.* In connection with a customer who opens a credit card account, a bank may obtain the identifying information about a customer required under paragraph (a)(2)(i)(A) by acquiring it from a third-party source prior to extending credit to the customer.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using information obtained in accordance with

paragraph (a)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (a)(2)(ii).

(A) *Verification through documents.* For a bank relying on documents, the CIP must contain procedures that set forth the documents that the bank will use. These documents may include:

(*1*) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a bank relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(*2*) The bank's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the bank; and where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This verification method applies only when the bank cannot verify the customer's true identity using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the bank should not open an account;

(B) The terms under which a customer may use an account while the bank attempts to verify the customer's identity;

(C) When the bank should close an account, after attempts to verify a customer's identity have failed; and

(D) When the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (a) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance and, if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (a)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The bank must retain the information in paragraph (a)(3)(i)(A) of this section for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. The bank must retain the information in paragraphs (a)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the bank to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the bank to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the bank generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a bank may post a notice in the lobby or on its Web site, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a bank may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when a bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP, with respect to any customer of the bank that is opening, or has opened, an account or has established a similar formal banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

(b) *Exemptions.* The appropriate Federal functional regulator, with the concurrence of the Secretary, may, by order or regulation, exempt any bank or type of account from the requirements of this section. The Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and may consider other appropriate factors. The Secretary will make these determinations for any bank or type of account that is not subject to the authority of a Federal functional regulator.

(c) *Other requirements unaffected.* Nothing in this section relieves a bank of its obligation to comply with any other provision in this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Subpart C—Reports Required To Be Made By Banks

§ 1020.300 General.

Banks are subject to the reporting requirements set forth and cross referenced in this subpart. Banks should also refer to Subpart C of Part 1010 of this chapter for reporting requirements contained in that subpart which apply to banks.

§ 1020.310 Reports of transactions in currency.

The reports of transactions in currency requirements for banks are located in subpart C of part 1010 of this chapter and this subpart.

§ 1020.311 Filing obligations.

Refer to § 1010.311 of this chapter for reports of transactions in currency filing obligations for banks.

§ 1020.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by banks.

§ 1020.313 Aggregation.

Refer to § 1010.313 of this chapter for reports of transactions in currency aggregation requirements for banks.

§ 1020.314 Structured transactions.

Refer to § 1010.314 of this chapter for rules regarding structured transactions for banks.

§ 1020.315 Transactions of exempt persons.

(a) *General.* No bank is required to file a report otherwise required by § 1010.311 with respect to any transaction in currency between an exempt person and such bank, or, to the extent provided in paragraph (e)(6) of this section, between such exempt person and other banks affiliated with such bank. (A limitation on the exemption described in this paragraph (a) is set forth in paragraph (f) of this section.)

(b) *Exempt person.* For purposes of this section, an exempt person is:

(1) A bank, to the extent of such bank's domestic operations;

(2) A department or agency of the United States, of any State, or of any political subdivision of any State;

(3) Any entity established under the laws of the United States, of any State, or of any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or any such State or political subdivision;

(4) Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a NASDAQ National Market Security listed on the NASDAQ Stock Market (except stock or interests listed under the separate ''NASDAQ Capital Markets Companies'' heading), provided that, for purposes of this paragraph (b)(4), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(5) Any subsidiary, other than a bank, of any entity described in paragraph (b)(4) of this section (a ''listed entity'') that is organized under the laws of the United States or of any State and at least 51 percent of whose common stock or analogous equity interest is owned by the listed entity, provided that, for purposes of this paragraph (b)(5), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(6) To the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts, any other commercial enterprise (for purposes of this section, a ''non-listed business''), other than an enterprise specified in paragraph (e)(8) of this section, that:

(i) Maintains a transaction account, as defined in paragraph (e)(9) of this section, at the bank for at least two months, except as provided in paragraph (c)(2)(ii) of this section;

(ii) Frequently engages in transactions in currency with the bank in excess of $10,000; and

(iii) Is incorporated or organized under the laws of the United States or

a State, or is registered as and eligible to do business within the United States or a State; or

(7) With respect solely to withdrawals for payroll purposes from existing exemptible accounts, any other person (for purposes of this section, a ''payroll customer'') that:

(i) Maintains a transaction account, as defined in paragraph (e)(9) of this section, at the bank for at least two months, except as provided in paragraph (c)(2)(ii) of this section;

(ii) Operates a firm that regularly withdraws more than $10,000 in order to pay its United States employees in currency; and

(iii) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.

(c) *Designation of certain exempt persons*—(1) *General*. Except as provided in paragraph (c)(2) of this section, a bank must designate an exempt person by filing FinCEN Form 110. Such designation must occur by the close of the 30-calendar day period beginning after the day of the first reportable transaction in currency with that person sought to be exempted from reporting under the terms of this section. The designation must be made separately by each bank that treats the customer as an exempt person, except as provided in paragraph (e)(6) of this section.

(2) *Special rules*. (i) A bank is not required to file a FinCEN Form 110 with respect to the transfer of currency to or from:

(A) Any of the twelve Federal Reserve Banks; or

(B) Any exempt person as described in paragraphs (b)(1) to (3) of this section.

(ii) Notwithstanding subparagraphs (b)(6)(i) and (b)(7)(i) of this section, and if the requirements under this section are otherwise satisfied, a bank may designate a non-listed business or a payroll customer, as described in paragraphs (b)(6) and (7) of this section, as an exempt person before the customer has maintained a transaction account at the bank for at least two months if the bank conducts and documents a risk-based assessment of the customer and forms a reasonable belief that the customer has a legitimate business purpose for conducting frequent transactions in currency.

(d) *Annual review*. At least once each year, a bank must review the eligibility of an exempt person described in paragraphs (b)(4) to (7) of this section to determine whether such person remains eligible for an exemption. As part of its annual review, a bank must review the application of the monitoring system required to be maintained by paragraph (h)(2) of this section to each existing account of an exempt person described in paragraphs (b)(6) or (b)(7) of this section.

(e) *Operating rules*—(1) *General rule*. Subject to the specific rules of this section, a bank must take such steps to assure itself that a person is an exempt person (within the meaning of the applicable provision of paragraph (b) of this section), to document the basis for its conclusions, and document its compliance, with the terms of this section, that a reasonable and prudent bank would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status, and in the case of the monitoring system requirement set forth in paragraph (h)(2) of this section, such steps that a reasonable and prudent bank would take and document to identify suspicious transactions as required by paragraph (h)(2) of this section.

(2) *Governmental departments and agencies*. A bank may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (b)(2) or (b)(3) of this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (b)(3) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters

within its jurisdiction. Examples of entities that exercise governmental authority include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

(3) *Stock exchange listings.* In determining whether a person is described in paragraph (b)(4) of this section, a bank may rely on any New York, American, or NASDAQ Stock Market listing published in a newspaper of general circulation, on any commonly accepted or published stock symbol guide, on any information contained in the Securities and Exchange Commission ''EDGAR'' System, or on any information contained on an Internet site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ.

(4) *Listed company subsidiaries.* In determining whether a person is described in paragraph (b)(5) of this section, a bank may rely upon:

(i) Any reasonably authenticated corporate officer's certificate;

(ii) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(iii) A person's Annual Report or Form 10–K, as filed in each case with the Securities and Exchange Commission.

(5) *Aggregated accounts.* In determining the qualification of a customer as a non-listed business or a payroll customer, a bank may treat all exemptible accounts of the customer as a single account. If a bank elects to treat all exemptible accounts of a customer as a single account, the bank must continue to treat such accounts consistently as a single account for purposes of determining the qualification of the customer as a non-listed business or payroll customer.

(6) *Affiliated banks.* The designation required by paragraph (c) of this section may be made by a parent bank holding company or one of its bank subsidiaries on behalf of all bank subsidiaries of the holding company, so long as the designation lists each bank subsidiary to which the designation shall apply.

(7) *Sole proprietorships.* A sole proprietorship may be treated as a non-listed business if it otherwise meets the requirements of paragraph (b)(6) of this section, as applicable. In addition, a sole proprietorship may be treated as a payroll customer if it otherwise meets the requirements of paragraph (b)(7) of this section, as applicable.

(8) *Ineligible businesses.* A business engaged primarily in one or more of the following activities may not be treated as a non-listed business for purposes of this section: Serving as financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft; gaming of any kind (other than licensed parimutuel betting at race tracks); investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified by FinCEN. A business that engages in multiple business activities may be treated as a non-listed business so long as no more than 50% of its gross revenues are derived from one or more of the ineligible business activities listed in this paragraph (e)(8).

(9) *Exemptible accounts of a non-listed business or payroll customer.* The exemptible accounts of a non-listed business or payroll customer include transaction accounts and money market deposit accounts. However, money market deposit accounts maintained other than in connection with a commercial enterprise are not exemptible accounts. A transaction account, for purposes of this section, is any account described in section 19(b)(1)(C) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(C), and its implementing regulations (12 CFR part 204). A money market deposit account, for purposes of this section, is any interest-bearing account that is described as a money market deposit account in 12 CFR 204.2(d)(2).

(10) *Documentation.* The records maintained by a bank to document its compliance with and administration of the

rules of this section shall be maintained in accordance with the provisions of § 1010.430.

(f) *Limitation on exemption.* A transaction carried out by an exempt person as an agent for another person who is the beneficial owner of the funds that are the subject of a transaction in currency is not subject to the exemption from reporting contained in paragraph (a) of this section.

(g) *Limitation on liability.* (1) No bank shall be subject to penalty under this chapter for failure to file a report required by § 1010.311 with respect to a transaction in currency by an exempt person with respect to which the requirements of this section have been satisfied, unless the bank:

(i) Knowingly files false or incomplete information with respect to the transaction or the customer engaging in the transaction; or

(ii) Has reason to believe that the customer does not meet the criteria established by this section for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.

(2) Subject to the specific terms of this section, and absent any specific knowledge of information indicating that a customer no longer meets the requirements of an exempt person, a bank satisfies the requirements of this section to the extent it continues to treat that customer as an exempt person until the completion of that customer's next required periodic review, which as required by paragraph (d) of this section for an exempt person described in paragraph (b)(4) to (7) of this section, shall occur no less than once each year.

(3) A bank that files a report with respect to a currency transaction by an exempt person rather than treating such person as exempt shall remain subject, with respect to each such report, to the rules for filing reports, and the penalties for filing false or incomplete reports that are applicable to reporting of transactions in currency by persons other than exempt persons.

(h) *Obligations to file suspicious activity reports and maintain system for monitoring transactions in currency.* (1) Nothing in this section relieves a bank of the obligation, or reduces in any way such bank's obligation, to file a report required by § 1020.320 with respect to any transaction, including any transaction in currency that a bank knows, suspects, or has reason to suspect is a transaction or attempted transaction that is described in § 1020.320(a)(2)(i), (ii), or (iii), or relieves a bank of any reporting or recordkeeping obligation imposed by this chapter (except the obligation to report transactions in currency pursuant to this chapter to the extent provided in this section). Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions made by an exempt customer, or similarly anomalous transactions trends or patterns, may trigger the obligation of a bank under § 1020.320.

(2) Consistent with its annual review obligations under paragraph (d) of this section, a bank shall establish and maintain a monitoring system that is reasonably designed to detect, for each account of a non-listed business or payroll customer, those transactions in currency involving such account that would require a bank to file a suspicious transaction report. The statement in the preceding sentence with respect to accounts of non-listed business and payroll customers does not limit the obligation of banks generally to take the steps necessary to satisfy the terms of paragraph (h)(1) of this section and § 1020.320 with respect to all exempt persons.

(i) *Revocation.* Without any action on the part of the Department of the Treasury and subject to the limitation on liability contained in paragraph (g)(2) of this section:

(1) The status of an entity as an exempt person under paragraph (b)(4) of this section ceases once such entity ceases to be listed on the applicable stock exchange; and

(2) The status of a subsidiary as an exempt person under paragraph (b)(5) of this section ceases once such subsidiary ceases to have at least 51 per cent of its common stock or analogous equity interest owned by a listed entity.

(Approved by the Office of Management and Budget under control number 1506–0012)

§ 1020.320 Reports by banks of suspicious transactions.

(a) *General.* (1) Every bank shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A bank may also file with the Treasury Department by using the Suspicious Activity Report specified in paragraph (b)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through the bank, it involves or aggregates at least $5,000 in funds or other assets, and the bank knows, suspects, or has reason to suspect that:

(i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) The transaction is designed to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act; or

(iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report (''SAR''), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR.

(3) *When to file.* A bank is required to file a SAR no later than 30 calendar days after the date of initial detection by the bank of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of the detection of the incident requiring the filing, a bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations that require immediate attention, such as, for example, ongoing money laundering schemes, the bank shall immediately notify, by telephone, an appropriate law enforcement authority in addition to filing timely a SAR.

(c) *Exceptions.* A bank is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the bank files a report pursuant to the reporting requirements of 17 CFR 240.17f–1.

(d) *Retention of records.* A bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR. Supporting documentation shall be identified, and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A bank shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the bank for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the bank to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the institution complies with the Bank Secrecy Act, upon request.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For

purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by banks*—(i) *General rule*. No bank, and no director, officer, employee, or agent of any bank, shall disclose a SAR or any information that would reveal the existence of a SAR. Any bank, and any director, officer, employee, or agent of any bank that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction*. Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by a bank, or any director, officer, employee, or agent of a bank, of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the bank for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the bank to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the bank complies with the Bank Secrecy Act; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(*i*) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(*ii*) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by a bank, or any director, officer, employee, or agent of the bank, of a SAR, or any information that would reveal the existence of a SAR, within the bank's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities*. A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) *Limitation on liability*. A bank, and any director, officer, employee, or agent of any bank, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance*. Banks shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter. Such failure may also violate provisions of title 12 of the Code of Federal Regulations.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 10517, Feb. 25, 2011]

Subpart D—Records Required To Be Maintained By Banks

§ 1020.400 General.

Banks are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Banks should also refer to subpart D of part

1010 of this chapter for recordkeeping requirements contained in that subpart which apply to banks.

§ 1020.410 Records to be made and retained by banks.

(a) Each agent, agency, branch, or office located within the United States of a bank is subject to the requirements of this paragraph (a) with respect to a funds transfer in the amount of $3,000 or more, and is required to retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) *Recordkeeping requirements.* (i) For each payment order that it accepts as an originator's bank, a bank shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the payment order:

(A) The name and address of the originator;

(B) The amount of the payment order;

(C) The execution date of the payment order;

(D) Any payment instructions received from the originator with the payment order;

(E) The identity of the beneficiary's bank; and

(F) As many of the following items as are received with the payment order:[1]

(*1*) The name and address of the beneficiary;

(*2*) The account number of the beneficiary; and

(*3*) Any other specific identifier of the beneficiary.

(ii) For each payment order that it accepts as an intermediary bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(iii) For each payment order that it accepts as a beneficiary's bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(2) *Originators other than established customers.* In the case of a payment order from an originator that is not an established customer, in addition to obtaining and retaining the information required in paragraph (a)(1)(i) of this section:

(i) If the payment order is made in person, prior to acceptance the originator's bank shall verify the identity of the person placing the payment order. If it accepts the payment order, the originator's bank shall obtain and retain a record of the name and address, the type of identification reviewed, the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(ii) If the payment order accepted by the originator's bank is not made in person, the originator's bank shall obtain and retain a record of name and address of the person placing the payment order, as well as the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (*e.g.*, check or credit card transaction) for the funds transfer. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or

[1] For funds transfers effected through the Federal Reserve's Fedwire funds transfer system, only one of the items is required to be retained, if received with the payment order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(3) *Beneficiaries other than established customers*. For each payment order that it accepts as a beneficiary's bank for a beneficiary that is not an established customer, in addition to obtaining and retaining the information required in paragraph (a)(1)(iii) of this section:

(i) If the proceeds are delivered in person to the beneficiary or its representative or agent, the beneficiary's bank shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the beneficiary's bank has knowledge that the person receiving the proceeds is not the beneficiary, the beneficiary's bank shall obtain and retain a record of the beneficiary's name and address, as well as the beneficiary's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the beneficiary's bank shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability*. The information that an originator's bank must retain under paragraphs (a)(1)(i) and (a)(2) of this section shall be retrievable by the originator's bank by reference to the name of the originator. If the originator is an established customer of the originator's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. The information that a beneficiary's bank must retain under paragraphs (a)(1)(iii) and (a)(3) of this section shall be retrievable by the beneficiary's bank by reference to the name of the beneficiary. If the beneficiary is an established customer of the beneficiary's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the bank is able to retrieve the information required by this paragraph, either by accessing funds transfer records directly or through reference to some other record maintained by the bank.

(5) *Verification*. Where verification is required under paragraphs (a)(2) and (a)(3) of this section, a bank shall verify a person's identity by examination of a document (other than a bank signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a foreign driver's license with indication of home address).

(6) *Exceptions*. The following funds transfers are not subject to the requirements of this section:

(i) Funds transfers where the originator and beneficiary are any of the following:

(A) A bank;

(B) A wholly owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly owned domestic subsidiary of a broker or dealer in securities;

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

(G) The United States;

(H) A state or local government;

(I) A Federal, State or local government agency or instrumentality; or

(J) A mutual fund; and

(ii) Funds transfers where both the originator and the beneficiary are the same person and the originator's bank and the beneficiary's bank are the same bank.

(b)(1) With respect to each certificate of deposit sold or redeemed after May 31, 1978, and before October 1, 2003, or each deposit or share account opened with a bank after June 30, 1972, and before October 1, 2003, a bank shall, within 30 days from the date such a transaction occurs or an account is opened, secure and maintain a record of the taxpayer identification number of the customer involved; or where the account or certificate is in the names of two or more persons, the bank shall secure the taxpayer identification number of a person having a financial interest in the certificate or account. In the event that a bank has been unable to secure, within the 30-day period specified, the required identification, it shall nevertheless not be deemed to be in violation of this section if it has made a reasonable effort to secure such identification, and it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. A bank acting as an agent for another person in the purchase or redemption of a certificate of deposit issued by another bank is responsible for obtaining and recording the required taxpayer identification, as well as for maintaining the records referred to in paragraphs (c)(11) and (12) of this section. The issuing bank can satisfy the recordkeeping requirement by recording the name and address of the agent together with a description of the instrument and the date of the transaction. Where a person is a non-resident alien, the bank shall also record the person's passport number or a description of some other government document used to verify his identity.

(2) The 30-day period provided for in paragraph (b)(1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS–4 or SS–5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the bank.

(3) A taxpayer identification number required under paragraph (b)(1) of this section need not be secured for accounts or transactions with the following:

(i) Agencies and instrumentalities of Federal, State, local or foreign governments;

(ii) Judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court;

(iii) Aliens who are ambassadors, ministers, career diplomatic or consular officers, or naval, military or other attachés of foreign embassies and legations, and for the members of their immediate families;

(iv) Aliens who are accredited representatives of international organizations which are entitled to enjoy privileges, exemptions and immunities as an international organization under the International Organization Immunities Act of December 29, 1945 (22 U.S.C. 288), and the members of their immediate families;

(v) Aliens temporarily residing in the United States for a period not to exceed 180 days;

(vi) Aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government;

(vii) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter,

(viii) A person under 18 years of age with respect to an account opened as a part of a school thrift savings program, provided the annual interest is less than $10;

(ix) A person opening a Christmas club, vacation club and similar installment savings programs, provided the annual interest is less than $10; and

(x) Non-resident aliens who are not engaged in a trade or business in the United States.

(4) In instances described in paragraphs (b)(3)(viii) and (ix) of this section, the bank shall, within 15 days following the end of any calendar year in which the interest accrued in that year is $10 or more use its best effort to secure and maintain the appropriate taxpayer identification number or application form therefor.

(5) The rules and regulations issued by the Internal Revenue Service under section 6109 of the Internal Revenue Code of 1954 shall determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(c) Each bank shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature authority over each deposit or share account, including any notations, if such are normally made, of specific identifying information verifying the identity of the signer (such as a driver's license number or credit card number);

(2) Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account;

(3) Each check, clean draft, or money order drawn on the bank or issued and payable by it, except those drawn for $100 or less or those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks per month over the calendar year or on each occasion on which such checks are issued, and which are:

(i) Dividend checks,

(ii) Payroll checks,

(iii) Employee benefit checks,

(iv) Insurance claim checks,

(v) Medical benefit checks,

(vi) Checks drawn on government agency accounts,

(vii) Checks drawn by brokers or dealers in securities,

(viii) Checks drawn on fiduciary accounts,

(ix) Checks drawn on other financial institutions, or

(x) Pension or annuity checks;

(4) Each item in excess of $100 (other than bank charges or periodic charges made pursuant to agreement with the customer), comprising a debit to a customer's deposit or share account, not required to be kept, and not specifically exempted, under paragraph (c)(3) of this section;

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

(7) Each check or draft in an amount in excess of $10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment;

(8) Each item, including checks, drafts or transfers of credit, of more than $10,000 received directly and not through a domestic financial institution, by letter, cable or any other means, from a bank, broker or dealer in foreign exchange outside the United States;

(9) A record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker or dealer in foreign exchange outside the United States; and

(10) Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a transaction account and to trace a check in excess of $100 deposited in such account through its domestic processing system or to supply a description of a deposited check in excess of $100. This subparagraph shall be applicable only with respect to demand deposits.

(11) A record containing the name, address, and taxpayer identification number as determined under section 6109 of the Internal Revenue Code of 1986, if available, of the purchaser of each certificate of deposit, as well as a

description of the instrument, a notation of the method of payment, and the date of the transaction.

(12) A record containing the name, address and taxpayer identification number as determined under section 6109 of the Internal Revenue Code of 1986, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction.

(13) Each deposit slip or credit ticket reflecting a transaction in excess of $100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The slip or ticket shall record the amount of any currency involved.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1020.500 General.

Banks are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Banks should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to banks.

§ 1020.520 Special information sharing procedures to deter money laundering and terrorist activity for banks.

(a) Refer to § 1010.520 of this chapter.
(b) [Reserved]

§ 1020.530 [Reserved]

§ 1020.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this chapter.
(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures

§ 1020.600 General.

Banks are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Banks should also refer to subpart F of part 1010 of this chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to banks.

§ 1020.610 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) Refer to § 1010.610 of this chapter.
(b) [Reserved]

§ 1020.620 Due diligence programs for private banking accounts.

(a) Refer to § 1010.620 of this chapter.
(b) [Reserved]

§ 1020.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) Refer to § 1010.630 of this chapter.
(b) [Reserved]

§ 1020.640 [Reserved]

§ 1020.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

(a) Refer to § 1010.670 of this chapter.
(b) [Reserved]

PART 1021—RULES FOR CASINOS AND CARD CLUBS

Subpart A—Definitions

Sec.
1021.100 Definitions.

Subpart B—Programs

1021.200 General.
1021.210 Anti-money laundering program requirements for casinos.

Subpart C—Reports Required To Be Made By Casinos and Card Clubs

1021.300 General.
1021.310 Reports of transactions in currency.
1021.311 Filing obligations.

1021.312 Identification required.
1021.313 Aggregation.
1021.314 Structured transactions.
1021.315 Exemptions.
1021.320 Reports by casinos of suspicious transactions.
1021.330 Exceptions to the reporting requirements of 31 U.S.C. 5331.

Subpart D—Records Required To Be Maintained By Casinos and Card Clubs

1021.400 General.
1021.410 Additional records to be made and retained by casinos.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity for Casinos and Card Clubs

1021.500 General.
1021.520 Special information sharing procedures to deter money laundering and terrorist activity for casinos and card clubs.
1021.530 [Reserved]
1021.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Casinos and Card Clubs

1021.600 General.
1021.610 Due diligence programs for correspondent accounts for foreign financial institutions.
1021.620 Due diligence programs for private banking accounts.
1021.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.
1021.640 [Reserved]
1021.670 Summons or subpoena of foreign bank records; Termination of correspondent relationship.

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—Definitions

§ 1021.100 Definitions.

Refer to § 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this chapter, the definition in this section is what applies to part 1021. Unless otherwise indicated, for purposes of this part:

(a) *Business year* means the annual accounting period, such as a calendar or fiscal year, by which a casino maintains its books and records for purposes of subtitle A of title 26 of the United States Code.

(b) *Casino account number* means any and all numbers by which a casino identifies a customer.

(c) *Customer* includes every person which is involved in a transaction to which this chapter applies with a casino, whether or not that person participates, or intends to participate, in the gaming activities offered by that casino.

(d) *Gaming day* means the normal business day of a casino. For a casino that offers 24 hour gaming, the term means that 24 hour period by which the casino keeps its books and records for business, accounting, and tax purposes. For purposes of the regulations contained in this chapter, each casino may have only one gaming day, common to all of its divisions.

(e) *Machine-readable* means capable of being read by an automated data processing system.

Subpart B—Programs

§ 1021.200 General.

Casinos and card clubs are subject to the program requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to casinos and card clubs.

§ 1021.210 Anti-money laundering program requirements for casinos.

(a) *Requirements for casinos*. A casino shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains a compliance program described in paragraph (b) of this section.

(b) *Compliance programs*. (1) Each casino shall develop and implement a written program reasonably designed to assure and monitor compliance with the requirements set forth in 31 U.S.C. chapter 53, subchapter II and the regulations contained in this chapter.

(2) At a minimum, each compliance program shall provide for:

(i) A system of internal controls to assure ongoing compliance;

(ii) Internal and/or external independent testing for compliance. The scope and frequency of the testing shall be commensurate with the money laundering and terrorist financing risks posed by the products and services provided by the casino;

(iii) Training of casino personnel, including training in the identification of unusual or suspicious transactions, to the extent that the reporting of such transactions is required by this chapter, by other applicable law or regulation, or by the casino's own administrative and compliance policies;

(iv) An individual or individuals to assure day-to-day compliance;

(v) Procedures for using all available information to determine:

(A) When required by this chapter, the name, address, social security number, and other information, and verification of the same, of a person;

(B) The occurrence of any transactions or patterns of transactions required to be reported pursuant to § 1021.320;

(C) Whether any record as described in subpart D of part 1010 of this chapter or subpart D of this part 1021 must be made and retained; and

(vi) For casinos that have automated data processing systems, the use of automated programs to aid in assuring compliance.

Subpart C—Reports Required To Be Made By Casinos and Card Clubs

§ 1021.300 General.

Casinos and card clubs are subject to the reporting requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to casinos and card clubs.

§ 1021.310 Reports of transactions in currency.

The reports of transactions in currency requirements for casinos are located in subpart C of part 1010 of this chapter and this subpart.

§ 1021.311 Filing obligations.

Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than $10,000.

(a) Transactions in currency involving cash in include, but are not limited to:

(1) Purchases of chips, tokens, and other gaming instruments;

(2) Front money deposits;

(3) Safekeeping deposits;

(4) Payments on any form of credit, including markers and counter checks;

(5) Bets of currency, including money plays;

(6) Currency received by a casino for transmittal of funds through wire transfer for a customer;

(7) Purchases of a casino's check;

(8) Exchanges of currency for currency, including foreign currency; and

(9) Bills inserted into electronic gaming devices.

(b) Transactions in currency involving cash out include, but are not limited to:

(1) Redemptions of chips, tokens, tickets, and other gaming instruments;

(2) Front money withdrawals;

(3) Safekeeping withdrawals;

(4) Advances on any form of credit, including markers and counter checks;

(5) Payments on bets;

(6) Payments by a casino to a customer based on receipt of funds through wire transfers;

(7) Cashing of checks or other negotiable instruments;

(8) Exchanges of currency for currency, including foreign currency;

(9) Travel and complimentary expenses and gaming incentives; and

(10) Payment for tournament, contests, and other promotions.

(c) Other provisions of this chapter notwithstanding, casinos are exempted from the reporting obligations found in this section and § 1021.313 for the following transactions in currency or currency transactions:

(1) Transactions between a casino and a currency dealer or exchanger, or between a casino and a check casher, as those terms are defined in § 1010.100(ff) of this chapter, so long as

such transactions are conducted pursuant to a contractual or other arrangement with a casino covering the financial services in paragraphs (a)(8), (b)(7), and (b)(8) of this section;

(2) Cash out transactions to the extent the currency is won in a money play and is the same currency the customer wagered in the money play, or cash in transactions to the extent the currency is the same currency the customer previously wagered in a money play on the same table game without leaving the table;

(3) Bills inserted into electronic gaming devices in multiple transactions (unless a casino has knowledge pursuant to § 1021.313 in which case this exemption would not apply); and

(4) Jackpots from slot machines or video lottery terminals.

§ 1021.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports of transaction in currency filed by casinos and card clubs.

§ 1021.313 Aggregation.

In the case of a casino, multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any gaming day. For purposes of this section, a casino shall be deemed to have the knowledge described in the preceding sentence, if: Any sole proprietor, partner, officer, director, or employee of the casino, acting within the scope of his or her employment, has knowledge that such multiple currency transactions have occurred, including knowledge from examining the books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the ordinary course of its business, and which contain information that such multiple currency transactions have occurred.

§ 1021.314 Structured transactions.

Refer to § 1010.314 of this chapter for rules regarding structured transactions for casinos.

§ 1021.315 Exemptions.

Refer to § 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for casinos.

§ 1021.320 Reports by casinos of suspicious transactions.

(a) *General.* (1) Every casino shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A casino may also file with FinCEN, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a casino, and involves or aggregates at least $5,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the

background and possible purpose of the transaction; or

(iv) Involves use of the casino to facilitate criminal activity.

(b) *Filing procedures*—(1) *What to file*. A suspicious transaction shall be reported by completing a Suspicious Activity Report by Casinos (''SARC''), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file*. The SARC shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SARC.

(3) *When to file*. A SARC shall be filed no later than 30 calendar days after the date of the initial detection by the casino of facts that may constitute a basis for filing a SARC under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SARC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SARC. Casinos wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SARC if required by this section.

(c) *Exceptions*. A casino is not required to file a SARC for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(d) *Retention of records*. A casino shall maintain a copy of any SARC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SARC. Supporting documentation shall be identified as such and maintained by the casino, and shall be deemed to have been filed with the SARC. A casino shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the casino for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the casino complies with the Bank Secrecy Act, or any tribal regulatory authority administering a tribal law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the tribal regulatory authority to ensure that the casino complies with the Bank Secrecy Act, upon request.

(e) *Confidentiality of SARs*. A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by casinos*—(i) *General rule*. No casino, and no director, officer, employee, or agent of any casino, shall disclose a SAR or any information that would reveal the existence of a SAR. Any casino, and any director, officer, employee, or agent of any casino that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction*. Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by a casino, or any director, officer, employee, or agent of a casino, of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the casino for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the casino to comply

with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the casino complies with the Bank Secrecy Act, or any tribal regulatory authority administering a tribal law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the tribal regulatory authority to ensure that casino complies with the Bank Secrecy Act; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by a casino, or any director, officer, employee, or agent of the casino, of a SAR, or any information that would reveal the existence of a SAR, within the casino's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act (BSA). For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) *Limitation on liability.* A casino, and any director, officer, employee, or agent of any casino, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Casinos shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(h) *Applicability date.* This section applies to transactions occurring after March 25, 2003.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 10517, Feb. 25, 2011]

§ 1021.330 Exceptions to the reporting requirements of 31 U.S.C. 5331.

(a) *Receipt of currency by certain casinos having gross annual gaming revenue in excess of $1,000,000—In general.* If a casino receives currency in excess of $10,000 and is required to report the receipt of such currency directly to the Treasury Department under § 1010.306, § 1021.311, or § 1021.313 and is subject to the recordkeeping requirements of § 1021.410, then the casino is not required to make a report with respect to the receipt of such currency under 31 U.S.C. 5331 and this section.

(b) *Casinos exempt under § 1010.970(c).* Pursuant to § 1010.970, the Secretary may exempt from the reporting and recordkeeping requirements under § 1010.306, § 1021.311, § 1021.313 or § 1021.410 casinos in any state whose regulatory system substantially meets the reporting and recordkeeping requirements of this chapter. Such casinos shall not be required to report receipt of currency under 31 U.S.C. 5331 and this section.

(c) *Reporting of currency received in a non-gaming business.* Non-gaming businesses (such as shops, restaurants, entertainment, and hotels) at casino hotels and resorts are separate trades or businesses in which the receipt of currency in excess of $10,000 is reportable under section 5331 and these regulations. Thus, a casino exempt under paragraph (a) or (b) of this section must report with respect to currency in excess of $10,000 received in its non-gaming businesses.

(d) *Example.* The following example illustrates the application of the rules in paragraphs (a) and (c) of this section:

Example. A and B are casinos having gross annual gaming revenue in excess of $1,000,000. C is a casino with gross annual gaming revenue of less than $1,000,000. Casino A receives $15,000 in currency from a customer with respect to a gaming transaction which the casino reports to the Treasury Department under §§1010.306, 1021.311, and 1021.313. Casino B receives $15,000 in currency from a customer in payment for accommodations provided to that customer at Casino B's hotel. Casino C receives $15,000 in currency from a customer with respect to a gaming transaction. Casino A is not required to report the transaction under 31 U.S.C. 5331 or this section because the exception for certain casinos provided in paragraph (a) of this section (''the casino exception'') applies. Casino B is required to report under 31 U.S.C. 5331 and this section because the casino exception does not apply to the receipt of currency from a nongaming activity. Casino C is required to report under 31 U.S.C. 5331 and this section because the casino exception does not apply to casinos having gross annual gaming revenue of $1,000,000 or less which do not have to report to the Treasury Department under §§1010.306, 1021.311, and 1021.313.

Subpart D—Records Required To Be Maintained By Casinos and Card Clubs

§ 1021.400 General.

Casinos and card clubs are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to casinos and card clubs.

§ 1021.410 Additional records to be made and retained by casinos.

(a) With respect to each deposit of funds, account opened or line of credit extended after the effective date of these regulations, a casino shall, at the time the funds are deposited, the account is opened or credit is extended, secure and maintain a record of the name, permanent address, and social security number of the person involved. Where the deposit, account or credit is in the names of two or more persons, the casino shall secure the name, permanent address, and social security number of each person having a financial interest in the deposit, account or line of credit. The name and address of such person shall be verified by the casino at the time the deposit is made, account opened, or credit extended. The verification shall be made by examination of a document of the type described in §1010.312 of this chapter, and the specific identifying information shall be recorded in the manner described in §1010.312 of this chapter. In the event that a casino has been unable to secure the required social security number, it shall not be deemed to be in violation of this section if it has made a reasonable effort to secure such number and it maintains a list containing the names and permanent addresses of those persons from who it has been unable to obtain social security numbers and makes the names and addresses of those persons available to the Secretary upon request. Where a person is a nonresident alien, the casino shall also record the person's passport number or a description of some other government document used to verify his identity.

(b) In addition, each casino shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) A record of each receipt (including but not limited to funds for safekeeping or front money) of funds by the casino for the account (credit or deposit) of any person. The record shall include the name, permanent address and social security number of the person from whom the funds were received, as well as the date and amount of the funds received. If the person from whom the funds were received is a non-resident alien, the person's passport number or a description of some other government document used to verify the person's identity shall be obtained and recorded;

(2) A record of each bookkeeping entry comprising a debit or credit to a customer's deposit account or credit account with the casino;

(3) Each statement, ledger card or other record of each deposit account or credit account with the casino, showing each transaction (including deposits, receipts, withdrawals, disbursements or transfers) in or with respect to, a customer's deposit account or credit account with the casino;

(4) A record of each extension of credit in excess of $2,500, the terms and conditions of such extension of credit, and repayments. The record shall include the customer's name, permanent address, social security number, and the date and amount of the transaction (including repayments). If the customer or person for whom the credit extended is a non-resident alien, his passport number or description of some other government document used to verify his identity shall be obtained and recorded;

(5) A record of each advice, request or instruction received or given by the casino for itself or another person with respect to a transaction involving a person, account or place outside the United States (including but not limited to communications by wire, letter, or telephone). If the transfer outside the United States is on behalf of a third party, the record shall include the third party's name, permanent address, social security number, signature, and the date and amount of the transaction. If the transfer is received from outside the United States on behalf of a third party, the record shall include the third party's name, permanent address, social security number, signature, and the date and amount of the transaction. If the person for whom the transaction is being made is a non-resident alien the record shall also include the person's name, his passport number or a description of some other government document used to verify his identity;

(6) Records prepared or received by the casino in the ordinary course of business which would be needed to reconstruct a person's deposit account or credit account with the casino or to trace a check deposited with the casino through the casino's records to the bank of deposit;

(7) All records, documents or manuals required to be maintained by a casino under state and local laws or regulations, regulations of any governing Indian tribe or tribal government, or terms of (or any regulations issued under) any Tribal-State compacts entered into pursuant to the Indian Gaming Regulatory Act, with respect to the casino in question.

(8) All records which are prepared or used by a casino to monitor a customer's gaming activity.

(9)(i) A separate record containing a list of each transaction between the casino and its customers involving the following types of instruments having a face value of $3,000 or more:

(A) Personal checks (excluding instruments which evidence credit granted by a casino strictly for gaming, such as markers);

(B) Business checks (including casino checks);

(C) Official bank checks;

(D) Cashier's checks;

(E) Third-party checks;

(F) Promissory notes;

(G) Traveler's checks; and

(H) Money orders.

(ii) The list will contain the time, date, and amount of the transaction; the name and permanent address of the customer; the type of instrument; the name of the drawee or issuer of the instrument; all reference numbers (*e.g.*, casino account number, personal check number, *etc.*); and the name or casino license number of the casino employee who conducted the transaction. Applicable transactions will be placed on the list in the chronological order in which they occur.

(10) A copy of the compliance program described in § 1021.210(b).

(11) In the case of card clubs only, records of all currency transactions by customers, including without limitation, records in the form of currency transaction logs and multiple currency transaction logs, and records of all activity at cages or similar facilities, including, without limitation, cage control logs.

(c)(1) Casinos which input, store, or retain, in whole or in part, for any period of time, any record required to be maintained by § 1010.410 of this chapter or this section on computer disk, tape, or other machine-readable media shall retain the same on computer disk, tape, or machine-readable media.

(2) All indexes, books, programs, record layouts, manuals, formats, instructions, file descriptions, and similar materials which would enable a person readily to access and review the records that are described in § 1010.410 of this chapter and this section and

that are input, stored, or retained on computer disk, tape, or other machine-readable media shall be retained for the period of time such records are required to be retained.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity for Casinos and Card Clubs

§ 1021.500 General.

Casinos and card clubs are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to subpart E of part 1010 of this Chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to casinos and card clubs.

§ 1021.520 Special information sharing procedures to deter money laundering and terrorist activity for casinos and card clubs.

(a) Refer to § 1010.520 of this chapter.
(b) [Reserved]

§ 1021.530 [Reserved]

§ 1021.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this Chapter.
(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Casinos and Card Clubs

§ 1021.600 General.

Casinos and card clubs are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to subpart F of part 1010 of this chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to casinos and card clubs.

§ 1021.610 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) Refer to § 1010.610 of this chapter.
(b) [Reserved]

§ 1021.620 Due diligence programs for private banking accounts.

(a) Refer to § 1010.620 of this chapter.
(b) [Reserved]

§ 1021.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) Refer to § 1010.630 of this chapter.
(b) [Reserved]

§ 1021.640 [Reserved]

§ 1021.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

(a) Refer to § 1010.670 of this chapter.
(b) [Reserved]

PART 1022—RULES FOR MONEY SERVICES BUSINESSES

Subpart A—Definitions

Sec.
1022.100 Definitions.

Subpart B—Programs

1022.200 General.
1022.210 Anti-money laundering programs for money services businesses.

Subpart C—Reports Required To Be Made By Money Services Businesses

1022.300 General.
1022.310 Reports of transactions in currency.
1022.311 Filing obligations.
1022.312 Identification required.
1022.313 Aggregation.
1022.314 Structured transactions.
1022.315 Exemptions.
1022.320 Reports by money services businesses of suspicious transactions.
1022.380 Registration of money services businesses.

Subpart D—Records Required To Be Maintained By Money Services Businesses

1022.400 General.

1022.410 Additional records to be made and retained by currency dealers or exchangers.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1022.500 General.
1022.520 Special information sharing procedures to deter money laundering and terrorist activity for money services businesses.
1022.530 [Reserved]
1022.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Money Services Businesses

1022.600 General.
1022.610—1022.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—Definitions

§ 1022.100 Definitions.

Refer to § 1010.100 of this chapter for general definitions not noted herein.

Subpart B—Programs

§ 1022.200 General.

Money services businesses are subject to the program requirements set forth and cross referenced in this subpart. Money services businesses should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to money services businesses.

§ 1022.210 Anti-money laundering programs for money services businesses.

(a) Each money services business, as defined by § 1010.100(ff) of this chapter, shall develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities.

(b) The program shall be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business.

(c) The program shall be in writing, and a money services business shall make copies of the anti-money laundering program available for inspection to the Department of the Treasury upon request.

(d) At a minimum, the program shall:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with this chapter.

(i) Policies, procedures, and internal controls developed and implemented under this section shall include provisions for complying with the requirements of this chapter including, to the extent applicable to the money services business, requirements for:

(A) Verifying customer identification;

(B) Filing reports;

(C) Creating and retaining records; and

(D) Responding to law enforcement requests.

(ii) Money services businesses that have automated data processing systems should integrate their compliance procedures with such systems.

(iii) A person that is a money services business solely because it is an agent for another money services business as set forth in § 1022.380(a)(2), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1). Each money services business shall remain solely responsible for implementation of the requirements set forth in this section, and nothing in this paragraph (d)(1) relieves any money services business from its obligation to establish and maintain an effective anti-money laundering program.

(2) Designate a person to assure day to day compliance with the program and this chapter. The responsibilities of such person shall include assuring that:

(i) The money services business properly files reports, and creates and retains records, in accordance with applicable requirements of this chapter;

(ii) The compliance program is updated as necessary to reflect current requirements of this chapter, and related guidance issued by the Department of the Treasury; and

(iii) The money services business provides appropriate training and education in accordance with paragraph (d)(3) of this section.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions under this chapter.

(4) Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services business so long as the reviewer is not the person designated in paragraph (d)(2) of this section.

(e) *Compliance date.* A money services business must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of July 24, 2002, and the end of the 90-day period beginning on the day following the date the business is established.

Subpart C—Reports Required To Be Made By Money Services Businesses

§ 1022.300 General.

Money services businesses are subject to the reporting requirements set forth and cross referenced in this subpart. Money services businesses should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to money services businesses.

§ 1022.310 Reports of transactions in currency.

The reports of transactions in currency requirements for money services businesses are located in subpart C of part 1010 of this chapter and this subpart.

§ 1022.311 Filing obligations.

Refer to § 1010.311 of this chapter for reports of transactions in currency filing obligations for money services businesses.

§ 1022.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by money services businesses.

§ 1022.313 Aggregation.

Refer to § 1010.313 of this chapter for reports of transactions in currency aggregation requirements for money services businesses.

§ 1022.314 Structured transactions.

Refer to § 1010.314 of this chapter for rules regarding structured transactions for money services businesses.

§ 1022.315 Exemptions.

Refer to § 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for money services businesses.

§ 1022.320 Reports by money services businesses of suspicious transactions.

(a) *General.* (1) Every money services business, described in § 1010.100(ff) (1), (3), (4), (5), or (6) of this chapter, shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. Any money services business may also file with the Treasury Department, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or

through a money services business, involves or aggregates funds or other assets of at least $2,000 (except as provided in paragraph (a)(3) of this section), and the money services business knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act; or

(iii) Serves no business or apparent lawful purpose, and the reporting money services business knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(iv) Involves use of the money services business to facilitate criminal activity.

(3) To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or traveler's checks shall only be required to report a transaction or pattern of transactions that involves or aggregates funds or other assets of at least $5,000.

(4) The obligation to identify and properly and timely to report a suspicious transaction rests with each money services business involved in the transaction, provided that no more than one report is required to be filed by the money services businesses involved in a particular transaction (so long as the report filed contains all relevant facts). Whether, in addition to any liability on its own for failure to report, a money services business that issues the instrument or provides the funds transfer service involved in the transaction may be liable for the failure of another money services business involved in the transaction to report that transaction depends upon the nature of the contractual or other relationship between the businesses, and the legal effect of the facts and circumstances of the relationship and transaction involved, under general principles of the law of agency.

(5) Notwithstanding the provisions of this section, a transaction that involves solely the issuance, or facilitation of the transfer of stored value, or the issuance, sale, or redemption of stored value, shall not be subject to reporting under this paragraph (a), until the promulgation of rules specifically relating to such reporting.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report-MSB (''SAR–MSB''), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* The SAR–MSB shall be filed in a central location to be determined by FinCEN, as indicated in the instructions to the SAR–MSB.

(3) *When to file.* A money services business subject to this section is required to file each SAR–MSB no later than 30 calendar days after the date of the initial detection by the money services business of facts that may constitute a basis for filing a SAR–MSB under this section. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the money services business shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a SAR–MSB. Money services businesses wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–MSB if required by this section.

(c) *Retention of records.* A money services business shall maintain a copy of any SAR–MSB filed and the original or business record equivalent of any supporting documentation for a period of

five years from the date of filing the SAR–MSB. Supporting documentation shall be identified as such and maintained by the money services business, and shall be deemed to have been filed with the SAR–MSB. A money services business shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the money services business for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the money services business to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the money services business complies with the Bank Secrecy Act.

(d) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by money services businesses*—(i) *General rule.* No money services business, and no director, officer, employee, or agent of any money services business, shall disclose a SAR or any information that would reveal the existence of a SAR. Any money services business, and any director, officer, employee, or agent of any money services business that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (d)(1) shall not be construed as prohibiting:

(A) The disclosure by a money services business, or any director, officer, employee, or agent of a money services business, of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the money services business for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the money services business to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the money services business complies with the Bank Secrecy Act; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by a money services business, or any director, officer, employee, or agent of the money services business, of a SAR, or any information that would reveal the existence of a SAR, within the money services business's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) *Limitation on liability.* A money services business, and any director, officer, employee, or agent of any money services business, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure

pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Money services businesses shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(g) *Applicability date.* This section applies to transactions occurring after December 31, 2001.

[75 FR 65812, Oct. 26, 2010, as amended at 75 FR 10518, Feb. 25, 2011]

§ 1022.380 Registration of money services businesses.

(a) *Registration requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, relating to agents, each money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, maintain a list of its agents as required by 31 U.S.C. 5330 and this section. This section does not apply to the U.S. Postal Service, to agencies of the United States, of any State, or of any political subdivision of a State, or to a person to the extent that the person is an issuer, seller, or redeemer of stored value.

(2) *Agents.* A person that is a money services business solely because that person serves as an agent of another money services business, see § 1010.100(ff) of this chapter, is not required to register under this section, but a money services business that engages in activities described in § 1010.100(ff) of this chapter both on its own behalf and as an agent for others must register under this section. For example, a supermarket corporation that acts as an agent for an issuer of money orders and performs no other services of a nature and value that would cause the corporation to be a money services business, is not required to register; the answer would be the same if the supermarket corporation served as an agent both of a money order issuer and of a money transmitter. However, registration would be required if the supermarket corporation, in addition to acting as an agent of an issuer of money orders, cashed checks or exchanged currencies (other than as an agent for another business) in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day, in one or more transactions.

(3) *Agency status.* The determination whether a person is an agent depends on all the facts and circumstances.

(b) *Registration procedures*—(1) *In general.* (i) A money services business must be registered by filing such form as FinCEN may specify with the Enterprise Computing Center in Detroit of the Internal Revenue Service (or such other location as the form may specify). The information required by 31 U.S.C. 5330(b) and any other information required by the form must be reported in the manner and to the extent required by the form.

(ii) A branch office of a money services business is not required to file its own registration form. A money services business must, however, report information about its branch locations or offices as provided by the instructions to the registration form.

(iii) A money services business must retain a copy of any registration form filed under this section and any registration number that may be assigned to the business at a location in the United States and for the period specified in § 1010.430(d) of this Chapter.

(2) *Registration period.* A money services business must be registered for the initial registration period and each renewal period. The initial registration period is the two-calendar-year period beginning with the calendar year in which the money services business is first required to be registered. However, the initial registration period for a money services business required to register by December 31, 2001 (see paragraph (b)(3) of this section) is the two-calendar year period beginning 2002. Each two-calendar-year period following the initial registration period is a renewal period.

(3) *Due date.* The registration form for the initial registration period must be filed on or before the later of December 31, 2001, and the end of the 180-day period beginning on the day following the date the business is established. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

(4) *Events requiring re-registration.* If a money services business registered as such under the laws of any State experiences a change in ownership or control that requires the business to be re-registered under State law, the money services business must also be re-registered under this section. In addition, if there is a transfer of more than 10 percent of the voting power or equity interests of a money services business (other than a money services business that must report such transfer to the Securities and Exchange Commission), the money services business must be re-registered under this section. Finally, if a money services business experiences a more than 50-per cent increase in the number of its agents during any registration period, the money services business must be re-registered under this section. The registration form must be filed not later than 180 days after such change in ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period.

(c) *Persons required to file the registration form.* Under 31 U.S.C. 5330(a), any person who owns or controls a money services business is responsible for registering the business; however, only one registration form is required to be filed for each registration period. A person is treated as owning or controlling a money services business for purposes of filing the registration form only to the extent provided by the form. If more than one person owns or controls a money services business, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the money services business does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business. See paragraph (e) of this section, relating to consequences of the failure to comply with 31 U.S.C. 5330 or this section.

(d) *List of agents*—(1) *In general.* A money services business must prepare and maintain a list of its agents. The initial list of agents must be prepared by January 1, 2002, and must be revised each January 1, for the immediately preceding 12 month period; for money services businesses established after December 31, 2001, the initial agent list must be prepared by the due date of the initial registration form and must be revised each January 1 for the immediately preceding 12-month period. The list is not filed with the registration form but must be maintained at the location in the United States reported on the registration form under paragraph (b)(1) of this section. Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). Requests for information made pursuant to the preceding sentence shall be coordinated through FinCEN in the manner and to the extent determined by FinCEN. The original list of agents and any revised list must be retained for the period specified in § 1010.430(d) of this chapter.

(2) *Information included on the list of agents*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a money services business must include the following information with respect to each agent on the list (including any revised list) of its agents—

(A) The name of the agent, including any trade names or doing-business-as names;

(B) The address of the agent, including street address, city, state, and ZIP code;

(C) The telephone number of the agent;

(D) The type of service or services (money orders, traveler's checks, check sales, check cashing, currency exchange, and money transmitting) the agent provides;

(E) A listing of the months in the 12 months immediately preceding the date of the most recent agent list in which the gross transaction amount of the agent with respect to financial products or services issued by the money services business maintaining the agent list exceeded $100,000. For this purpose, the money services gross transaction amount is the agent's gross amount (excluding fees and commissions) received from transactions of one or more businesses described in § 1010.100(ff) of this chapter;

(F) The name and address of any depository institution at which the agent maintains a transaction account (as defined in 12 U.S.C. 461(b)(1)(C)) for all or part of the funds received in or for the financial products or services issued by the money services business maintaining the list, whether in the agent's or the business principal's name;

(G) The year in which the agent first became an agent of the money services business; and

(H) The number of branches or subagents the agent has.

(ii) *Special rules.* Information about agent volume must be current within 45 days of the due date of the agent list. The information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is not required to be included in an agent list with respect to any person that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000 so long as the information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is made available upon the request of FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority).

(e) *Consequences of failing to comply with 31 U.S.C. 5330 or the regulations thereunder.* It is unlawful to do business without complying with 31 U.S.C. 5330 and this section. A failure to comply with the requirements of 31 U.S.C. 5330 or this section includes the filing of false or materially incomplete information in connection with the registration of a money services business. Any person who fails to comply with any requirement of 31 U.S.C. 5330 or this section shall be liable for a civil penalty of $5,000 for each violation. Each day a violation of 31 U.S.C. 5330 or this section continues constitutes a separate violation. In addition, under 31 U.S.C. 5320, the Secretary of the Treasury may bring a civil action to enjoin the violation. See 18 U.S.C. 1960 for a criminal penalty for failure to comply with the registration requirements of 31 U.S.C. 5330 or this section.

(f) *Applicability date.* This section is applicable as of September 20, 1999. Registration of money services businesses under this section will not be required prior to December 31, 2001.

Subpart D—Records Required To Be Maintained By Money Services Businesses

§ 1022.400 General.

Money services businesses are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Money services businesses should also refer to subpart D of Part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to money services businesses.

§ 1022.410 Additional records to be made and retained by currency dealers or exchangers.

(a)(1) After July 7, 1987, each currency dealer or exchanger shall secure and maintain a record of the taxpayer identification number of each person for whom a transaction account is opened or a line of credit is extended within 30 days after such account is opened or credit line extended. Where a person is a non-resident alien, the currency dealer or exchanger shall also record the person's passport number or a description of some other government document used to verify his identity. Where the account or credit line is in the names of two or more persons, the currency dealer or exchanger shall secure the taxpayer identification number of a person having a financial interest in the account or credit line. In the event that a currency dealer or exchanger has been unable to secure the identification required within the

30-day period specified, it shall nevertheless not be deemed to be in violation of this section if:

(i) It has made a reasonable effort to secure such identification, and

(ii) It maintains a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account or credit line numbers of those persons available to the Secretary as directed by him.

(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account or credit line has applied for a taxpayer identification or social security number on Form SS–4 or SS–5, until such time as the person maintaining the account or credit line has had a reasonable opportunity to secure such number and furnish it to the currency dealer or exchanger.

(3) A taxpayer identification number for an account or credit line required under paragraph (a)(1) of this section need not be secured in the following instances:

(i) Accounts for public funds opened by agencies and instrumentalities of Federal, state, local or foreign governments,

(ii) Accounts for aliens who are—

(A) Ambassadors, ministers, career diplomatic or consular officers, or

(B) Naval, military or other attaches of foreign embassies, and legations, and for members of their immediate families,

(iii) Accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and for the members of their immediate families,

(iv) Aliens temporarily residing in the United States for a period not to exceed 180 days,

(v) Aliens not engaged in a trade or business in the United States who are attending a recognized college or any training program, supervised or conducted by any agency of the Federal Government, and

(vi) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.

(b) Each currency dealer or exchanger shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Statements of accounts from banks, including paid checks, charges or other debit entry memoranda, deposit slips and other credit memoranda representing the entries reflected on such statements;

(2) Daily work records, including purchase and sales slips or other memoranda needed to identify and reconstruct currency transactions with customers and foreign banks;

(3) A record of each exchange of currency involving transactions in excess of $1000, including the name and address of the customer (and passport number or taxpayer identification number unless received by mail or common carrier) date and amount of the transaction and currency name, country, and total amount of each foreign currency;

(4) Signature cards or other documents evidencing signature authority over each deposit or security account, containing the name of the depositor, street address, taxpayer identification number (TIN) or employer identification number (EIN) and the signature of the depositor or of a person authorized to sign on the account (if customer accounts are maintained in a code name, a record of the actual owner of the account);

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each receipt of currency, other monetary instruments, investment securities and checks, and of each transfer of funds or credit, or more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States;

(7) Records prepared or received by a dealer in the ordinary course of business, that would be needed to reconstruct an account and trace a check in

excess of $100 deposited in such account through its internal recordkeeping system to its depository institution, or to supply a description of a deposited check in excess of $100;

(8) A record maintaining the name, address and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and date of transaction;

(9) A system of books and records that will enable the currency dealer or exchanger to prepare an accurate balance sheet and income statement.

(c) This section does not apply to banks that offer services in dealing or changing currency to their customers as an adjunct to their regular service.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1022.500 General.

Money services businesses are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Money services businesses should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to money services businesses.

§ 1022.520 Special information sharing procedures to deter money laundering and terrorist activity for money services businesses.

(a) Refer to § 1010.520 of this chapter.

(b) [Reserved]

§ 1022.530 [Reserved]

§ 1022.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this chapter.

(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Money Services Businesses

§ 1022.600 General.

Money services businesses are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Money services businesses should also refer to subpart F of part 1010 of this chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to money services businesses.

§§ 1022.610—1022.670 [Reserved]

PART 1023—RULES FOR BROKERS OR DEALERS IN SECURITIES

Subpart A—Definitions

Sec.
1023.100 Definitions.

Subpart B—Programs

1023.200 General.
1023.210 Anti-money laundering program requirements for brokers or dealers in securities.
1023.220 Customer identification programs for broker-dealers.

Subpart C—Reports Required To Be Made By Brokers or Dealers in Securities

1023.300 General.
1023.310 Reports of transactions in currency.
1023.311 Filing obligations.
1023.312 Identification required.
1023.313 Aggregation.
1023.314 Structured transactions.
1023.315 Exemptions
1023.320 Reports by brokers or dealers in securities of suspicious transactions.

Subpart D—Records Required To Be Maintained By Brokers or Dealers in Securities

1023.400 General.
1023.410 Additional records to be made and retained by brokers or dealers in securities.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1023.500 General.

1023.520 Special information sharing procedures to deter money laundering and terrorist activity for brokers or dealers in securities.
1023.530 [Reserved]
1023.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Brokers or Dealers in Securities

1023.600 General.
1023.610 Due diligence programs for correspondent accounts for foreign financial institutions.
1023.620 Due diligence programs for private banking accounts.
1023.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.
1023.640 [Reserved]
1023.670 Summons or subpoena of foreign bank account records; Termination of correspondent relationship.

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 25, 2011, unless otherwise noted.

Subpart A—Definitions

§ 1023.100 Definitions.

Refer to § 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this chapter, the definition in this section is what applies to part 1023. Unless otherwise indicated, for purposes of this part:

(a) *Account.* For purposes of § 1023.220:

(1) Account means a formal relationship with a broker-dealer established to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral.

(2) *Account* does not include:

(i) An account that the broker-dealer acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(ii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) *Broker-dealer* means a person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C. 77a *et seq.*), except persons who register pursuant to 15 U.S.C. 78o(b)(11).

(c) *Commission* means, for the purposes of § 1023.220, the United States Securities and Exchange Commission.

(d) *Customer*. For purposes of § 1023.220:

(1) *Customer* means:

(i) A person that opens a new account; and

(ii) An individual who opens a new account for:

(A) An individual who lacks legal capacity; or

(B) An entity that is not a legal person.

(2) *Customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(ii) A person described in § 1020.315(b)(2) through (4) of this Chapter; or

(iii) A person that has an existing account with the broker-dealer, provided the broker-dealer has a reasonable belief that it knows the true identity of the person.

(e) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

Subpart B—Programs

§ 1023.200 General.

Brokers or dealers in securities are subject to the program requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to brokers or dealers in securities.

§ 1023.210 Anti-money laundering program requirements for brokers or dealers in securities.

A financial institution regulated by a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if:

(a) The financial institution complies with the requirements of §§ 1010.610 of

this chapter and 1010.620 and any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs; and

(b)(1) The financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; and

(2) The rules, regulations, or requirements of the self-regulatory organization have been approved, if required, by the appropriate Federal functional regulator.

§ 1023.220 Customer identification programs for broker-dealers.

(a) *Customer identification program: minimum requirements*—(1) *In general.* A broker-dealer must establish, document, and maintain a written Customer Identification Program (''CIP'') appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (a)(5) of this section. The CIP must be a part of the broker-dealer's anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the broker-dealer to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the broker-dealer's assessment of the relevant risks, including those presented by the various types of accounts maintained by the broker-dealer, the various methods of opening accounts provided by the broker-dealer, the various types of identifying information available and the broker-dealer's size, location and customer base. At a minimum, these procedures must contain the elements described in this paragraph (a)(2).

(i)(A) *Customer information required.* The CIP must contain procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (a)(2)(i)(B) of this section, the broker-dealer must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) for an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or

(*iii*) for a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) for a non-U.S. person, one or more of the following: A taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

NOTE TO PARAGRAPH (a)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the broker-dealer must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time before or after the

customer's account is opened. The procedures must describe when the broker-dealer will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (a)(2)(ii).

(A) *Verification through documents.* For a broker-dealer relying on documents, the CIP must contain procedures that set forth the documents the broker-dealer will use. These documents may include:

(1) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a broker-dealer relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the broker-dealer will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(*2*) The broker-dealer's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the broker-dealer is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the broker-dealer; and where the broker-dealer is otherwise presented with circumstances that increase the risk that the broker-dealer will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the broker-dealer's risk assessment of a new account opened by a customer that is not an individual, the broker-dealer will obtain information about individuals with authority or control over such account. This verification method applies only when the broker-dealer cannot verify the customer's true identity using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the broker-dealer cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the broker-dealer should not open an account;

(B) The terms under which a customer may conduct transactions while the broker-dealer attempts to verify the customer's identity;

(C) When the broker-dealer should close an account after attempts to verify a customer's identity fail; and

(D) When the broker-dealer should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (a) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section,

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (a)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The broker-dealer must retain the records made under paragraph (a)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (a)(3)(i)(B), (C) and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 240.17a–4.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the broker-dealer to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the broker-dealer to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the broker-dealer is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the broker-dealer generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a broker-dealer may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of oral or written notice.

(iii) *Sample notice.* If appropriate, a broker-dealer may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the broker-dealer will rely on the performance by another financial institution (including an affiliate) of any procedures of the broker-dealer's CIP, with respect to any customer of the broker-dealer that is opening an account or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the broker-dealer that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the broker-dealer's CIP.

(b) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o or 15 U.S.C. 78o–4 or any type of account from the requirements of this section. The Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o–5. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider

other necessary and appropriate factors.

(c) *Other requirements unaffected.* Nothing in this section relieves a broker-dealer of its obligation to comply with any other provision of this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Subpart C—Reports Required To Be Made By Brokers or Dealers in Securities

§ 1023.300 General.

Brokers or dealers in securities are subject to the reporting requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to brokers or dealers in securities.

§ 1023.310 Reports of transactions in currency.

The reports of transactions in currency requirements for brokers or dealers in securities are located in subpart C of part 1010 of this chapter and this subpart.

§ 1023.311 Filing obligations.

Refer to § 1010.311 of this chapter for reports of transactions in currency filing obligations for brokers or dealers in securities.

§ 1023.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by brokers or dealers in securities.

§ 1023.313 Aggregation.

Refer to § 1010.313 of this chapter for reports of transactions in currency aggregation requirements for brokers or dealers in securities.

§ 1023.314 Structured transactions.

Refer to § 1010.314 of this chapter for rules regarding structured transactions for brokers or dealers in securities.

§ 1023.315 Exemptions.

Refer to § 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for brokers or dealers in securities.

§ 1023.320 Reports by brokers or dealers in securities of suspicious transactions.

(a) *General.* (1) Every broker or dealer in securities within the United States (for purposes of this section, a ''broker-dealer'') shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A broker-dealer may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a broker-dealer from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission or a self-regulatory organization (''SRO'') (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least $5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the broker-dealer to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each broker-dealer involved in the transaction, provided that no more than one report is required to be filed by the broker-dealers involved in a particular transaction (so long as the report filed contains all relevant facts).

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by the Securities and Futures Industry (''SAR–SF''), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR–SF shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–SF.

(3) *When to file.* A SAR–SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting broker-dealer of facts that may constitute a basis for filing a SAR–SF under this section. If no suspect is identified on the date of such initial detection, a broker-dealer may delay filing a SAR–SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the broker-dealer shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–SF. Broker-dealers wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–SF if required by this section. The broker-dealer may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) *Exceptions.* (1) A broker-dealer is not required to file a SAR–SF to report:

(i) A robbery or burglary committed or attempted of the broker-dealer that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the broker-dealer files a report pursuant to the reporting requirements of 17 CFR 240.17f–1;

(ii) A violation otherwise required to be reported under this section of any of the Federal securities laws or rules of an SRO by the broker-dealer or any of its officers, directors, employees, or other registered representatives, other than a violation of 17 CFR 240.17a–8 or 17 CFR 405.4, so long as such violation is appropriately reported to the SEC or an SRO.

(2) A broker-dealer may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form RE–3, Form U–4, or Form U–5 concerning the transaction is filed consistent with the SRO rules, a copy of that form will be a sufficient record for purposes of this paragraph (c)(2).

(3) For the purposes of this paragraph (c) the term ''Federal securities laws'' means the ''securities laws,'' as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47), and the rules and regulations promulgated by the Securities and Exchange Commission under such laws.

(d) *Retention of records.* A broker-dealer shall maintain a copy of any SAR–SF filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–SF. Supporting documentation shall be identified as such and maintained by the broker-dealer, and shall be deemed to have been filed with the SAR–SF. A broker-dealer shall make all supporting documentation available

to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the broker-dealer for compliance with the Bank Secrecy Act, upon request; or to any SRO that examines the broker-dealer for compliance with the requirements of this section, upon the request of the Securities and Exchange Commission.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by brokers or dealers in securities.* (i) *General rule.* No broker-dealer, and no director, officer, employee, or agent of any broker-dealer, shall disclose a SAR or any information that would reveal the existence of a SAR. Any broker-dealer, and any director, officer, employee, or agent of any broker-dealer that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by a broker-dealer, or any director, officer, employee, or agent of a broker-dealer, of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the broker-dealer for compliance with the Bank Secrecy Act; or to any SRO that examines the broker-dealer for compliance with the requirements of this section, upon the request of the Securities Exchange Commission; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(i) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(*ii*) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by a broker-dealer, or any director, officer, employee, or agent of the broker-dealer, of a SAR, or any information that would reveal the existence of a SAR, within the broker-dealer's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(3) *Prohibition on disclosures by Self-Regulatory Organizations.* Any self-regulatory organization registered with the Securities and Exchange Commission, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR except as necessary to fulfill self-regulatory duties with the consent of the Securities Exchange Commission, in a manner consistent with Title II of the Bank Secrecy Act. For purposes of this section, ''self-regulatory duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding.

(f) *Limitation on liability.* A broker-dealer, and any director, officer, employee, or agent of any broker-dealer, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Broker-dealers shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(h) *Applicability date.* This section applies to transactions occurring after December 30, 2002.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 10519, Feb. 25, 2011]

Subpart D—Records Required To Be Maintained by Brokers or Dealers in Securities

§ 1023.400 General.

Brokers or dealers in securities are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to brokers or dealers in securities.

§ 1023.410 Additional records to be made and retained by brokers or dealers in securities.

(a)(1) With respect to each brokerage account opened with a broker or dealer in securities after June 30, 1972, and before October 1, 2003, by a person residing or doing business in the United States or a citizen of the United States, such broker or dealer shall within 30 days from the date such account is opened, secure and maintain a record of the taxpayer identification number of the person maintaining the account; or in the case of an account of one or more individuals, such broker or dealer shall secure and maintain a record of the social security number of an individual having a financial interest in that account. In the event that a broker or dealer has been unable to secure the identification required within the 30-day period specified, it shall nevertheless not be deemed to be in violation of this section if: It has made a reasonable effort to secure such identification, and it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. Where a person is a non-resident alien, the broker or dealer in securities shall also record the person's passport number or a description of some other government document used to verify his identity.

(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS–4 or SS–5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the broker or dealer.

(3) A taxpayer identification number for a deposit or share account required under paragraph (a)(1) of this section need not be secured in the following instances:

(i) Accounts for public funds opened by agencies and instrumentalities of Federal, state, local, or foreign governments,

(ii) Accounts for aliens who are ambassadors, ministers, career diplomatic or consular officers, or naval, military or other attaches of foreign embassies, and legations, and for the members of their immediate families,

(iii) Accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and for the members of their immediate families,

(iv) Aliens temporarily residing in the United States for a period not to exceed 180 days,

(v) Aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government, and

(vi) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.

(b) Every broker or dealer in securities shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature or trading authority over each customer's account;

(2) Each record described in 17 CFR 240.17a–3(a)(1), (2), (3), (5), (6), (7), (8), and (9);

(3) A record of each remittance or transfer of funds, or of currency, checks, other monetary instruments, investment securities, or credit, of more than $10,000 to a person, account, or place, outside the United States;

(4) A record of each receipt of currency, other monetary instruments, checks, or investment securities and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1023.500 General.

Brokers or dealers in securities are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to brokers or dealers in securities.

§ 1023.520 Special information sharing procedures to deter money laundering and terrorist activity for brokers or dealers in securities.

(a) Refer to § 1010.520 of this chapter.

(b) [Reserved]

§ 1023.530 [Reserved]

§ 1023.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this chapter.

(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Brokers or Dealers in Securities

§ 1023.600 General.

Brokers or dealers in securities are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to subpart F of part 1010 of this chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to brokers or dealers in securities.

§ 1023.610 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) Refer to § 1010.610 of this chapter.

(b) [Reserved]

§ 1023.620 Due diligence programs for private banking accounts.

(a) Refer to § 1010.620 of this chapter.

(b) [Reserved]

§ 1023.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) Refer to § 1010.630 of this chapter.

(b) [Reserved]

§ 1023.640 [Reserved]

§ 1023.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

(a) Refer to § 1010.670 of this chapter.

(b) [Reserved]

PART 1024—RULES FOR MUTUAL FUNDS

Subpart A—Definitions

Sec.
1024.100 Definitions.

Subpart B—Programs

1024.200 General.
1024.210 Anti-money laundering programs for mutual funds.
1024.220 Customer identification programs for mutual funds.

Subpart C—Reports Required To Be Made By Mutual Funds

1024.300 General.
1024.310 Reports of transactions in currency.
1024.311 Filing obligations.
1024.312 Identification required.
1024.313 Aggregation.
1024.314 Structured transactions.
1024.315 Exemptions
1024.320 Reports by mutual funds of suspicious transactions.

Subpart D—Records Required To Be Maintained By Mutual Funds

1024.400 General.
1024.410 Recordkeeping.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1024.500 General.
1024.520 Special information sharing procedures to deter money laundering and terrorist activity for mutual funds.
1024.530 [Reserved]
1024.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Mutual Funds

1024.600 General.
1024.610 Due diligence programs for correspondent accounts for foreign financial institutions.
1024.620 Due diligence programs for private banking accounts.
1024.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.
1024.640–1024.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—Definitions

§ 1024.100 Definitions.

Refer to § 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this chapter, the definition in this section is what applies to part 1024. Unless otherwise indicated, for purposes of this part:

(a) *Account*. For purposes of § 1024.220:

(1) *Account* means any contractual or other business relationship between a person and a mutual fund established to effect transactions in securities issued by the mutual fund, including the purchase or sale of securities.

(2) *Account* does not include:

(i) An account that a mutual fund acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(ii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) *Commission* means the United States Securities and Exchange Commission.

(c) *Customer*. For purposes of § 1024.220:

(1) *Customer* means:

(i) A person that opens a new account; and

(ii) An individual who opens a new account for:

(A) An individual who lacks legal capacity, such as a minor; or

(B) An entity that is not a legal person, such as a civic club.

(2) *Customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;

(ii) A person described in § 1020.315(b)(2) through (4) of this Chapter; or

(iii) A person that has an existing account with the mutual fund, provided that the mutual fund has a reasonable belief that it knows the true identity of the person.

(d) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

Subpart B—Programs

§ 1024.200 General.

Mutual funds are subject to the program requirements set forth and cross referenced in this subpart. Mutual funds should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to mutual funds.

§ 1024.210 Anti-money laundering programs for mutual funds.

(a) Effective July 24, 2002, each mutual fund shall develop and implement a written anti-money laundering program reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each mutual fund's anti-money laundering program must be approved in writing by its board of directors or trustees. A mutual fund shall make its anti-money laundering program available for inspection by the Commission.

(b) The anti-money laundering program shall at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;

(2) Provide for independent testing for compliance to be conducted by the mutual fund's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program; and

(4) Provide ongoing training for appropriate persons.

§ 1024.220 Customer identification programs for mutual funds.

(a) *Customer identification program: minimum requirements*—(1) *In general.* A mutual fund must implement a written Customer Identification Program (''CIP'') appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of the mutual fund's anti-money laundering program required under the regulations implementing 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the mutual fund's assessment of the relevant risks, including those presented by the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected, the various types of accounts maintained by the mutual fund, the various types of identifying information available, and the mutual fund's customer base. At a minimum, these procedures must contain the elements described in this paragraph (a)(2).

(i) *Customer information required*—(A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained with respect to each customer. Except as permitted by paragraph (a)(2)(i)(B) of this section, a mutual fund must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

NOTE TO PARAGRAPH (a)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the mutual fund must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a person that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the person opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using the information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the mutual fund will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (a)(2)(ii).

(A) *Verification through documents.* For a mutual fund relying on documents, the CIP must contain procedures that set forth the documents that the mutual fund will use. These documents may include:

(*1*) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a mutual fund relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the mutual fund will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(*2*) The mutual fund's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the mutual fund is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person; and where the mutual fund is otherwise presented with circumstances that increase the risk that the mutual fund will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the mutual fund's risk assessment of a new account opened by a customer that is not an individual, the mutual fund will obtain information about individuals with authority or control over such account, including persons authorized to effect transactions in the shareholder of record's account, in order to verify the customer's identity. This verification method applies only when the mutual fund cannot verify the customer's true identity using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief

that it knows the true identity of a customer. These procedures should describe:

(A) When the mutual fund should not open an account;

(B) The terms under which a customer may use an account while the mutual fund attempts to verify the customer's identity;

(C) When the mutual fund should file a Suspicious Activity Report in accordance with applicable law and regulation; and

(D) When the mutual fund should close an account, after attempts to verify a customer's identity have failed.

(3) *Recordkeeping*. The CIP must include procedures for making and maintaining a record of all information obtained under paragraph (a) of this section.

(i) *Required records*. At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (a)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records*. The mutual fund must retain the information in paragraph (a)(3)(i)(A) of this section for five years after the date the account is closed. The mutual fund must retain the information in paragraphs (a)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists*. The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by the Department of the Treasury in consultation with the Federal functional regulators. The procedures must require the mutual fund to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the mutual fund to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice*. The CIP must include procedures for providing mutual fund customers with adequate notice that the mutual fund is requesting information to verify their identities.

(ii) *Adequate notice*. Notice is adequate if the mutual fund generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending on the manner in which the account is opened, a mutual fund may post a notice on its Web site, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice*. If appropriate, a mutual fund may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on other financial institutions*. The CIP may include procedures specifying when a mutual fund will rely on the performance by another financial institution (including an affiliate) of any procedures of the mutual fund's CIP, with respect to any customer of the mutual fund that is opening, or has opened, an account or has established a similar formal business

relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the mutual fund that it has implemented its anti-money laundering program, and that it (or its agent) will perform the specific requirements of the mutual fund's CIP.

(b) *Exemptions*. The Commission, with the concurrence of the Secretary, may, by order or regulation, exempt any mutual fund or type of account from the requirements of this section. The Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and is in the public interest, and may consider other appropriate factors.

(c) *Other requirements unaffected*. Nothing in this section relieves a mutual fund of its obligation to comply with any other provision in this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Subpart C—Reports Required To Be Made By Mutual Funds

§ 1024.300 General.

Mutual funds are subject to the reporting requirements set forth and cross referenced in this subpart. Mutual funds should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to mutual funds.

§ 1024.310 Reports of transactions in currency.

The reports of transactions in currency requirements for mutual funds are located in subpart C of part 1010 of this chapter and this subpart.

§ 1024.311 Filing obligations.

Refer to § 1010.311 of this chapter for reports of transactions in currency filing obligations for mutual funds.

§ 1024.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by mutual funds.

§ 1024.313 Aggregation.

Refer to § 1010.313 of this chapter for reports of transactions in currency aggregation requirements for mutual funds.

§ 1024.314 Structured transactions.

Refer to § 1010.314 of this chapter for rules regarding structured transactions for mutual funds.

§ 1024.315 Exemptions.

Refer to § 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for mutual funds.

§ 1024.320 Reports by mutual funds of suspicious transactions.

(a) *General*. (1) Every investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) (''Investment Company Act'') that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to that Act (for purposes of this section, a ''mutual fund''), shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A mutual fund may also file with the Financial Crimes Enforcement Network a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation, but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a mutual

fund from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through a mutual fund, it involves or aggregates funds or other assets of at least $5,000, and the mutual fund knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the mutual fund knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the mutual fund to facilitate criminal activity.

(3) More than one mutual fund may have an obligation to report the same transaction under this section, and other financial institutions may have separate obligations to report suspicious activity with respect to the same transaction pursuant to other provisions of this chapter. In those instances, no more than one report is required to be filed by the mutual fund(s) and other financial institution(s) involved in the transaction, provided that the report filed contains all relevant facts, including the name of each financial institution and the words ''joint filing'' in the narrative section, and each institution maintains a copy of the report filed, along with any supporting documentation.

(b) *Filing and notification procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Securities and Futures Industries (''SAR–SF''), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* Form SAR–SF shall be filed with the Financial Crimes Enforcement Network in accordance with the instructions to the Form SAR–SF.

(3) *When to file.* A Form SAR–SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting mutual fund of facts that may constitute a basis for filing a Form SAR–SF under this section. If no suspect is identified on the date of such initial detection, a mutual fund may delay filing a Form SAR–SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection.

(4) *Mandatory notification to law enforcement.* In situations involving violations that require immediate attention, such as suspected terrorist financing or ongoing money laundering schemes, a mutual fund shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a Form SAR–SF.

(5) *Voluntary notification to the Financial Crimes Enforcement Network or the Securities and Exchange Commission.* Mutual funds wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a Form SAR–SF if required by this section. The mutual fund may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) *Retention of records.* A mutual fund shall maintain a copy of any Form SAR–SF filed by the fund or on its behalf (including joint reports), and the original (or business record equivalent) of any supporting documentation concerning any Form SAR–SF that it files (or is filed on its behalf), for a period of five years from the date of filing the

Form SAR–SF. Supporting documentation shall be identified as such and maintained by the mutual fund, and shall be deemed to have been filed with the Form SAR–SF. The mutual fund shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the mutual fund for compliance with the Bank Secrecy Act, upon request.

(d) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by mutual funds*—(i) *General rule.* No mutual fund, and no director, officer, employee, or agent of any mutual fund, shall disclose a SAR or any information that would reveal the existence of a SAR. Any mutual fund, and any director, officer, employee, or agent of any mutual fund that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (d)(1) shall not be construed as prohibiting:

(A) The disclosure by a mutual fund, or any director, officer, employee, or agent of a mutual fund, of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the mutual fund for compliance with the Bank Secrecy Act; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(B) The sharing by a mutual fund, or any director, officer, employee, or agent of the mutual fund, of a SAR, or any information that would reveal the existence of a SAR, within the mutual fund's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) *Limitation on liability.* A mutual fund, and any director, officer, employee, or agent of any mutual fund, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Mutual funds shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(g) *Applicability date.* This section applies to transactions occurring after October 31, 2006.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 10519, Feb. 25, 2011]

Subpart D—Records Required To Be Maintained By Mutual Funds

§ 1024.400 General.

Mutual funds are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Mutual funds should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to mutual funds.

§ 1024.410 Recordkeeping.

Refer to § 1010.410 of this chapter.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1024.500 General.

Mutual funds are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Mutual funds should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to mutual funds.

§ 1024.520 Special information sharing procedures to deter money laundering and terrorist activity for mutual funds.

(a) Refer to § 1010.520 of this chapter.
(b) [Reserved]

§ 1024.530 [Reserved]

§ 1024.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this chapter.
(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Mutual Funds

§ 1024.600 General.

Mutual funds are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Mutual funds should also refer to subpart F of part 1010 of this chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to mutual funds.

§ 1024.610 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) Refer to § 1010.610 of this chapter.
(b) [Reserved]

§ 1024.620 Due diligence programs for private banking accounts.

(a) Refer to § 1010.620 of this chapter.
(b) [Reserved]

§ 1024.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) Refer to § 1010.630 of this chapter.
(b) [Reserved]

§§ 1024.640—1024.670 [Reserved]

PART 1025—RULES FOR INSURANCE COMPANIES

Subpart A—Definitions

Sec.
1025.100 Definitions.

Subpart B—Programs

1025.200 General.
1025.210 Anti-money laundering programs for insurance companies.

Subpart C—Reports Required To Be Made By Insurance Companies

1025.300 General.
1025.310–1025.315 [Reserved]
1025.320 Reports by insurance companies of suspicious transactions.
1025.330 Reports relating to currency in excess of $10,000 received in a trade or business.

Subpart D—Records Required To Be Maintained By Insurance Companies

1025.400 General.
1025.410 Recordkeeping.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1025.500 General.

1025.520 Special information sharing procedures to deter money laundering and terrorist activity for insurance companies.
1025.530 [Reserved]
1025.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Insurance Companies

1025.600–1025.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—Definitions

§ 1025.100 Definitions.

Refer to § 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this chapter, the definition in this section is what applies to part 1025. Unless otherwise indicated, for purposes of this part:

(a) *Annuity contract* means any agreement between the insurer and the contract owner whereby the insurer promises to pay out a fixed or variable income stream for a period of time.

(b) *Covered product* means:

(1) A permanent life insurance policy, other than a group life insurance policy;

(2) An annuity contract, other than a group annuity contract; or

(3) Any other insurance product with features of cash value or investment.

(c) *Group annuity contract* means a master contract providing annuities to a group of persons under a single contract.

(d) *Group life insurance policy* means any life insurance policy under which a number of persons and their dependents, if appropriate, are insured under a single policy.

(e) *Insurance agent* means a sales and/or service representative of an insurance company. The term ''insurance agent'' encompasses any person that sells, markets, distributes, or services an insurance company's covered products, including, but not limited to, a person who represents only one insurance company, a person who represents more than one insurance company, and a bank or broker-dealer in securities that sells any covered product of an insurance company.

(f) *Insurance broker* means a person who, by acting as the customer's representative, arranges and/or services covered products on behalf of the customer.

(g) *Insurance company or insurer*. (1) Except as provided in paragraph (g)(2) of this section, the term ''insurance company'' or ''insurer'' means any person engaged within the United States as a business in the issuing or underwriting of any covered product.

(2) The term ''insurance company'' or ''insurer'' does not include an insurance agent or insurance broker.

(h) *Permanent life insurance policy* means an agreement that contains a cash value or investment element and that obligates the insurer to indemnify or to confer a benefit upon the insured or beneficiary to the agreement contingent upon the death of the insured.

Subpart B—Programs

§ 1025.200 General.

Insurance companies are subject to the program requirements set forth and cross referenced in this subpart. Insurance companies should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to insurance companies.

§ 1025.210 Anti-money laundering programs for insurance companies.

(a) *In general*. Not later than May 2, 2006, each insurance company shall develop and implement a written anti-money laundering program applicable to its covered products that is reasonably designed to prevent the insurance company from being used to facilitate money laundering or the financing of terrorist activities. The program must be approved by senior management. An insurance company shall make a copy of its anti-money laundering program available to the Department of the Treasury, the Financial Crimes Enforcement Network, or their designee upon request.

(b) *Minimum requirements*. At a minimum, the program required by paragraph (a) of this section shall:

(1) Incorporate policies, procedures, and internal controls based upon the insurance company's assessment of the money laundering and terrorist financing risks associated with its covered products. Policies, procedures, and internal controls developed and implemented by an insurance company under this section shall include provisions for complying with the applicable requirements of subchapter II of chapter 53 of title 31, United States Code and this chapter, integrating the company's insurance agents and insurance brokers into its anti-money laundering program, and obtaining all relevant customer-related information necessary for an effective anti-money laundering program.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively, including monitoring compliance by the company's insurance agents and insurance brokers with their obligations under the program;

(ii) The anti-money laundering program is updated as necessary; and

(iii) Appropriate persons are educated and trained in accordance with paragraph (b)(3) of this section.

(3) Provide for on-going training of appropriate persons concerning their responsibilities under the program. An insurance company may satisfy this requirement with respect to its employees, insurance agents, and insurance brokers by directly training such persons or verifying that persons have received training by another insurance company or by a competent third party with respect to the covered products offered by the insurance company.

(4) Provide for independent testing to monitor and maintain an adequate program, including testing to determine compliance of the company's insurance agents and insurance brokers with their obligations under the program. The scope and frequency of the testing shall be commensurate with the risks posed by the insurance company's covered products. Such testing may be conducted by a third party or by any officer or employee of the insurance company, other than the person designated in paragraph (b)(2) of this section.

(c) *Anti-money laundering program requirements for insurance companies registered or required to register with the Securities and Exchange Commission as broker-dealers in securities.* An insurance company that is registered or required to register with the Securities and Exchange Commission as a broker-dealer in securities shall be deemed to have satisfied the requirements of this section for its broker-dealer activities to the extent that the company is required to establish and has established an anti-money laundering program pursuant to §1023.210 of this chapter and complies with such program.

(d) *Compliance.* Compliance with this section shall be examined by the Department of the Treasury, through the Financial Crimes Enforcement Network or its delegees, under the terms of the Bank Secrecy Act. Failure to comply with the requirements of this section may constitute a violation of the Bank Secrecy Act and of this chapter.

Subpart C—Reports Required To Be Made By Insurance Companies

§1025.300 General.

Insurance companies are subject to the reporting requirements set forth and cross referenced in this subpart. Insurance companies should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to insurance companies.

§1025.310–1025.315 [Reserved]

§1025.320 Reports by insurance companies of suspicious transactions.

(a) *General.* (1) Each insurance company shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction involving a covered product that is relevant to a possible violation of law or regulation. An insurance company may also file with the Financial Crimes Enforcement Network by using the form specified in paragraph

(b)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but the reporting of which is not required by this section.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through an insurance company, and involves or aggregates at least $5,000 in funds or other assets, and the insurance company knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the insurance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the insurance company to facilitate criminal activity.

(3)(i) An insurance company is responsible for reporting suspicious transactions conducted through its insurance agents and insurance brokers. Accordingly, an insurance company shall establish and implement policies and procedures reasonably designed to obtain customer-related information necessary to detect suspicious activity from all relevant sources, including from its insurance agents and insurance brokers, and shall report suspicious activity based on such information.

(ii) Certain insurance agents may have a separate obligation to report suspicious activity pursuant to other provisions of this chapter. In those instances, no more than one report is required to be filed by the financial institutions involved in the transaction, as long as the report filed contains all relevant facts, including the names of both institutions and the words ''joint filing'' in the narrative section, and both institutions maintain a copy of the report filed, along with any supporting documentation.

(iii) An insurance company that issues variable insurance products funded by separate accounts that meet the definition of a mutual fund in §1024.320(a)(1) of this chapter shall file reports of suspicious transactions pursuant to §1024.320 of this chapter.

(b) *Filing procedures*—(1) *What to file*. A suspicious transaction shall be reported by completing a Suspicious Activity Report by Insurance Companies (SAR–IC), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file*. The SAR–IC shall be filed with the Financial Crimes Enforcement Network as indicated in the instructions to the SAR–IC.

(3) *When to file*. A SAR–IC shall be filed no later than 30 calendar days after the date of the initial detection by the insurance company of facts that may constitute a basis for filing a SAR–IC under this section. If no suspect is identified on the date of such initial detection, an insurance company may delay filing a SAR–IC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the insurance company shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–IC. Insurance companies wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement

Network's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–IC if required by this section.

(c) *Exception.* An insurance company is not required to file a SAR–IC to report the submission to it of false or fraudulent information to obtain a policy or make a claim, unless the company has reason to believe that the false or fraudulent submission relates to money laundering or terrorist financing.

(d) *Retention of records.* An insurance company shall maintain a copy of any SAR–IC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–IC. Supporting documentation shall be identified as such and maintained by the insurance company and shall be deemed to have been filed with the SAR–IC. When an insurance company has filed or is identified as a filer in a joint Suspicious Activity Report, the insurance company shall maintain a copy of such joint report (together with copies of any supporting documentation) for a period of five years from the date of filing. An insurance company shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the insurance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the insurance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the institution complies with the Bank Secrecy Act, upon request.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by insurance companies*—(i) *General rule.* No insurance company, and no director, officer, employee, or agent of any insurance company, shall disclose a SAR or any information that would reveal the existence of a SAR. Any insurance company, and any director, officer, employee, or agent of any insurance company that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by an insurance company, or any director, officer, employee, or agent of an insurance company, of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the insurance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the insurance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the institution complies with the Bank Secrecy Act; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by an insurance company, or any director, officer, employee, or agent of the insurance company, of a SAR, or any information that would reveal the existence of a SAR, within the insurance company's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government

authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) *Limitation on liability*. An insurance company, and any director, officer, employee, or agent of any insurance company, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance*. Insurance companies shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(h) *Suspicious transaction reporting requirements for insurance companies registered or required to register with the Securities and Exchange Commission as broker-dealers in securities*. An insurance company that is registered or required to register with the Securities and Exchange Commission as a broker-dealer in securities shall be deemed to have satisfied the requirements of this section for its broker-dealer activities to the extent that the company complies with the reporting requirements applicable to such activities pursuant to § 1023.320 of this chapter.

(i) *Applicability date*. This section applies to transactions occurring after May 2, 2006.

[75 FR 65812, Oct. 26, 2010, as amended at 75 FR 10520, Feb. 25, 2011]

§ 1025.330 Reports relating to currency in excess of $10,000 received in a trade or business.

Refer to § 1010.330 of this chapter for rules regarding the filing of reports relating to currency in excess of $10,000 received by insurance companies.

Subpart D—Records Required To Be Maintained By Insurance Companies

§ 1025.400 General.

Insurance companies are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Insurance companies should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to insurance companies.

§ 1025.410 Recordkeeping.

Refer to § 1010.410.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1025.500 General.

Insurance companies are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Insurance companies should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to insurance companies.

§ 1025.520 Special information sharing procedures to deter money laundering and terrorist activity for insurance companies.

(a) Refer to § 1010.520 of this chapter.

(b) [Reserved]

§ 1025.530 [Reserved]

§ 1025.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this chapter.

(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Insurance Companies

§§ 1025.600–1025.670 [Reserved]

PART 1026—RULES FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES

Subpart A—Definitions

Sec.
1026.100 Definitions.

Subpart B—Programs

1026.200 General.
1026.210 Anti-money laundering program requirements for futures commission merchants and introducing brokers in commodities.
1026.220 Customer identification program requirements for futures commission merchants and introducing brokers.

Subpart C—Reports Required To Be Made By Futures Commission Merchants and Introducing Brokers in Commodities

1026.300 General.
1026.310 Reports of transactions in currency.
1026.311 Filing obligations.
1026.312 Identification required.
1026.313 Aggregation.
1026.314 Structured transactions.
1026.315 Exemptions.
1026.320 Reports by futures commission merchants and introducing brokers in commodities of suspicious transactions.

Subpart D—Records Required To Be Maintained By Futures Commission Merchants and Introducing Brokers in Commodities

1026.400 General.
1026.410 Recordkeeping.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1026.500 General.
1026.520 Special information sharing procedures to deter money laundering and terrorist activity for futures commission merchants and introducing brokers in commodities.
1026.530 [Reserved]
1026.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Futures Commission Merchants and Introducing Brokers in Commodities

1026.600 General.
1026.610 Due diligence programs for correspondent accounts for foreign financial institutions.
1026.620 Due diligence programs for private banking accounts.
1026.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.
1026.640 [Reserved]
1026.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—Definitions

§ 1026.100 Definitions.

Refer to § 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this chapter, the definition in this section is what applies to part 1026. Unless otherwise indicated, for the purposes of this part:

(a) *Account.* For purposes of § 1026.220:

(1) *Account* means a formal relationship with a futures commission merchant, including, but not limited to, those established to effect transactions in contracts of sale of a commodity for future delivery, options on any contract of sale of a commodity for future delivery, or options on a commodity.

(2) *Account* does not include:

(i) An account that the futures commission merchant acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(ii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) *Commodity* means any good, article, service, right, or interest described in Section 1a(4) of the Commodity Exchange Act (7 U.S.C. 1a(4)).

(c) *Contract of sale* means any sale, agreement of sale or agreement to sell as described in Section 1a(7) of the Commodity Exchange Act (7 U.S.C. 1a(7)).

(d) *Customer*. For purposes of § 1026.220:

(1) *Customer* means:

(i) A person that opens a new account with a futures commission merchant; and

(ii) An individual who opens a new account with a futures commission merchant for:

(A) An individual who lacks legal capacity; or

(B) An entity that is not a legal person.

(2) *Customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(ii) A person described in § 1020.315(b)(2) through (4) of this Chapter; or

(iii) A person that has an existing account, provided the futures commission merchant or introducing broker has a reasonable belief that it knows the true identity of the person.

(3) When an account is introduced to a futures commission merchant by an introducing broker, the person or individual opening the account shall be deemed to be a *customer* of both the futures commission merchant and the introducing broker for the purposes of this section.

(e) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(f) *Futures commission merchant* means any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission (''CFTC'') under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to Section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(g) *Introducing broker* means any person registered or required to be registered as an introducing broker with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to Section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(h) *Option* means an agreement, contract or transaction described in Section 1a(26) of the Commodity Exchange Act (7 U.S.C. 1a(26)).

Subpart B—Programs

§ 1026.200 General.

Futures commission merchants and introducing brokers in commodities are subject to the program requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

§ 1026.210 Anti-money laundering program requirements for futures commission merchants and introducing brokers in commodities.

A financial institution regulated by a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if:

(a) The financial institution complies with the requirements of §§ 1010.610 and 1010.620 of this chapter and any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs; and

(b)(1) The financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; and

(2) The rules, regulations, or requirements of the self-regulatory organization have been approved, if required, by the appropriate Federal functional regulator.

§ 1026.220 Customer identification programs for futures commission merchants and introducing brokers.

(a) *Customer identification program: Minimum requirements*—(1) *In general*. Each futures commission merchant and introducing broker must implement a written Customer Identification Program (CIP) appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs

(a)(1) through (a)(5) of this section. The CIP must be a part of each futures commission merchant's and introducing broker's anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable each futures commission merchant and introducing broker to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the futures commission merchant's or introducing broker's assessment of the relevant risks, including those presented by the various types of accounts maintained, the various methods of opening accounts, the various types of identifying information available, and the futures commission merchant's or introducing broker's size, location and customer base. At a minimum, these procedures must contain the elements described in paragraph (a)(2) of this section.

(i)(A) *Customer information required.* The CIP must include procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (a)(2)(i)(B) of this section, each futures commission merchant and introducing broker must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: A taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

NOTE TO PARAGRAPH (a)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the futures commission merchant or introducing broker must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time before or after the customer's account is opened. The procedures must describe when the futures commission merchant or introducing broker will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (a)(2)(ii).

(A) *Verification through documents.* For a futures commission merchant or introducing broker relying on documents, the CIP must contain procedures that set forth the documents the futures commission merchant or introducing broker will use. These documents may include:

(*1*) For an individual, an unexpired government-issued identification evidencing nationality or residence and

bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a futures commission merchant or introducing broker relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the futures commission merchant or introducing broker will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(*2*) The futures commission merchant's or introducing broker's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the futures commission merchant or introducing broker is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the futures commission merchant or introducing broker; and where the futures commission merchant or introducing broker is otherwise presented with circumstances that increase the risk that the futures commission merchant or introducing broker will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the futures commission merchant's or introducing broker's risk assessment of a new account opened by a customer that is not an individual, the futures commission merchant or introducing broker will obtain information about individuals with authority or control over such account in order to verify the customer's identity. This verification method applies only when the futures commission merchant or introducing broker cannot verify the customer's true identity after using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the futures commission merchant or introducing broker cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When an account should not be opened;

(B) The terms under which a customer may conduct transactions while the futures commission merchant or introducing broker attempts to verify the customer's identity;

(C) When an account should be closed after attempts to verify a customer's identity have failed; and

(D) When the futures commission merchant or introducing broker should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (a) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (a)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* Each futures commission merchant and introducing broker must retain the records made under paragraph (a)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (a)(3)(i)(B), (C), and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 1.31.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the futures commission merchant or introducing broker to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the futures commission merchant or introducing broker to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the futures commission merchant or introducing broker is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the futures commission merchant or introducing broker generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a futures commission merchant or introducing broker may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a futures commission merchant or introducing broker may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the futures commission merchant or introducing broker will rely on the performance by another financial institution (including an affiliate) of any procedures of its CIP, with respect to any customer of the futures commission merchant or introducing broker that is opening an account, or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the futures commission merchant or introducing broker that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the futures commission merchant's or introducing broker's CIP.

(b) *Exemptions.* The CFTC, with the concurrence of the Secretary, may by order or regulation exempt any futures commission merchant or introducing broker that registers with the CFTC or any type of account from the requirements of this section. In issuing such exemptions, the CFTC and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in

the public interest, and may consider other necessary and appropriate factors.

(c) *Other requirements unaffected.* Nothing in this section relieves a futures commission merchant or introducing broker of its obligation to comply with any other provision of this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Subpart C—Reports Required To Be Made by Futures Commission Merchants and Introducing Brokers in Commodities

§ 1026.300 General.

Futures commission merchants and introducing brokers in commodities are subject to the reporting requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

§ 1026.310 Reports of transactions in currency.

The reports of transactions in currency requirements for futures commission merchants and introducing brokers in commodities are located in subpart C of part 1010 of this chapter and this subpart

§ 1026.311 Filing obligations.

Refer to § 1010.311 of this chapter for reports of transactions in currency filing obligations for futures commission merchants and introducing brokers in commodities.

[76 FR 10521, Feb. 25, 2011]

§ 1026.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by futures commission merchants and introducing brokers in commodities.

[76 FR 10521, Feb. 25, 2011]

§ 1026.313 Aggregation.

Refer to § 1010.313 of this chapter for reports of transactions in currency aggregation requirements for futures commission merchants and introducing brokers in commodities.

[76 FR 10521, Feb. 25, 2011]

§ 1026.314 Structured transactions.

Refer to § 1010.314 of this chapter for rules regarding structured transactions for futures commission merchants and introducing brokers in commodities.

[76 FR 10521, Feb. 25, 2011]

§ 1026.315 Exemptions.

Refer to § 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for futures commission merchants and introducing brokers in commodities.

§ 1026.320 Reports by futures commission merchants and introducing brokers in commodities of suspicious transactions.

(a) *General*—(1) Every futures commission merchant (''FCM'') and introducing broker in commodities (''IB–C'') within the United States shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. An FCM or IB–C may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve an FCM or IB–C from the responsibility of complying with any other reporting requirements imposed by the CFTC or any registered futures association or registered entity as those terms are defined in the Commodity Exchange Act (''CEA''), 7 U.S.C. 21 and 7 U.S.C. 1a(29).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through an FCM or IB–C, it involves or aggregates funds or other assets of at

least $5,000, and the FCM or IB–C knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the FCM or IB–C knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the FCM or IB–C to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each FCM and IB–C involved in the transaction, provided that no more than one report is required to be filed by any of the FCMs or IB–Cs involved in a particular transaction, so long as the report filed contains all relevant facts.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Securities and Futures Industries (''SAR–SF''), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR–SF shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–SF.

(3) *When to file.* A SAR–SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting FCM or IB–C of facts that may constitute a basis for filing a SAR–SF under this section. If no suspect is identified on the date of such initial detection, an FCM or IB–C may delay filing a SAR–SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the FCM or IB–C shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–SF. FCMs and IB–Cs wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–SF if required by this section. The FCM or IB–C may also, but is not required to, contact the CFTC to report in such situations.

(c) *Exceptions*—(1) An FCM or IB–C is not required to file a SAR–SF to report—

(i) A robbery or burglary committed or attempted of the FCM or IB–C that is reported to appropriate law enforcement authorities;

(ii) A violation otherwise required to be reported under the CEA (7 U.S.C. 1 *et seq.*), the regulations of the CFTC (17 CFR chapter I), or the rules of any registered futures association or registered entity as those terms are defined in the CEA, 7 U.S.C. 21 and 7 U.S.C. 1a(29), by the FCM or IB–C or any of its officers, directors, employees, or associated persons, other than a violation of 17 CFR 42.2, as long as such violation is appropriately reported to the CFTC or a registered futures association or registered entity.

(2) An FCM or IB–C may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form 8–R, 8–T, U–5, or any other similar form concerning the transaction is filed consistent with CFTC, registered futures association, or registered entity rules, a copy of that form will be a sufficient

record for the purposes of this paragraph (c)(2).

(d) *Retention of records.* An FCM or IB–C shall maintain a copy of any SAR–SF filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–SF. Supporting documentation shall be identified as such and maintained by the FCM or IB–C, and shall be deemed to have been filed with the SAR–SF. An FCM or IB–C shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the FCM or IB–C for compliance with the BSA, upon request; or to any registered futures association or registered entity (as defined in the Commodity Exchange Act, 7 U.S.C. 21 and 7 U.S.C. 1(a)(29)) (collectively, a self-regulatory organization (''SRO'')) that examines the FCM or IB–C for compliance with the requirements of this section, upon the request of the Commodity Futures Trading Commission.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by futures commission merchants and introducing brokers in commodities*—(i) *General rule.* No FCM or IB–C, and no director, officer, employee, or agent of any FCM or IB–C, shall disclose a SAR or any information that would reveal the existence of a SAR. Any FCM or IB–C, and any director, officer, employee, or agent of any FCM or IB–C that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by an FCM or IB–C, or any director, officer, employee, or agent of an FCM or IB–C, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the FCM or IB–C for compliance with the BSA; or to any SRO that examines the FCM or IB–C for compliance with the requirements of this section, upon the request of the Commodity Futures Trading Commission; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(i) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(ii) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by an FCM or IB–C, or any director, officer, employee, or agent of the FCM or IB–C, of a SAR, or any information that would reveal the existence of a SAR, within the FCM's or IB–C's corporate organizational structure for purposes consistent with Title II of the BSA as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the BSA. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(3) *Prohibition on disclosures by Self-Regulatory Organizations*. Any self-regulatory organization registered with or designated by the Commodity Futures Trading Commission, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR except as necessary to fulfill self-regulatory duties upon the request of the Commodity Futures Trading Commission, in a manner consistent with Title II of the BSA. For purposes of this section, ''self-regulatory duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding.

(f) *Limitation on liability*. An FCM or IB–C, and any director, officer, employee, or agent of any FCM or IB–C, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance*. FCMs or IB–Cs shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(h) *Applicability date*. This section applies to transactions occurring after May 18, 2004.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 10521, Feb. 25, 2011]

Subpart D—Records Required To Be Maintained By Futures Commission Merchants and Introducing Brokers in Commodities

§ 1026.400 General.

Futures commission merchants and introducing brokers in commodities are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

§ 1026.410 Recordkeeping.

Refer to § 1010.410 of this chapter.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1026.500 General.

Futures commission merchants and introducing brokers in commodities are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

§ 1026.520 Special information sharing procedures to deter money laundering and terrorist activity for futures commission merchants and introducing brokers in commodities.

(a) Refer to § 1010.520 of this chapter.

(b) [Reserved]

§ 1026.530 [Reserved]

§ 1026.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this chapter.

(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Futures Commission Merchants and Introducing Brokers in Commodities

§ 1026.600 General.

Futures commission merchants and introducing brokers in commodities are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to subpart F of part 1010 of this chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

§ 1026.610 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) Refer to § 1010.610 of this chapter.
(b) [Reserved]

§ 1026.620 Due diligence programs for private banking accounts.

(a) Refer to § 1010.620 of this chapter.
(b) [Reserved]

§ 1026.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) Refer to § 1010.630 of this chapter.
(b) [Reserved]

§ 1026.640 [Reserved]

§ 1026.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

(a) Refer to § 1010.670 of this chapter.
(b) [Reserved]

PART 1027—RULES FOR DEALERS IN PRECIOUS METALS, PRECIOUS STONES, OR JEWELS

Subpart A—Definitions

Sec.
1027.100 Definitions.

Subpart B—Programs

1027.200 General.
1027.210 Anti-money laundering programs for dealers in precious metals, precious stones, or jewels.

Subpart C—Reports Required To Be Made By Dealers in Precious Metals, Precious Stones, or Jewels

1027.300 General.
1027.310–1027.320 [Reserved]
1027.330 Reports relating to currency in excess of $10,000 received in a trade or business.

Subpart D—Records Required To Be Maintained By Dealers in Precious Metals, Precious Stones, or Jewels

1027.400 General.
1027.410 Recordkeeping.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1027.500 General.
1027.520 Special information sharing procedures to deter money laundering and terrorist activity for dealers in precious metals, precious stones, or jewels.
1027.530 [Reserved]
1027.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Dealers in Precious Metals, Precious Stones, or Jewels

1027.600–1027.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—Definitions

§ 1027.100 Definitions.

Refer to § 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this chapter, the definition in this section is what applies to part 1027. Unless otherwise indicated, for purposes of this part:

(a) *Covered goods* means:

(1) Jewels (as defined in paragraph (c) of this section);

(2) Precious metals (as defined in paragraph (d) of this section);

(3) Precious stones (as defined in paragraph (e) of this section); and

(4) Finished goods (including, but not limited to, jewelry, numismatic items, and antiques), that derive 50 percent or more of their value from jewels, precious metals, or precious stones contained in or attached to such finished goods;

(b) *Dealer*. (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the term ''dealer'' means a person engaged within the United States as a business in the purchase and sale of covered goods and who, during the prior calendar or tax year:

(i) Purchased more than $50,000 in covered goods; and

(ii) Received more than $50,000 in gross proceeds from the sale of covered goods.

(2) For purposes of this section, the term ''dealer'' does not include:

(i) A retailer (as defined in paragraph (f) of this section), unless the retailer, during the prior calendar or tax year, purchased more than $50,000 in covered goods from persons other than dealers or other retailers (such as members of the general public or foreign sources of supply); or

(ii) A person licensed or authorized under the laws of any State (or political subdivision thereof) to conduct business as a pawnbroker, but only to the extent such person is engaged in pawn transactions (including the sale of pawn loan collateral).

(3) For purposes of paragraph (b) of this section, the terms ''purchase'' and ''sale'' do not include a retail transaction in which a retailer or a dealer accepts from a customer covered goods, the value of which the retailer or dealer credits to the account of the customer, and the retailer or dealer does not provide funds to the customer in exchange for such covered goods.

(4) For purposes of paragraph (b) of this section and § 1027.210(a), the terms ''purchase'' and ''sale'' do not include the purchase of jewels, precious metals, or precious stones that are incorporated into machinery or equipment to be used for industrial purposes, and the purchase and sale of such machinery or equipment.

(5) For purposes of applying the $50,000 thresholds in paragraphs (b)(1) and (b)(2)(i) of this section to finished goods defined in paragraph (a)(4) of this section, only the value of jewels, precious metals, or precious stones contained in, or attached to, such goods shall be taken into account.

(c) *Jewel* means an organic substance with gem quality market-recognized beauty, rarity, and value, and includes pearl, amber, and coral.

(d) *Precious metal* means:

(1) Gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, or silver, having a level of purity of 500 or more parts per thousand; and

(2) An alloy containing 500 or more parts per thousand, in the aggregate, of two or more of the metals listed in paragraph (d)(1) of this section.

(e) *Precious stone* means a substance with gem quality market-recognized beauty, rarity, and value, and includes diamond, corundum (including rubies and sapphires), beryl (including emeralds and aquamarines), chrysoberyl, spinel, topaz, zircon, tourmaline, garnet, crystalline and cryptocrystalline quartz, olivine peridot, tanzanite, jadeite jade, nephrite jade, spodumene, feldspar, turquoise, lapis lazuli, and opal.

(f) *Retailer* means a person engaged within the United States in the business of sales primarily to the public of covered goods.

Subpart B—Programs

§ 1027.200 General.

Dealers in precious metals, precious stones, or jewels are subject to the program requirements set forth and cross referenced in this subpart. Dealers in precious metals, precious stones, or jewels should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to dealers in precious metals, precious stones, or jewels.

§ 1027.210 Anti-money laundering programs for dealers in precious metals, precious stones, or jewels.

(a) *Anti-money laundering program requirement*. (1) Each dealer shall develop and implement a written anti-money

laundering program reasonably designed to prevent the dealer from being used to facilitate money laundering and the financing of terrorist activities through the purchase and sale of covered goods. The program must be approved by senior management. A dealer shall make its anti-money laundering program available to the Department of Treasury through FinCEN or its designee upon request.

(2) To the extent that a retailer's purchases from persons other than dealers and other retailers exceeds the $50,000 threshold contained in § 1027.100(b)(2)(i), the anti-money laundering compliance program required of the retailer under this paragraph need only address such purchases.

(b) *Minimum requirements.* At a minimum, the anti-money laundering program shall:

(1) Incorporate policies, procedures, and internal controls based upon the dealer's assessment of the money laundering and terrorist financing risks associated with its line(s) of business. Policies, procedures, and internal controls developed and implemented by a dealer under this section shall include provisions for complying with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*), and this chapter.

(i) For purposes of making the risk assessment required by paragraph (b)(1) of this section, a dealer shall take into account all relevant factors including, but not limited to:

(A) The type(s) of products the dealer buys and sells, as well as the nature of the dealer's customers, suppliers, distribution channels, and geographic locations;

(B) The extent to which the dealer engages in transactions other than with established customers or sources of supply, or other dealers subject to this rule; and

(C) Whether the dealer engages in transactions for which payment or account reconciliation is routed to or from accounts located in jurisdictions that have been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371; designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States representative or organization concurs; or designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns.

(ii) A dealer's program shall incorporate policies, procedures, and internal controls to assist the dealer in identifying transactions that may involve use of the dealer to facilitate money laundering or terrorist financing, including provisions for making reasonable inquiries to determine whether a transaction involves money laundering or terrorist financing, and for refusing to consummate, withdrawing from, or terminating such transactions. Factors that may indicate a transaction is designed to involve use of the dealer to facilitate money laundering or terrorist financing include, but are not limited to:

(A) Unusual payment methods, such as the use of large amounts of cash, multiple or sequentially numbered money orders, traveler's checks, or cashier's checks, or payment from third parties;

(B) Unwillingness by a customer or supplier to provide complete or accurate contact information, financial references, or business affiliations;

(C) Attempts by a customer or supplier to maintain an unusual degree of secrecy with respect to the transaction, such as a request that normal business records not be kept;

(D) Purchases or sales that are unusual for the particular customer or supplier, or type of customer or supplier; and

(E) Purchases or sales that are not in conformity with standard industry practice.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary to reflect changes in the risk assessment, requirements of this chapter, and further guidance issued by the Department of the Treasury; and

(iii) Appropriate personnel are trained in accordance with paragraph (b)(3) of this section.

(3) Provide for on-going education and training of appropriate persons concerning their responsibilities under the program.

(4) Provide for independent testing to monitor and maintain an adequate program. The scope and frequency of the testing shall be commensurate with the risk assessment conducted by the dealer in accordance with paragraph (b)(1) of this section. Such testing may be conducted by an officer or employee of the dealer, so long as the tester is not the person designated in paragraph (b)(2) of this section or a person involved in the operation of the program.

(c) *Implementation date.* A dealer must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of January 1, 2006, or six months after the date a dealer becomes subject to the requirements of this section.

Subpart C—Reports Required To Be Made by Dealers in Precious Metals, Precious Stones, or Jewels

§ 1027.300 General.

Dealers in precious metals, precious stones, or jewels are subject to the reporting requirements set forth and cross referenced in this subpart. Dealers in precious metals, precious stones, or jewels should also refer to subpart C of part 1010 of this Chapter for reporting requirements contained in that subpart which apply to dealers in precious metals, precious stones, or jewels.

§§ 1027.310–1027.320 [Reserved]

§ 1027.330 Reports relating to currency in excess of $10,000 received in a trade or business.

Refer to § 1010.330 of this chapter for rules regarding the filing of reports relating to currency in excess of $10,000 received by dealers in precious metals, precious stones, or jewels.

Subpart D—Records Required To Be Maintained By Dealers in Precious Metals, Precious Stones, or Jewels

§ 1027.400 General.

Dealers in precious metals, precious stones, or jewels are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Dealers in precious metals, precious stones, or jewels should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to dealers in precious metals, precious stones, or jewels.

§ 1027.410 Recordkeeping.

Refer to § 1010.410 of this chapter.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1027.500 General.

Dealers in precious metals, precious stones, or jewels are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Dealers in precious metals, precious stones, or jewels should also refer to Ssubpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to dealers in precious metals, precious stones, or jewels.

§ 1027.520 Special information sharing procedures to deter money laundering and terrorist activity for dealers in precious metals, precious stones, or jewels.

(a) Refer to § 1010.520 of this chapter.

(b) [Reserved]

§ 1027.530 [Reserved]

§ 1027.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this chapter.

(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Dealers in Precious Metals, Precious Stones, or Jewels

§§ 1027.600–1027.670 [Reserved]

PART 1028—RULES FOR OPERATORS OF CREDIT CARD SYSTEMS

Subpart A—Definitions

Sec.
1028.100 Definitions.

Subpart B—Programs

1028.200 General.
1028.210 Anti-money laundering programs for operators of credit card systems.

Subpart C—Reports Required To Be Made by Operators of Credit Card Systems

1028.300 General.
1028.310–1028.320 [Reserved]
1028.330 Reports relating to currency in excess of $10,000 received in a trade or business.

Subpart D—Records Required To Be Maintained by Operators of Credit Card Systems

1028.400 General.
1028.410 Recordkeeping.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1028.500 General.
1028.520 Special information sharing procedures to deter money laundering and terrorist activity for operators of credit card systems.
1028.530 [Reserved]
1028.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Operators of Credit Card Systems

1028.600–1028.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2011, unless otherwise noted.

Subpart A—Definitions

§ 1028.100 Definitions.

Refer to § 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this chapter, the definition in this section is what applies to part 1028. Unless otherwise indicated, for purposes of this part:

(a) *Acquiring institution* means a person authorized by the operator of a credit card system to contract, directly or indirectly, with merchants or other persons to process transactions, including cash advances, involving the operator's credit card.

(b) *Credit card* has the same meaning as in 15 U.S.C. 1602(k). It includes charge cards as defined in 12 CFR 226.2(15).

(c) *Foreign bank* means any organization that is organized under the laws of a foreign country; engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or the country of its principal banking operations; and receives deposits in the regular course of its business. For purposes of this definition:

(1) The term foreign bank includes a branch of a foreign bank in a territory of the United States, Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

(2) The term foreign bank does not include:

(i) A U.S. agency or branch of a foreign bank; and

(ii) An insured bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

(d) *Issuing institution* means a person authorized by the operator of a credit card system to issue the operator's credit card.

(e) *Operator of a credit card system* means any person doing business in the United States that operates a system for clearing and settling transactions in which the operator's credit card, whether acting as a credit or debit card, is used to purchase goods or services or to obtain a cash advance. To fall within this definition, the operator

must also have authorized another person (whether located in the United States or not) to be an issuing or acquiring institution for the operator's credit card.

(f) *Operator's credit card* means a credit card capable of being used in the United States that:

(1) Has been issued by an issuing institution; and

(2) Can be used in the operator's credit card system.

Subpart B—Programs

§ 1028.200 General.

Operators of credit card systems are subject to the program requirements set forth and cross referenced in this subpart. Operators of credit card systems should also refer to Subpart B of Part 1010 of this Chapter for program requirements contained in that subpart which apply to operators of credit card systems.

§ 1028.210 Anti-money laundering programs for operators of credit card systems.

(a) *Anti-money laundering program requirement*. Effective July 24, 2002, each operator of a credit card system shall develop and implement a written anti-money laundering program reasonably designed to prevent the operator of a credit card system from being used to facilitate money laundering and the financing of terrorist activities. The program must be approved by senior management. Operators of credit card systems must make their anti-money laundering programs available to the Department of the Treasury or the appropriate Federal regulator for review.

(b) *Minimum requirements*. At a minimum, the program must:

(1) Incorporate policies, procedures, and internal controls designed to ensure the following:

(i) That the operator does not authorize, or maintain authorization for, any person to serve as an issuing or acquiring institution without the operator taking appropriate steps, based upon the operator's money laundering or terrorist financing risk assessment, to guard against that person issuing the operator's credit card or acquiring merchants who accept the operator's credit card in circumstances that facilitate money laundering or the financing of terrorist activities;

(ii) For purposes of making the risk assessment required by paragraph (b)(1)(i) of this section, the following persons are presumed to pose a heightened risk of money laundering or terrorist financing when evaluating whether and under what circumstances to authorize, or to maintain authorization for, any such person to serve as an issuing or acquiring institution:

(A) A foreign shell bank that is not a regulated affiliate, as those terms are defined in § 1010.605(g) and (n) of this Chapter;

(B) A person appearing on the Specially Designated Nationals List issued by Treasury's Office of Foreign Assets Control;

(C) A person located in, or operating under a license issued by, a jurisdiction whose government has been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371;

(D) A foreign bank operating under an offshore banking license, other than a branch of a foreign bank if such foreign bank has been found by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act (12 U.S.C. 1841, *et seq.*) or the International Banking Act (12 U.S.C. 3101, *et seq.*) to be subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in that jurisdiction;

(E) A person located in, or operating under a license issued by, a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member, with which designation the United States representative to the group or organization concurs; and

(F) A person located in, or operating under a license issued by, a jurisdiction that has been designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns;

(iii) That the operator is in compliance with all applicable provisions of

subchapter II of chapter 53 of title 31, United States Code and this chapter;

(2) Designate a compliance officer who will be responsible for assuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary to reflect changes in risk factors or the risk assessment, current requirements of this chapter, and further guidance issued by the Department of the Treasury; and

(iii) Appropriate personnel are trained in accordance with paragraph (b)(3) of this section;

(3) Provide for education and training of appropriate personnel concerning their responsibilities under the program; and

(4) Provide for an independent audit to monitor and maintain an adequate program. The scope and frequency of the audit shall be commensurate with the risks posed by the persons authorized to issue or accept the operator's credit card. Such audit may be conducted by an officer or employee of the operator, so long as the reviewer is not the person designated in paragraph (b)(2) of this section or a person involved in the operation of the program.

Subpart C—Reports Required To Be Made by Operators of Credit Card Systems

§ 1028.300 General.

Operators of credit card systems are subject to the reporting requirements set forth and cross referenced in this subpart. Operators of credit card systems should also refer to Subpart C of Part 1010 of this Chapter for reporting requirements contained in that subpart which apply to operators of credit card systems.

§§ 1028.310–1028.320 [Reserved]

§ 1028.330 Reports relating to currency in excess of $10,000 received in a trade or business.

Refer to § 1010.330 of this Chapter for rules regarding the filing of reports relating to currency in excess of $10,000 received by operators of credit card systems.

Subpart D—Records Required To Be Maintained By Operators of Credit Card Systems

§ 1028.400 General.

Operators of credit card systems are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Operators of credit card systems should also refer to Subpart D of Part 1010 of this Chapter for recordkeeping requirements contained in that subpart which apply to operators of credit card systems.

§ 1028.410 Recordkeeping.

Refer to § 1010.410 of this Chapter.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1028.500 General.

Operators of credit card systems are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Operators of credit card systems should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to operators of credit card systems.

§ 1028.520 Special information sharing procedures to deter money laundering and terrorist activity for operators of credit card systems.

(a) Refer to § 1010.520.

(b) [Reserved]

§ 1028.530 [Reserved]

§ 1028.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this chapter.

(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Operators of Credit Card Systems

§§ 1028.600–1028.670 [Reserved]

PARTS 1029–1099 [RESERVED]

Finding Aids

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected

Table of CFR Titles and Chapters

(Revised as of July 1, 2011)

Title 1—General Provisions

I Administrative Committee of the Federal Register (Parts 1—49)
II Office of the Federal Register (Parts 50—299)
III Administrative Conference of the United States (Parts 300—399)
IV Miscellaneous Agencies (Parts 400—500)

Title 2—Grants and Agreements

SUBTITLE A—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE FOR GRANTS AND AGREEMENTS

I Office of Management and Budget Governmentwide Guidance for Grants and Agreements (Parts 100—199)
II Office of Management and Budget Circulars and Guidance (200—299)

SUBTITLE B—FEDERAL AGENCY REGULATIONS FOR GRANTS AND AGREEMENTS

III Department of Health and Human Services (Parts 300— 399)
IV Department of Agriculture (Parts 400—499)
VI Department of State (Parts 600—699)
VII Agency for International Development (Parts 700—799)
VIII Department of Veterans Affairs (Parts 800—899)
IX Department of Energy (Parts 900—999)
XI Department of Defense (Parts 1100—1199)
XII Department of Transportation (Parts 1200—1299)
XIII Department of Commerce (Parts 1300—1399)
XIV Department of the Interior (Parts 1400—1499)
XV Environmental Protection Agency (Parts 1500—1599)
XVIII National Aeronautics and Space Administration (Parts 1880—1899)
XX United States Nuclear Regulatory Commission (Parts 2000—2099)
XXII Corporation for National and Community Service (Parts 2200—2299)
XXIII Social Security Administration (Parts 2300—2399)
XXIV Housing and Urban Development (Parts 2400—2499)
XXV National Science Foundation (Parts 2500—2599)
XXVI National Archives and Records Administration (Parts 2600—2699)
XXVII Small Business Administration (Parts 2700—2799)
XXVIII Department of Justice (Parts 2800—2899)

Title 2—Grants and Agreements—Continued

Chap.	
XXX	Department of Homeland Security (Parts 3000—3099)
XXXI	Institute of Museum and Library Services (Parts 3100—3199)
XXXII	National Endowment for the Arts (Parts 3200—3299)
XXXIII	National Endowment for the Humanities (Parts 3300—3399)
XXXV	Export-Import Bank of the United States (Parts 3500—3599)
XXXVII	Peace Corps (Parts 3700—3799)
LVIII	Election Assistance Commission (Parts 5800—5899)

Title 3—The President

I	Executive Office of the President (Parts 100—199)

Title 4—Accounts

I	Government Accountability Office (Parts 1—99)
II	Recovery Accountability and Transparency Board (Parts 200—299)

Title 5—Administrative Personnel

I	Office of Personnel Management (Parts 1—1199)
II	Merit Systems Protection Board (Parts 1200—1299)
III	Office of Management and Budget (Parts 1300—1399)
V	The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI	Federal Retirement Thrift Investment Board (Parts 1600—1699)
VIII	Office of Special Counsel (Parts 1800—1899)
IX	Appalachian Regional Commission (Parts 1900—1999)
XI	Armed Forces Retirement Home (Parts 2100—2199)
XIV	Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XV	Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI	Office of Government Ethics (Parts 2600—2699)
XXI	Department of the Treasury (Parts 3100—3199)
XXII	Federal Deposit Insurance Corporation (Parts 3200—3299)
XXIII	Department of Energy (Parts 3300—3399)
XXIV	Federal Energy Regulatory Commission (Parts 3400—3499)
XXV	Department of the Interior (Parts 3500—3599)
XXVI	Department of Defense (Parts 3600— 3699)
XXVIII	Department of Justice (Parts 3800—3899)
XXIX	Federal Communications Commission (Parts 3900—3999)
XXX	Farm Credit System Insurance Corporation (Parts 4000—4099)
XXXI	Farm Credit Administration (Parts 4100—4199)
XXXIII	Overseas Private Investment Corporation (Parts 4300—4399)

Title 5—Administrative Personnel—Continued

Chap.	
XXXIV	Securities and Exchange Commission (Parts 4400—4499)
XXXV	Office of Personnel Management (Parts 4500—4599)
XL	Interstate Commerce Commission (Parts 5000—5099)
XLI	Commodity Futures Trading Commission (Parts 5100—5199)
XLII	Department of Labor (Parts 5200—5299)
XLIII	National Science Foundation (Parts 5300—5399)
XLV	Department of Health and Human Services (Parts 5500—5599)
XLVI	Postal Rate Commission (Parts 5600—5699)
XLVII	Federal Trade Commission (Parts 5700—5799)
XLVIII	Nuclear Regulatory Commission (Parts 5800—5899)
XLIX	Federal Labor Relations Authority (Parts 5900—5999)
L	Department of Transportation (Parts 6000—6099)
LII	Export-Import Bank of the United States (Parts 6200—6299)
LIII	Department of Education (Parts 6300—6399)
LIV	Environmental Protection Agency (Parts 6400—6499)
LV	National Endowment for the Arts (Parts 6500—6599)
LVI	National Endowment for the Humanities (Parts 6600—6699)
LVII	General Services Administration (Parts 6700—6799)
LVIII	Board of Governors of the Federal Reserve System (Parts 6800—6899)
LIX	National Aeronautics and Space Administration (Parts 6900—6999)
LX	United States Postal Service (Parts 7000—7099)
LXI	National Labor Relations Board (Parts 7100—7199)
LXII	Equal Employment Opportunity Commission (Parts 7200—7299)
LXIII	Inter-American Foundation (Parts 7300—7399)
LXIV	Merit Systems Protection Board (Parts 7400—7499)
LXV	Department of Housing and Urban Development (Parts 7500—7599)
LXVI	National Archives and Records Administration (Parts 7600—7699)
LXVII	Institute of Museum and Library Services (Parts 7700—7799)
LXVIII	Commission on Civil Rights (Parts 7800—7899)
LXIX	Tennessee Valley Authority (Parts 7900—7999)
LXX	Court Services and Offender Supervision Agency for the District of Columbia (Parts 8000—8099)
LXXI	Consumer Product Safety Commission (Parts 8100—8199)
LXXII	Special Inspector General for Iraq Reconstruction (Parts 8200—8299)
LXXIII	Department of Agriculture (Parts 8300—8399)
LXXIV	Federal Mine Safety and Health Review Commission (Parts 8400—8499)
LXXVI	Federal Retirement Thrift Investment Board (Parts 8600—8699)
LXXVII	Office of Management and Budget (Parts 8700—8799)
LXXX	Federal Housing Finance Agency (Parts 8700—8799)
LXXXII	Special Inspector General for Iraq Reconstruction (Parts 9200—9299)

Title 5—Administrative Personnel—Continued

Chap.

XCVII Department of Homeland Security Human Resources Management System (Department of Homeland Security—Office of Personnel Management) (Parts 9700—9799)

XCIX Department of Defense Human Resources Management and Labor Relations Systems (Department of Defense—Office of Personnel Management) (Parts 9900—9999)

Title 6—Domestic Security

I Department of Homeland Security, Office of the Secretary (Parts 0—99)

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE (PARTS 0—26)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE

I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

II Food and Nutrition Service, Department of Agriculture (Parts 210—299)

III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

V Agricultural Research Service, Department of Agriculture (Parts 500—599)

VI Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)

VII Farm Service Agency, Department of Agriculture (Parts 700—799)

VIII Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

XV Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

XVI Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)

XVII Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

Title 7—Agriculture—Continued

Chap.	
XVIII	Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)
XX	Local Television Loan Guarantee Board (Parts 2200—2299)
XXVI	Office of Inspector General, Department of Agriculture (Parts 2600—2699)
XXVII	Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)
XXVIII	Office of Operations, Department of Agriculture (Parts 2800—2899)
XXIX	Office of Energy Policy and New Uses, Department of Agriculture (Parts 2900—2999)
XXX	Office of the Chief Financial Officer, Department of Agriculture (Parts 3000—3099)
XXXI	Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)
XXXII	Office of Procurement and Property Management, Department of Agriculture (Parts 3200—3299)
XXXIII	Office of Transportation, Department of Agriculture (Parts 3300—3399)
XXXIV	National Institute of Food and Agriculture (Parts 3400—3499)
XXXV	Rural Housing Service, Department of Agriculture (Parts 3500—3599)
XXXVI	National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)
XXXVII	Economic Research Service, Department of Agriculture (Parts 3700—3799)
XXXVIII	World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)
XLI	[Reserved]
XLII	Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Parts 4200—4299)
L	Rural Business-Cooperative Service, Rurual Housing Service, and Rural Utilities Service, Department of Agriculture (Parts 5000—5099)

Title 8—Aliens and Nationality

I	Department of Homeland Security (Immigration and Naturalization) (Parts 1—499)
V	Executive Office for Immigration Review, Department of Justice (Parts 1000—1399)

Title 9—Animals and Animal Products

I	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)
II	Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture (Parts 200—299)

Title 9—Animals and Animal Products—Continued

Chap.

III Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0—199)

II Department of Energy (Parts 200—699)

III Department of Energy (Parts 700—999)

X Department of Energy (General Provisions) (Parts 1000—1099)

XIII Nuclear Waste Technical Review Board (Parts 1303—1399)

XVII Defense Nuclear Facilities Safety Board (Parts 1700—1799)

XVIII Northeast Interstate Low-Level Radioactive Waste Commission (Parts 1800—1899)

Title 11—Federal Elections

I Federal Election Commission (Parts 1—9099)

II Election Assistance Commission (Parts 9400—9499)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1—199)

II Federal Reserve System (Parts 200—299)

III Federal Deposit Insurance Corporation (Parts 300—399)

IV Export-Import Bank of the United States (Parts 400—499)

V Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

VI Farm Credit Administration (Parts 600—699)

VII National Credit Union Administration (Parts 700—799)

VIII Federal Financing Bank (Parts 800—899)

IX Federal Housing Finance Board (Parts 900—999)

XI Federal Financial Institutions Examination Council (Parts 1100—1199)

XII Federal Housing Finance Agency (Parts 1200—1299)

XIV Farm Credit System Insurance Corporation (Parts 1400—1499)

XV Department of the Treasury (Parts 1500—1599)

XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700—1799)

XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)

III Economic Development Administration, Department of Commerce (Parts 300—399)

Title 13—Business Credit and Assistance—Continued

Chap.

IV Emergency Steel Guarantee Loan Board (Parts 400—499)

V Emergency Oil and Gas Guaranteed Loan Board (Parts 500—599)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)

II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

III Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)

V National Aeronautics and Space Administration (Parts 1200—1299)

VI Air Transportation System Stabilization (Parts 1300—1399)

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE (PARTS 0—29)

SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE

I Bureau of the Census, Department of Commerce (Parts 30—199)

II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

IV Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)

VII Bureau of Industry and Security, Department of Commerce (Parts 700—799)

VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

XI Technology Administration, Department of Commerce (Parts 1100—1199)

XIII East-West Foreign Trade Board (Parts 1300—1399)

XIV Minority Business Development Agency (Parts 1400—1499)

SUBTITLE C—REGULATIONS RELATING TO FOREIGN TRADE AGREEMENTS

XX Office of the United States Trade Representative (Parts 2000—2099)

SUBTITLE D—REGULATIONS RELATING TO TELECOMMUNICATIONS AND INFORMATION

XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

Chap.

I Federal Trade Commission (Parts 0—999)

II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1—199)

II Securities and Exchange Commission (Parts 200—399)

IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

III Delaware River Basin Commission (Parts 400—499)

VI Water Resources Council (Parts 700—799)

VIII Susquehanna River Basin Commission (Parts 800—899)

XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury (Parts 0—199)

II United States International Trade Commission (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

IV U.S. Immigration and Customs Enforcement, Department of Homeland Security (Parts 400—599)

Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

II Railroad Retirement Board (Parts 200—399)

III Social Security Administration (Parts 400—499)

IV Employees Compensation Appeals Board, Department of Labor (Parts 500—599)

V Employment and Training Administration, Department of Labor (Parts 600—699)

VI Office of Workers' Compensation Programs, Department of Labor (Parts 700—799)

VII Benefits Review Board, Department of Labor (Parts 800—899)

VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)

IX Office of the Assistant Secretary for Veterans' Employment and Training Service, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

Chap.

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)

II Agency for International Development (Parts 200—299)

III Peace Corps (Parts 300—399)

IV International Joint Commission, United States and Canada (Parts 400—499)

V Broadcasting Board of Governors (Parts 500—599)

VII Overseas Private Investment Corporation (Parts 700—799)

IX Foreign Service Grievance Board (Parts 900—999)

X Inter-American Foundation (Parts 1000—1099)

XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)

XII United States International Development Cooperation Agency (Parts 1200—1299)

XIII Millenium Challenge Corporation (Parts 1300—1399)

XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)

XV African Development Foundation (Parts 1500—1599)

XVI Japan-United States Friendship Commission (Parts 1600—1699)

XVII United States Institute of Peace (Parts 1700—1799)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)

II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (PARTS 0—99)

SUBTITLE B—REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

Title 24—Housing and Urban Development—Continued

Chap.

II Office of Assistant Secretary for Housing-Federal HousingCommissioner, Department of Housing and Urban Development (Parts 200—299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

IV Office of Housing and Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]

VII Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs, Section 202 Direct Loan Program, Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons With Disabilities Program) (Parts 800—899)

IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1699)

X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)

XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

XV Emergency Mortgage Insurance and Loan Programs, Department of Housing and Urban Development (Parts 2700—2799)

XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

XXIV Board of Directors of the HOPE for Homeowners Program (Parts 4000—4099)

XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)

Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)

III National Indian Gaming Commission, Department of the Interior (Parts 500—599)

IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)

V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)

Title 25—Indians—Continued

Chap.

VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Parts 1000—1199)

VII Office of the Special Trustee for American Indians, Department of the Interior (Parts 1200—1299)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—899)

Title 27—Alcohol, Tobacco Products and Firearms

I Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury (Parts 1—399)

II Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (Parts 400—699)

Title 28—Judicial Administration

I Department of Justice (Parts 0—299)

III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)

V Bureau of Prisons, Department of Justice (Parts 500—599)

VI Offices of Independent Counsel, Department of Justice (Parts 600—699)

VII Office of Independent Counsel (Parts 700—799)

VIII Court Services and Offender Supervision Agency for the District of Columbia (Parts 800—899)

IX National Crime Prevention and Privacy Compact Council (Parts 900—999)

XI Department of Justice and Department of State (Parts 1100—1199)

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR (PARTS 0—99)

SUBTITLE B—REGULATIONS RELATING TO LABOR

I National Labor Relations Board (Parts 100—199)

II Office of Labor-Management Standards, Department of Labor (Parts 200—299)

III National Railroad Adjustment Board (Parts 300—399)

IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)

V Wage and Hour Division, Department of Labor (Parts 500—899)

IX Construction Industry Collective Bargaining Commission (Parts 900—999)

X National Mediation Board (Parts 1200—1299)

XII Federal Mediation and Conciliation Service (Parts 1400—1499)

XIV Equal Employment Opportunity Commission (Parts 1600—1699)

Title 29—Labor—Continued

Chap.

XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

XX Occupational Safety and Health Review Commission (Parts 2200—2499)

XXV Employee Benefits Security Administration, Department of Labor (Parts 2500—2599)

XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)

XL Pension Benefit Guaranty Corporation (Parts 4000—4999)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)

II Bureau of Ocean Energy Management, Regulation, and Enforcement, Department of the Interior (Parts 200—299)

IV Geological Survey, Department of the Interior (Parts 400—499)

VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

XII Office of Natural Resources Revenue, Department of the Interior (Parts 1200—1299)

Title 31—Money and Finance: Treasury

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY (PARTS 0—50)

SUBTITLE B—REGULATIONS RELATING TO MONEY AND FINANCE

I Monetary Offices, Department of the Treasury (Parts 51—199)

II Fiscal Service, Department of the Treasury (Parts 200—399)

IV Secret Service, Department of the Treasury (Parts 400—499)

V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)

VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)

VIII Office of International Investment, Department of the Treasury (Parts 800—899)

IX Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (Parts 900—999)

X Financial Crimes Enforcement Network, Departmnent of the Treasury (Parts 1000—1099)

Title 32—National Defense

SUBTITLE A—DEPARTMENT OF DEFENSE

I Office of the Secretary of Defense (Parts 1—399)

V Department of the Army (Parts 400—699)

VI Department of the Navy (Parts 700—799)

Title 32—National Defense—Continued

Chap.

VII Department of the Air Force (Parts 800—1099)

SUBTITLE B—OTHER REGULATIONS RELATING TO NATIONAL DEFENSE

XII Defense Logistics Agency (Parts 1200—1299)

XVI Selective Service System (Parts 1600—1699)

XVII Office of the Director of National Intelligence (Parts 1700—1799)

XVIII National Counterintelligence Center (Parts 1800—1899)

XIX Central Intelligence Agency (Parts 1900—1999)

XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)

XXI National Security Council (Parts 2100—2199)

XXIV Office of Science and Technology Policy (Parts 2400—2499)

XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)

XXVIII Office of the Vice President of the United States (Parts 2800—2899)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Homeland Security (Parts 1—199)

II Corps of Engineers, Department of the Army (Parts 200—399)

IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF EDUCATION (PARTS 1—99)

SUBTITLE B—REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

I Office for Civil Rights, Department of Education (Parts 100—199)

II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

IV Office of Vocational and Adult Education, Department of Education (Parts 400—499)

V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)

VI Office of Postsecondary Education, Department of Education (Parts 600—699)

VII Office of Educational Research and Improvmeent, Department of Education [Reserved]

XI National Institute for Literacy (Parts 1100—1199)

SUBTITLE C—REGULATIONS RELATING TO EDUCATION

XII National Council on Disability (Parts 1200—1299)

Title 35 [Reserved]

Chap.

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)
II Forest Service, Department of Agriculture (Parts 200—299)
III Corps of Engineers, Department of the Army (Parts 300—399)
IV American Battle Monuments Commission (Parts 400—499)
V Smithsonian Institution (Parts 500—599)
VI [Reserved]
VII Library of Congress (Parts 700—799)
VIII Advisory Council on Historic Preservation (Parts 800—899)
IX Pennsylvania Avenue Development Corporation (Parts 900—999)
X Presidio Trust (Parts 1000—1099)
XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)
XII National Archives and Records Administration (Parts 1200—1299)
XV Oklahoma City National Memorial Trust (Parts 1500—1599)
XVI Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (Parts 1600—1699)

Title 37—Patents, Trademarks, and Copyrights

I United States Patent and Trademark Office, Department of Commerce (Parts 1—199)
II Copyright Office, Library of Congress (Parts 200—299)
III Copyright Royalty Board, Library of Congress (Parts 301—399)
IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—499)
V Under Secretary for Technology, Department of Commerce (Parts 500—599)

Title 38—Pensions, Bonuses, and Veterans' Relief

I Department of Veterans Affairs (Parts 0—99)
II Armed Forces Retirement Home

Title 39—Postal Service

I United States Postal Service (Parts 1—999)
III Postal Regulatory Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—1099)
IV Environmental Protection Agency and Department of Justice (Parts 1400—1499)
V Council on Environmental Quality (Parts 1500—1599)

Title 40—Protection of Environment—Continued

Chap.

VI Chemical Safety and Hazard Investigation Board (Parts 1600—1699)

VII Environmental Protection Agency and Department of Defense; Uniform National Discharge Standards for Vessels of the Armed Forces (Parts 1700—1799)

Title 41—Public Contracts and Property Management

SUBTITLE B—OTHER PROVISIONS RELATING TO PUBLIC CONTRACTS

50 Public Contracts, Department of Labor (Parts 50–1—50–999)

51 Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51–1—51–99)

60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

61 Office of the Assistant Secretary for Veterans' Employment and Training Service, Department of Labor (Parts 61–1—61–999)

62—100 [Reserved]

SUBTITLE C—FEDERAL PROPERTY MANAGEMENT REGULATIONS SYSTEM

101 Federal Property Management Regulations (Parts 101–1—101–99)

102 Federal Management Regulation (Parts 102–1—102–299)

103—104 [Reserved]

105 General Services Administration (Parts 105–1—105–999)

109 Department of Energy Property Management Regulations (Parts 109–1—109–99)

114 Department of the Interior (Parts 114–1—114–99)

115 Environmental Protection Agency (Parts 115–1—115–99)

128 Department of Justice (Parts 128–1—128–99)

129—200 [Reserved]

SUBTITLE D—OTHER PROVISIONS RELATING TO PROPERTY MANAGEMENT [RESERVED]

SUBTITLE E—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATIONS SYSTEM [RESERVED]

SUBTITLE F—FEDERAL TRAVEL REGULATION SYSTEM

300 General (Parts 300–1—300–99)

301 Temporary Duty (TDY) Travel Allowances (Parts 301–1—301–99)

302 Relocation Allowances (Parts 302–1—302–99)

303 Payment of Expenses Connected with the Death of Certain Employees (Part 303–1—303–99)

304 Payment of Travel Expenses from a Non-Federal Source (Parts 304–1—304–99)

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1—199)

IV Centers for Medicare & Medicaid Services, Department of Health and Human Services (Parts 400—499)

Title 42—Public Health—Continued

Chap.

V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR (PARTS 1—199)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC LANDS

I Bureau of Reclamation, Department of the Interior (Parts 200—499)

II Bureau of Land Management, Department of the Interior (Parts 1000—9999)

III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10099)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency, Department of Homeland Security (Parts 0—399)

IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH AND HUMAN SERVICES (PARTS 1—199)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC WELFARE

II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

IV Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services (Parts 400—499)

V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)

VI National Science Foundation (Parts 600—699)

VII Commission on Civil Rights (Parts 700—799)

VIII Office of Personnel Management (Parts 800—899) [Reserved]

X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)

XI National Foundation on the Arts and the Humanities (Parts 1100—1199)

XII Corporation for National and Community Service (Parts 1200—1299)

XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

Title 45—Public Welfare—Continued

Chap.	
XVI	Legal Services Corporation (Parts 1600—1699)
XVII	National Commission on Libraries and Information Science (Parts 1700—1799)
XVIII	Harry S. Truman Scholarship Foundation (Parts 1800—1899)
XXI	Commission on Fine Arts (Parts 2100—2199)
XXIII	Arctic Research Commission (Part 2301)
XXIV	James Madison Memorial Fellowship Foundation (Parts 2400—2499)
XXV	Corporation for National and Community Service (Parts 2500—2599)

Title 46—Shipping

I	Coast Guard, Department of Homeland Security (Parts 1—199)
II	Maritime Administration, Department of Transportation (Parts 200—399)
III	Coast Guard (Great Lakes Pilotage), Department of Homeland Security (Parts 400—499)
IV	Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I	Federal Communications Commission (Parts 0—199)
II	Office of Science and Technology Policy and National Security Council (Parts 200—299)
III	National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)
IV	National Telecommunications and Information Administration, Department of Commerce, and National Highway Traffic Safety Administration, Department of Transportation (Parts 400—499)

Title 48—Federal Acquisition Regulations System

1	Federal Acquisition Regulation (Parts 1—99)
2	Defense Acquisition Regulations System, Department of Defense (Parts 200—299)
3	Health and Human Services (Parts 300—399)
4	Department of Agriculture (Parts 400—499)
5	General Services Administration (Parts 500—599)
6	Department of State (Parts 600—699)
7	Agency for International Development (Parts 700—799)
8	Department of Veterans Affairs (Parts 800—899)
9	Department of Energy (Parts 900—999)
10	Department of the Treasury (Parts 1000—1099)
12	Department of Transportation (Parts 1200—1299)
13	Department of Commerce (Parts 1300—1399)
14	Department of the Interior (Parts 1400—1499)

Title 48—Federal Acquisition Regulations System—Continued

Chap.

15 Environmental Protection Agency (Parts 1500—1599)

16 Office of Personnel Management, Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

17 Office of Personnel Management (Parts 1700—1799)

18 National Aeronautics and Space Administration (Parts 1800—1899)

19 Broadcasting Board of Governors (Parts 1900—1999)

20 Nuclear Regulatory Commission (Parts 2000—2099)

21 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)

23 Social Security Administration (Parts 2300—2399)

24 Department of Housing and Urban Development (Parts 2400—2499)

25 National Science Foundation (Parts 2500—2599)

28 Department of Justice (Parts 2800—2899)

29 Department of Labor (Parts 2900—2999)

30 Department of Homeland Security, Homeland Security Acquisition Regulation (HSAR) (Parts 3000—3099)

34 Department of Education Acquisition Regulation (Parts 3400—3499)

51 Department of the Army Acquisition Regulations (Parts 5100—5199)

52 Department of the Navy Acquisition Regulations (Parts 5200—5299)

53 Department of the Air Force Federal Acquisition Regulation Supplement [Reserved]

54 Defense Logistics Agency, Department of Defense (Parts 5400—5499)

57 African Development Foundation (Parts 5700—5799)

61 Civilian Board of Contract Appeals, General Services Administration (Parts 6100—6199)

63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)

99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION (PARTS 1—99)

SUBTITLE B—OTHER REGULATIONS RELATING TO TRANSPORTATION

I Pipeline and Hazardous Materials Safety Administration, Department of Transportation (Parts 100—199)

II Federal Railroad Administration, Department of Transportation (Parts 200—299)

III Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)

IV Coast Guard, Department of Homeland Security (Parts 400—499)

Title 49—Transportation—Continued

Chap.

V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

VI Federal Transit Administration, Department of Transportation (Parts 600—699)

VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)

VIII National Transportation Safety Board (Parts 800—999)

X Surface Transportation Board, Department of Transportation (Parts 1000—1399)

XI Research and Innovative Technology Administration, Department of Transportation [Reserved]

XII Transportation Security Administration, Department of Homeland Security (Parts 1500—1699)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Fishing and Related Activities (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index

List of Agency Prepared Indexes

Parallel Tables of Statutory Authorities and Rules

List of CFR Titles, Chapters, Subchapters, and Parts

Alphabetical List of Agencies Appearing in the CFR

Alphabetical List of Agencies Appearing in the CFR

(Revised as of July 1, 2011)

Agency	CFR Title, Subtitle or Chapter
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advanced Research Projects Agency	32, I
Advisory Council on Historic Preservation	36, VIII
African Development Foundation	22, XV
Federal Acquisition Regulation	48, 57
Agency for International Development	22, II
Federal Acquisition Regulation	48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agriculture Department	2, IV; 5, LXXIII
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Animal and Plant Health Inspection Service	7, III; 9, I
Chief Financial Officer, Office of	7, XXX
Commodity Credit Corporation	7, XIV
Economic Research Service	7, XXXVII
Energy Policy and New Uses, Office of	2, IX; 7, XXIX
Environmental Quality, Office of	7, XXXI
Farm Service Agency	7, VII, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Forest Service	36, II
Grain Inspection, Packers and Stockyards Administration	7, VIII; 9, II
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National Institute of Food and Agriculture.	7, XXXIV
Natural Resources Conservation Service	7, VI
Operations, Office of	7, XXVIII
Procurement and Property Management, Office of	7, XXXII
Rural Business-Cooperative Service	7, XVIII, XLII, L
Rural Development Administration	7, XLII
Rural Housing Service	7, XVIII, XXXV, L
Rural Telephone Bank	7, XVI
Rural Utilities Service	7, XVII, XVIII, XLII, L
Secretary of Agriculture, Office of	7, Subtitle A
Transportation, Office of	7, XXXIII
World Agricultural Outlook Board	7, XXXVIII
Air Force Department	32, VII
Federal Acquisition Regulation Supplement	48, 53
Air Transportation Stabilization Board	14, VI
Alcohol and Tobacco Tax and Trade Bureau	27, I
Alcohol, Tobacco, Firearms, and Explosives, Bureau of	27, II
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
American Indians, Office of the Special Trustee	25, VII
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX

Agency	CFR Title, Subtitle or Chapter
Architectural and Transportation Barriers Compliance Board	36, XI
Arctic Research Commission	45, XXIII
Armed Forces Retirement Home	5, XI
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 51
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind or Severely Disabled, Committee for Purchase From People Who Are	41, 51
Broadcasting Board of Governors	22, V
Federal Acquisition Regulation	48, 19
Bureau of Ocean Energy Management, Regulation, and Enforcement	30, II
Census Bureau	15, I
Centers for Medicare & Medicaid Services	42, IV
Central Intelligence Agency	32, XIX
Chief Financial Officer, Office of	7, XXX
Child Support Enforcement, Office of	45, III
Children and Families, Administration for	45, II, III, IV, X
Civil Rights, Commission on	5, LXVIII; 45, VII
Civil Rights, Office for	34, I
Court Services and Offender Supervision Agency for the District of Columbia	5, LXX
Coast Guard	33, I; 46, I; 49, IV
Coast Guard (Great Lakes Pilotage)	46, III
Commerce Department	44, IV; 50, VI
Census Bureau	15, I
Economic Affairs, Under Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Emergency Management and Assistance	44, IV
Federal Acquisition Regulation	48, 13
Foreign-Trade Zones Board	15, IV
Industry and Security, Bureau of	15, VII
International Trade Administration	15, III; 19, III
National Institute of Standards and Technology	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII; 47, III, IV
National Weather Service	15, IX
Patent and Trademark Office, United States	37, I
Productivity, Technology and Innovation, Assistant Secretary for	37, IV
Secretary of Commerce, Office of	15, Subtitle A
Technology, Under Secretary for	37, V
Technology Administration	15, XI
Technology Policy, Assistant Secretary for	37, IV
Commercial Space Transportation	14, III
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	5, XLI; 17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	5, LXXI; 16, II
Copyright Office	37, II
Copyright Royalty Board	37, III
Corporation for National and Community Service	2, XXII; 45, XII, XXV
Cost Accounting Standards Board	48, 99
Council on Environmental Quality	40, V
Court Services and Offender Supervision Agency for the District of Columbia	28, VIII
Customs and Border Protection Bureau	19, I
Defense Contract Audit Agency	32, I
Defense Department	5, XXVI; 32, Subtitle A; 40, VII

Agency	CFR Title, Subtitle or Chapter
Advanced Research Projects Agency	32, I
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III, 48, 51
Defense Acquisition Regulations System	48, 2
Defense Intelligence Agency	32, I
Defense Logistics Agency	32, I, XII; 48, 54
Engineers, Corps of	33, II; 36, III
Human Resources Management and Labor Relations Systems	5, XCIX
National Imagery and Mapping Agency	32, I
Navy Department	32, VI; 48, 52
Secretary of Defense, Office of	2, XI; 32, I
Defense Contract Audit Agency	32, I
Defense Intelligence Agency	32, I
Defense Logistics Agency	32, XII; 48, 54
Defense Nuclear Facilities Safety Board	10, XVII
Delaware River Basin Commission	18, III
District of Columbia, Court Services and Offender Supervision Agency for the	28, VIII
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Affairs, Under Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Economic Research Service	7, XXXVII
Education, Department of	5, LIII
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Acquisition Regulation	48, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Election Assistance Commission	2, LVIII; 11, II
Elementary and Secondary Education, Office of	34, II
Emergency Oil and Gas Guaranteed Loan Board	13, V
Emergency Steel Guarantee Loan Board	13, IV
Employee Benefits Security Administration	29, XXV
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	5, XXIII; 10, II, III, X
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	5, XXIV; 18, I
Property Management Regulations	41, 109
Energy, Office of	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	2, XV; 5, LIV; 40, I, IV, VII
Federal Acquisition Regulation	48, 15
Property Management Regulations	41, 115
Environmental Quality, Office of	7, XXXI
Equal Employment Opportunity Commission	5, LXII; 29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Environmental Quality, Council on	40, V
Management and Budget, Office of	5, III, LXXVII; 14, VI; 48, 99

Agency	CFR Title, Subtitle or Chapter
National Drug Control Policy, Office of	21, III
National Security Council	32, XXI; 47, 2
Presidential Documents	3
Science and Technology Policy, Office of	32, XXIV; 47, II
Trade Representative, Office of the United States	15, XX
Export-Import Bank of the United States	2, XXXV; 5, LII; 12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	5, XXXI; 12, VI
Farm Credit System Insurance Corporation	5, XXX; 12, XIV
Farm Service Agency	7, VII, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I
Commercial Space Transportation	14, III
Federal Claims Collection Standards	31, IX
Federal Communications Commission	5, XXIX; 47, I
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	5, XXII; 12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I
Federal Employees Group Life Insurance Federal Acquisition Regulation	48, 21
Federal Employees Health Benefits Acquisition Regulation	48, 16
Federal Energy Regulatory Commission	5, XXIV; 18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Highway Administration	23, I, II
Federal Home Loan Mortgage Corporation	1, IV
Federal Housing Enterprise Oversight Office	12, XVII
Federal Housing Finance Agency	5, LXXX; 12, XII
Federal Housing Finance Board	12, IX
Federal Labor Relations Authority	5, XIV, XLIX; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Management Regulation	41, 102
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	5, LXXIV; 29, XXVII
Federal Motor Carrier Safety Administration	49, III
Federal Prison Industries, Inc.	28, III
Federal Procurement Policy Office	48, 99
Federal Property Management Regulations	41, 101
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Board of Governors	5, LVIII
Federal Retirement Thrift Investment Board	5, VI, LXXVI
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	5, XLVII; 16, I
Federal Transit Administration	49, VI
Federal Travel Regulation System	41, Subtitle F
Financial Crimes Enforcement Network	31, X
Fine Arts, Commission on	45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of the United States	45, V
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Services Administration	5, LVII; 41, 105

Agency	CFR Title, Subtitle or Chapter
Contract Appeals, Board of	48, 61
Federal Acquisition Regulation	48, 5
Federal Management Regulation	41, 102
Federal Property Management Regulations	41, 101
Federal Travel Regulation System	41, Subtitle F
General	41, 300
Payment From a Non-Federal Source for Travel Expenses	41, 304
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Relocation Allowances	41, 302
Temporary Duty (TDY) Travel Allowances	41, 301
Geological Survey	30, IV
Government Accountability Office	4, I
Government Ethics, Office of	5, XVI
Government National Mortgage Association	24, III
Grain Inspection, Packers and Stockyards Administration	7, VIII; 9, II
Harry S. Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	2, III; 5, XLV; 45, Subtitle A,
Centers for Medicare & Medicaid Services	42, IV
Child Support Enforcement, Office of	45, III
Children and Families, Administration for	45, II, III, IV, X
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Human Development Services, Office of	45, XIII
Indian Health Service	25, V
Inspector General (Health Care), Office of	42, V
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
Homeland Security, Department of	2, XXX; 6, I
Coast Guard	33, I; 46, I; 49, IV
Coast Guard (Great Lakes Pilotage)	46, III
Customs and Border Protection Bureau	19, I
Federal Emergency Management Agency	44, I
Human Resources Management and Labor Relations Systems	5, XCVII
Immigration and Customs Enforcement Bureau	19, IV
Immigration and Naturalization	8, I
Transportation Security Administration	49, XII
HOPE for Homeowners Program, Board of Directors of	24, XXIV
Housing and Urban Development, Department of	2, XXIV; 5, LXV; 24, Subtitle B
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Federal Housing Enterprise Oversight, Office of	12, XVII
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Housing, Office of, and Multifamily Housing Assistance Restructuring, Office of	24, IV
Inspector General, Office of	24, XII
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle A, VII
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Housing, Office of, and Multifamily Housing Assistance Restructuring, Office of	24, IV
Human Development Services, Office of	45, XIII
Immigration and Customs Enforcement Bureau	19, IV
Immigration and Naturalization	8, I
Immigration Review, Executive Office for	8, V
Independent Counsel, Office of	28, VII
Indian Affairs, Bureau of	25, I, V

Agency	CFR Title, Subtitle or Chapter
Indian Affairs, Office of the Assistant Secretary	25, VI
Indian Arts and Crafts Board	25, II
Indian Health Service	25, V
Industry and Security, Bureau of	15, VII
Information Resources Management, Office of	7, XXVII
Information Security Oversight Office, National Archives and Records Administration	32, XX
Inspector General	
Agriculture Department	7, XXVI
Health and Human Services Department	42, V
Housing and Urban Development Department	24, XII
Institute of Peace, United States	22, XVII
Inter-American Foundation	5, LXIII; 22, X
Interior Department	
American Indians, Office of the Special Trustee	25, VII
MBureau of Ocean Energy Management, Regulation, and Enforcement	30, II
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I, V
Indian Affairs, Office of the Assistant Secretary	25, VI
Indian Arts and Crafts Board	25, II
Land Management, Bureau of	43, II
National Indian Gaming Commission	25, III
National Park Service	36, I
Natural Resource Revenue, Office of	30, XII
Reclamation, Bureau of	43, I
Secretary of the Interior, Office of	2, XIV; 43, Subtitle A
Surface Mining Reclamation and Enforcement, Office of	30, VII
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico, United States Section	22, XI
International Development, United States Agency for	22, II
Federal Acquisition Regulation	48, 7
International Development Cooperation Agency, United States	22, XII
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	5, XL
Investment Security, Office of	31, VIII
James Madison Memorial Fellowship Foundation	45, XXIV
Japan–United States Friendship Commission	22, XVI
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	2, XXVII; 5, XXVIII; 28, I, XI; 40, IV
Alcohol, Tobacco, Firearms, and Explosives, Bureau of	27, II
Drug Enforcement Administration	21, II
Federal Acquisition Regulation	48, 28
Federal Claims Collection Standards	31, IX
Federal Prison Industries, Inc.	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration Review, Executive Office for	8, V
Offices of Independent Counsel	28, VI
Prisons, Bureau of	28, V
Property Management Regulations	41, 128
Labor Department	5, XLII
Employee Benefits Security Administration	29, XXV
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29

Agency	CFR Title, Subtitle or Chapter
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Standards, Office of	29, II, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Office of Workers' Compensation Programs	20, VII
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Veterans' Employment and Training Service, Office of the Assistant Secretary for	41, 61; 20, IX
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Standards, Office of	29, II, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Copyright Royalty Board	37, III
Local Television Loan Guarantee Board	7, XX
Management and Budget, Office of	5, III, LXXVII; 14, VI; 48, 99
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II, LXIV
Micronesian Status Negotiations, Office for	32, XXVII
Millenium Challenge Corporation	22, XIII
Mine Safety and Health Administration	30, I
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation	36, XVI
Museum and Library Services, Institute of	2, XXXI
National Aeronautics and Space Administration	2, XVIII; 5, LIX; 14, V
Federal Acquisition Regulation	48, 18
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National and Community Service, Corporation for	45, XII, XXV
National Archives and Records Administration	2, XXVI; 5, LXVI; 36, XII
Information Security Oversight Office	32, XX
National Capital Planning Commission	1, IV
National Commission for Employment Policy	1, IV
National Commission on Libraries and Information Science	45, XVII
National Council on Disability	34, XII
National Counterintelligence Center	32, XVIII
National Credit Union Administration	12, VII
National Crime Prevention and Privacy Compact Council	28, IX
National Drug Control Policy, Office of	21, III
National Endowment for the Arts	2, XXXII
National Endowment for the Humanities	2, XXXIII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II, III; 47, VI; 49, V
National Imagery and Mapping Agency	32, I
National Indian Gaming Commission	25, III
National Institute for Literacy	34, XI
National Institute of Food and Agriculture.	7, XXXIV
National Institute of Standards and Technology	15, II
National Intelligence, Office of Director of	32, XVII
National Labor Relations Board	5, LXI; 29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	2, XXV; 5, XLIII; 45, VI

Agency	CFR Title, Subtitle or Chapter
Federal Acquisition Regulation	48, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII; 47, III, IV
National Transportation Safety Board	49, VIII
Natural Resources Conservation Service	7, VI
Natural Resource Revenue, Office of	30, XII
Navajo and Hopi Indian Relocation, Office of	25, IV
Navy Department	32, VI
Federal Acquisition Regulation	48, 52
Neighborhood Reinvestment Corporation	24, XXV
Northeast Interstate Low-Level Radioactive Waste Commission	10, XVIII
Nuclear Regulatory Commission	2, XX; 5, XLVIII; 10, I
Federal Acquisition Regulation	48, 20
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Offices of Independent Counsel	28, VI
Office of Workers' Compensation Programs	20, VII
Oklahoma City National Memorial Trust	36, XV
Operations Office	7, XXVIII
Overseas Private Investment Corporation	5, XXXIII; 22, VII
Patent and Trademark Office, United States	37, I
Payment From a Non-Federal Source for Travel Expenses	41, 304
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XL
Personnel Management, Office of	5, I, XXXV; 45, VIII
Human Resources Management and Labor Relations Systems, Department of Defense	5, XCIX
Human Resources Management and Labor Relations Systems, Department of Homeland Security	5, XCVII
Federal Acquisition Regulation	48, 17
Federal Employees Group Life Insurance Federal Acquisition Regulation	48, 21
Federal Employees Health Benefits Acquisition Regulation	48, 16
Pipeline and Hazardous Materials Safety Administration	49, I
Postal Regulatory Commission	5, XLVI; 39, III
Postal Service, United States	5, LX; 39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Presidio Trust	36, X
Prisons, Bureau of	28, V
Procurement and Property Management, Office of	7, XXXII
Productivity, Technology and Innovation, Assistant Secretary	37, IV
Public Contracts, Department of Labor	41, 50
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Public Health Service	42, I
Railroad Retirement Board	20, II
Reclamation, Bureau of	43, I
Recovery Accountability and Transparency Board	4, II
Refugee Resettlement, Office of	45, IV
Relocation Allowances	41, 302
Research and Innovative Technology Administration	49, XI
Rural Business-Cooperative Service	7, XVIII, XLII, L
Rural Development Administration	7, XLII
Rural Housing Service	7, XVIII, XXXV, L
Rural Telephone Bank	7, XVI
Rural Utilities Service	7, XVII, XVIII, XLII, L
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV

Agency	CFR Title, Subtitle or Chapter
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	5, XXXIV; 17, II
Selective Service System	32, XVI
Small Business Administration	2, XXVII; 13, I
Smithsonian Institution	36, V
Social Security Administration	2, XXIII; 20, III; 48, 23
Soldiers' and Airmen's Home, United States	5, XI
Special Counsel, Office of	5, VIII
Special Education and Rehabilitative Services, Office of	34, III
Special Inspector General for Iraq Reconstruction	5, LXXXVII
State Department	2, VI; 22, I; 28, XI
Federal Acquisition Regulation	48, 6
Surface Mining Reclamation and Enforcement, Office of	30, VII
Surface Transportation Board	49, X
Susquehanna River Basin Commission	18, VIII
Technology Administration	15, XI
Technology Policy, Assistant Secretary for	37, IV
Technology, Under Secretary for	37, V
Tennessee Valley Authority	5, LXIX; 18, XIII
Thrift Supervision Office, Department of the Treasury	12, V
Trade Representative, United States, Office of	15, XX
Transportation, Department of	2, XII; 5, L
Commercial Space Transportation	14, III
Contract Appeals, Board of	48, 63
Emergency Management and Assistance	44, IV
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II
Federal Motor Carrier Safety Administration	49, III
Federal Railroad Administration	49, II
Federal Transit Administration	49, VI
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 47, IV; 49, V
Pipeline and Hazardous Materials Safety Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Surface Transportation Board	49, X
Transportation Statistics Bureau	49, XI
Transportation, Office of	7, XXXIII
Transportation Security Administration	49, XII
Transportation Statistics Bureau	49, XI
Travel Allowances, Temporary Duty (TDY)	41, 301
Treasury Department	5, XXI; 12, XV; 17, IV; 31, IX
Alcohol and Tobacco Tax and Trade Bureau	27, I
Community Development Financial Institutions Fund	12, XVIII
Comptroller of the Currency	12, I
Customs and Border Protection Bureau	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Claims Collection Standards	31, IX
Federal Law Enforcement Training Center	31, VII
Financial Crimes Enforcement Network	31, X
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Investment Security, Office of	31, VIII
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Thrift Supervision, Office of	12, V
Truman, Harry S. Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States and Mexico, International Boundary and Water Commission, United States Section	22, XI

Agency	CFR Title, Subtitle or Chapter
Utah Reclamation Mitigation and Conservation Commission	43, III
Veterans Affairs Department	2, VIII; 38, I
Federal Acquisition Regulation	48, 8
Veterans' Employment and Training Service, Office of the Assistant Secretary for	41, 61; 20, IX
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I
World Agricultural Outlook Board	7, XXXVIII

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations that were made by documents published in the FEDERAL REGISTER since January 1, 2001, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 2001, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985 and 1986–2000'' published in 11 separate volumes.

2001

31 CFR

66 FR Page

Subtitle B
Chapter V

501.801 (c) added; interim 2728
515 Authority citation revised 36687
515.207 Note added; interim 36687
515.533 Heading, (a) and (e) revised; (f) removed; interim 36687
515.559 Heading and note revised; interim 36687
515.560 (b) revised; interim 36688
535.215 (a) revised; interim 38554
535.333 Revised; interim 38554
538 Authority citation revised 36688
538.205 Revised; interim 36688
538.211 (b) through (e) redesignated as (c) through (f); new (b) added; interim 36688
538.405 (b) revised; interim 36688
538.521 Revised; interim 2729
538.523 Revised; interim 36688
538.524 Removed; interim 36689
538.525 Heading and (d) revised; (e) added; interim 36689
538.526 Heading, (a), (b) introductory text, (1) and (2) revised; interim 36689
539 Authority citation amended 57381
Appendix I amended 57381
540 Added; interim 3305
Revised 38555
545 Added; interim 2729
550 Authority citation revised 36690
550.306 Revised; interim 36690
550.308 Revised; interim 36690
550.318 Revised; interim 36690

31 CFR—Continued

66 FR Page

Chapter V—Continued

550.405 (b) revised; interim 36690
550.569 Revised; interim 36690
550.570 Removed; interim 36691
550.571 Heading and (d) revised; new (e) added; interim 36691
550.572 Heading, (a), (b) introductory text, (1) and (2) revised; interim 36691
550.573 Revised; interim 36692
560 Authority citation revised 36692
560.405 (b) revised; interim 36692
560.520 Heading revised; interim 36692
560.530 Revised; interim 36692
560.531 Removed; interim 36693
560.532 Heading and (d) revised; (e) added; interim 36693
560.533 Heading, (a), (b) introductory text, (1) and (2) revised; interim 36693
586 Authority citation revised 50508
586.201 (a) note, (b) note and (d) note added; (c) and endnote revised; interim 50509
586.204 Note added; interim 50509
586.302 Revised; interim 50509
586.319 Revised; interim 50509
586.405 Revised; interim 50509
586.406 (a) amended; interim 50509
586.501 Amended; interim 50509
586.517 Added; interim 50509
586.518 Added; interim 50509
586.519 Added; interim 50510
586.701 Revised; interim 50510
586.702 Revised; interim 50510
586.703 Revised; interim 50510
586.704 Revised; interim 50511

31 CFR—Continued

66 FR Page

Chapter V—Continued
586.705 Revised; interim 50511
587 Added; interim 50511
Chapter V Appendix A amended ..... 29229, 54404, 57373, 57379—57381

2002

31 CFR

67 FR Page

Subtitle B
Chapter V
585.529 Added 78974
586.520 Added 78974
588 Added; interim 37673
591 Added; interim 5473
Chapter V Appendix A amended 16309

2003

31 CFR

68 FR Page

Subtitle B
Chapter V
Chapter V Appendix A revised; Appendix B amended 38844
500.501 Added; interim 53641
500.701 Revised; interim 53641
500.702 Removed; interim 53641
500.703 Removed; interim 53641
500.704 Removed; interim 53641
500.705 Removed; interim 53641
500.706 Removed; interim 53641
500.707 Removed; interim 53641
500.708 Removed; interim 53641
500.709 Removed; interim 53641
500.710 Removed; interim 53641
500.711 Removed; interim 53641
500.712 Removed; interim 53641
500.713 Removed; interim 53641
500.714 Removed; interim 53641
500.715 Removed; interim 53641
500.716 Removed; interim 53641
500.717 Removed; interim 53641
500.718 Removed; interim 53641
500.801 Amended; interim 53641
501 Heading and authority citation revised; interim 53641
501.700—501.747 (Subpart D) Added; interim 53642
501.701 (a)(3) revised 61361
501.801—501.808 (Subpart D) Redesignated as Subpart E; interim 53642
501.805 (d) added 6822
501.901 (Subpart E) Redesignated as Subpart F; interim 53642

31 CFR—Continued

68 FR Page

Chapter V—Continued
505.30 Amended; interim 53657
505.50 Amended; interim 53657
505.60 Amended; interim 53657
515.302 (a) revised; interim 14144
515.329 (c) and (d) revised; interim 14145
515.330 (a)(3) and (4) revised; interim 14145
515.420 (a) introductory text revised; (a) note added; interim 14145
515.501 Added; interim 53657
515.505 Revised; interim 14145
515.512 Added; interim 14146
515.533 Revised; interim 14146
515.559 (b) note added; (d) removed; interim 14146
515.560 (c)(4) revised; (c)(4) note added; interim 14146
515.561 Revised; interim 14147
515.565 (b)(1) amended; (b)(2) removed; interim 14147
515.567 (b) and (c) revised; note added; interim 14147
515.570 Revised; interim 14147
515.571 (a) introductory text revised; (a)(5) and note added; interim 14148
515.572 (d) amended; interim 14148
515.574 Revised; interim 14148
515.575 Revised; interim 14148
515.701 Revised; interim 53657
515.702 Removed; interim 53657
515.703 Removed; interim 53657
515.704 Removed; interim 53657
515.705 Removed; interim 53657
515.706 Removed; interim 53657
515.707 Removed; interim 53657
515.708 Removed; interim 53657
515.709 Removed; interim 53657
515.710 Removed; interim 53657
515.711 Removed; interim 53657
515.712 Removed; interim 53657
515.713 Removed; interim 53657
515.714 Removed; interim 53657
515.715 Removed; interim 53657
515.716 Removed; interim 53657
515.717 Removed; interim 53657
515.718 Removed; interim 53657
515.801 Amended; interim 53657
535.501 Added; interim 53657
535.801 Amended; interim 53657
536 Authority citation revised 53657
536.100 Added; interim 53657
536.801 Amended; interim 53657
537 Authority citation revised 53657

31 CFR—Continued

68 FR Page

Chapter V—Continued

537.501 Revised; interim 53658
537.801 Revised; interim 53658
538.500 Added; interim 53658
538.801 Amended; interim 53658
539.501 Amended; interim 53658
539.801 Amended; interim 53658
540.500 Added; interim 53658
540.801 Amended; interim 53658
545.500 Added; interim 53658
545.801 Amended; interim 53658
550.500 Added; interim 53658
550.801 Amended; interim 53658
560.500 Added; interim 53659
560.536 Added; interim 11742
560.537 Added; interim 11743
560.801 Amended; interim 53659
575 Authority citation revised 53659
Policy statement 60625
575.307 Removed; interim 61363
575.325 Removed; interim 61363
575.327 Removed; interim 61363
575.328 Removed; interim 61363
575.329 Added; interim 11743
575.330 Added; interim 11743
Revised; interim 28755
575.419 Added; interim 61363
575.500 Added; interim 53659
575.505 Removed; interim 61363
575.506 Removed; interim 61363
575.507 Removed; interim 61363
575.508 Removed; interim 61363
575.509 Removed; interim 61363
575.510 Removed; interim 61363
575.511 Removed; interim 61363
575.513 Removed; interim 61363
575.514 Removed; interim 61363
575.517 Removed; interim 61363
575.518 Removed; interim 61363
575.519 Removed; interim 61363
575.520 Removed; interim 61363
575.521 Removed; interim 61363
575.522 Removed; interim 61363
575.523 Removed; interim 61363
575.524 Removed; interim 61363
575.525 Removed; interim 61363
575.526 Removed; interim 61363
575.527 Added; interim 11744
Removed; interim 61363
575.528 Added; interim 11744
Removed; interim 61363
575.529 Added; interim 28755
Removed; interim 61363
575.530 Added; interim 28755
Removed; interim 61363
575.531 Added; interim 28755
Removed; interim 61363

31 CFR—Continued

68 FR Page

Chapter V—Continued

575.532 Added; interim 28756
Removed; interim 61363
575.533 Added; interim 38189
575.534 Added; interim 65845
575.701 (a) introductory text and (1) revised 61361
575.801 Amended; interim 53659
585 Authority citation revised 53659
585.500 Added; interim 53659
585.801 Amended; interim 53659
586 Authority citation revised 53659
586.501 Amended; interim 53659
586.801 Amended; interim 53659
587 Authority citation revised 53659
587.501 Amended; interim 53659
587.801 Amended; interim 53659
588 Authority citation revised 53659
588.501 Amended; interim 53659
588.801 Amended; interim 53659
590 Authority citation revised 53659
590.501 Amended; interim 53659
590.801 Amended; interim 53660
591 Heading and authority citation revised 45779
Authority citation revised 53660
591.201 Revised 45779
591.202 Removed 45779
591.301 Removed 45779
591.302 Revised 45779
591.307 Revised 45779
591.308 Revised 45779
591.404 Revised 45779
591.405 Revised 45779
591.406 Revised 45779
591.501 Amended; interim 53660
591.801 Amended; interim 53660
592 Added 45779
594 Added; interim 34197
Authority citation revised 53660
594.501 Revised; interim 53660
594.801 Revised; interim 53660
595.500 Added; interim 53660
595.801 Amended; interim 53660
596.500 Added; interim 53660
596.801 Amended; interim 53660
597 Authority citation revised 53660, 61361
597.500 Added; interim 53660
597.701 (b) revised 61361
597.801 Amended; interim 53660
598.501 Amended; interim 53660
598.701 (a) introductory text and (3) revised 61361
598.801 Amended; interim 53660

Chapter VIII

800.401 Revised 16721

2004

31 CFR

69 FR Page

Title 31 Nomenclature change 18803

Subtitle B
Chapter V

515 Nomenclature change 33773
515.420 Revised 33771
515.560 (a) introductory text, (1), (7), (c) introductory text, (2), (3), (4) introductory text, (i) and (f) revised; (c) note removed 33771
515.545 Amended 75469
515.561 Revised 33771
515.564 (a)(1) note added 33772
515.565 (a) and (b) revised 33772
515.567 Revised 33772
515.570 (a), (d) introductory text, (1) and section note revised 33773
515.572 (a)(3) and (c)(4)(i) revised 33773
515.577 Added 75469
538.529 Added 75470
541 Added; interim 45248
560.538 Added 75471
575 Authority citation revised 46092
575.533 Revised 46092
592 Revised 56938
Chapter V Note 6 and Appendix A revised 30362

2005

31 CFR

70 FR Page

Subtitle B
Chapter V

501.604 (b)(3) revised 34061
515.533 (a)(2) introductory text and (i) revised; (d) added 9225
535.705 Revised 15762
537 Revised; interim 48241
538.317 Added 34062
538.318 Added 34062
538.319 Added 34062
538.412 Removed 34062
538.413 Removed 34062
538.507 Revised 34062
538.527 Added 34062
538.528 Added 34062
538.701 (c) revised 34063
538.702 Revised 34063
538.703 Revised 34063
538.704 Revised 34064
542 Added 17203
550 Authority citation revised 15762
550.706 Revised 15762
560.320 Revised 15584

31 CFR—Continued

70 FR Page

Chapter V—Continued

560.321 Added 15584
560.516 (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 15584
560.517 Heading and (b) revised; (c) added 15584
560.532 (d) amended 15584
575.535 Added 54259
575.705 Revised 15762
500—599 (Chapter V) Note 6 to Appendices revised 38256
Appendix A revised 38257

2006

31 CFR

71 FR Page

Subtitle B
Chapter V

500.586 (b)(5) added 17346
501 Appendix A added; interim 1974
535 Authority citation revised 29252
535.701 (a)(1) and (2) amended 29252
536 Authority citation revised 29252
536.701 (a)(1) and (2) amended 29252
537 Authority citation revised 29252
537.701 (a)(1) and (2) amended 29252
538 Authority citation revised 29252
538.701 (a)(1) and (2) amended 29253
539 Authority citation revised 29253
539.701 (a)(1) and (2) amended 29253
540 Authority citation revised 29253
540.701 (a)(1) and (2) amended 29253
541 Authority citation revised 29253
541.701 (a)(1) and (2) amended 29253
542 Authority citation revised 29253
542.701 (a)(1) and (2) amended 29253
550 Removed 16043
560 Authority citation revised 29253
560.405 (a) through (e) redesignated as (b) through (f); new (a) added 53570
560.516 (a)(1) revised; (f) added 53570
560.532 (b) revised 53570
560.539 Added 48796
560.701 (a)(1) and (2) amended 29253
588 Authority citation revised 29253
588.701 (a)(1) and (2) amended 29253
590 Removed 16043
591 Removed 16043
594 Authority citation revised 29253
594.411 Added 27200
594.510 Added 27200
594.511 Added 27200
594.512 Added 27200
594.513 Added 27200
594.514 Added 27200

31 CFR—Continued

71 FR Page

Chapter V—Continued
594.515 Added 27200
Revised 58743
594.701 (a)(1) and (2) amended 29253
595 Authority citation revised 29253
595.409 Added 27201
595.508 Added 27201
595.509 Added 27201
595.510 Added 27201
595.511 Added 27201
595.512 Added 27201
595.513 Added 27201
Revised 58744
595.701 (a)(1) and (2) amended 29253
597.407 Added 27202
597.506 Added 27202
597.507 Added 27202
597.508 Added 27202
597.509 Added 27202
597.510 Added 27202
597.511 Added 27203
Revised 58744
500—599 (Chapter V) Note 6 to Appendixes revised 39708
Appendix A revised 39708

2007

31 CFR

72 FR Page

Subtitle B
Chapter V
500.586 (b)(5) and note revised 4961
515.577 Revised 50048
537 Authority citation revised 34377, 50049
537.526 Revised 50049
537.527 Added 34377
538 Policy statement 12980
Authority citation revised 50050, 61515
538.210 Redesignated as 538.211; new 538.210 added 61515
538.211 Redesignated as 538.212; new 538.211 redesignated from 538.210 61515
538.212 Redesignated from 538.211; (g) added 61515
538.305 Introductory text and (a) through (d) redesignated as (a) introductory text and (1) through (4); new (a) revised; new (b) added 61516
538.320 Added 61516
538.417 Added 61516
538.418 Added 61516
538.516 Revised 15832
538.529 Revised 50050

31 CFR—Continued

72 FR Page

Chapter V—Continued
538.530 Added 61516
538.531 Added 61516
538.532 Added 61517
560 Policy statement 12980
Authority citation revised 15832
560.521 Revised 15832
560.538 Revised 50051
593 Added 28856
594 Authority citation revised 61518
594.201 (a) Note 3 revised 4206
594.316 Added 4207
594.516 Added 61518
595 Authority citation revised 61518
595.514 Added 61518
597.512 Added 61518
500—599 (Chapter V) Note 6 to Appendixes revised 40374
Appendix A revised 40375

2008

31 CFR

73 FR Page

Subtitle B
Chapter V
501 Authority citation revised 51936
501 Appendix A revised 51936
535 Authority citation revised 32651
535.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32651
536 Authority citation revised 32652
536.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32652
537 Authority citation revised 32652
537.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32652
538 Authority citation revised 32652
538.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32652
539 Authority citation revised 32652
539.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32653
540 Authority citation revised 32653
540.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32653
541 Authority citation revised 32653
541.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32653
542 Authority citation revised 32653

31 CFR—Continued

73 FR Page

Chapter V—Continued
542.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32653
545 Authority citation revised 32654
545.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32654
560 Authority citation revised 32654
560.405 Revised 66542
560.516 Revised 66542
560.532 (b) revised 66542
560.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32654
560 Appendix A amended 73789
585 Authority citation revised 32654
585.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32654
586 Authority citation revised 32654
586.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32654
587 Authority citation revised 32655
587.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32655
588 Authority citation revised 32655
588.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32655
592.301 (b) Note 4 added 29433
592.502 Added 29434
593 Authority citation revised 32655
593.701 (a)(1), (2) and (b) revised 32655
594 Authority citation revised 32656
594.506 (a)(4) revised; (a)(5) redesignated as (a)(6); new (a)(5) added 78632
594.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32656
595 Authority citation revised 32656
595.506 Revised 78632
595.701 (a) introductory text amended; (a)(1), (2) and (b) revised 32656
597.505 (e) and (f) redesignated as (f) and (g); new (e) added 78633
500—599 Note 6 to Appendixes revised 37536
Appendix A revised 37537

Chapter VIII
Chapter VIII Heading revised 70716
800 Authority citation revised 15079

31 CFR—Continued

73 FR Page

Chapter VIII—Continued
Revised 70716
800.504 (b) revised 15079

Chapter IX
901.9 (f) revised; (g) amended; interim 12274

2009

31 CFR

74 FR Page

Chapter V
501 Appendix A revised 57601
515 Authority citation revised 46003
515.337 Added 46003
515.338 Added 46003
515.339 Added 46003
515.411 Removed 46004
515.418 Removed 46004
515.505 Heading, (a) note, (b), (b) note, (c) and (e)(2) revised; (a) amended 46004
515.533 (e) redesignated as (g); heading, (a) introductory text, (b) note and new (g) revised; new (e) and (f) added 46004
515.542 Revised 46005
515.545 (a) removed; (b) and (c) redesignated as new (a) and (b) 46006
515.560 (a)(1), (4), (12), (c)(1), (2), (4)(i) and (d) revised; (f) removed; (g) redesignated as new (f) 46006
515.561 Revised 46006
515.564 (a)(1) heading, (2) heading and (3) added 46006
515.570 Revised 46006
515.572 (a)(3) revised; (a)(3) note added 46007
538 Authority citation revised 46362
538.212 (g)(2) note revised 46363
538.405 (d) revised 46363
538.515 Revised 27434
538.523 (a), (b) and (c) introductory text revised 46363
Revised; interim 61032
538.525 (a) introductory text and (b) revised 46363
Revised; interim 61033
538.526 (a), (b) introductory text and (2) revised 46364
Revised; interim 61033
543 Added 16764
Heading revised 35802
544 Added 16773
546 Added 25432

31 CFR—Continued

74 FR Page

Chapter V—Continued
547 Added 25441
560 Authority citation revised 61034
560.320 Revised 36398
560.517 (a) introductory text and (b) introductory text revised 36398
560.530 Revised; interim 61034
560.532 Heading and (c) revised 36398
Revised; interim 61035
560.533 (c) revised 36398
Revised; interim 61035
560.534 (d) and (e)(2) revised 36398
560.535 (d) revised 36398
594.317 Added 61037
596.201 Revised 23112
500—599 (Chapter V) Notes 6 and 7 to Appendixes redesignated as Notes 7 and 8; new Note 6 to Appendixes added; Appendix A revised 29743

2010

31 CFR

75 FR Page

Chapter V
510 Added 67913
515 Authority citation revised 10997, 10999
515.533 (a)(2)(i) revised 10997
515.578 Added 10999
538 Authority citation revised 10999
538.533 Added 10999
548 Added 5503
Authority citation revised 73959
548.509 (a) revised 73959
549 Added 44909
551 Added 24395
560 Authority citation revised 11000, 59613
Determination 48562
560.534 Removed 59613
560.535 Removed 59613
560.540 Added 11000
560 Appendix A revised 34631
561 Added 49838
575 Removed 55463
576 Added 55466
594.506 (a) introductory text revised; (b) and (c) redesignated as (c) and (d); new (b) added 75906
594.517 Added 75906
595.506 (a) introductory text revised; (b) and (c) redesignated as (c) and (d); new (b) added 75907
595.515 Added 75907

31 CFR—Continued

75 FR Page

Chapter V—Continued
597.505 Introductory text revised; note added 75909
597.513 Added 75909
500—599 (Ch. V) Note 7 to Appendixes and Appendix A revised 38213

Chapter X
Chapter X Established 65812

2011

(Regulations published from January 1, 2011, through July 1, 2011)

31 CFR

76 FR Page

Chapter V
500 Removed 35740
501.807 Heading revised 38535
505 Removed 35740
510 Authority citation revised 35741
510.201 (a) Note 1 redesignated as (a) Note; section Notes 1, 2 and 3 redesignated as (b) Notes 1 and 2 and section Note; (c) added 35741
(b) Notes 1 and 2 revised 38535
510.302 (b) and (c) revised; (d) added 35741
510.501 Added 35741
510.801 Added 35741
510.802 Revised 35741
510 Appendix C added 35741
515 Authority citation revised 5074
515.306 Note revised 38535
515.505 Heading and (b) revised; (d) and (e) redesignated as (e) and (f); new (d) and (f)(4) added 5074
515.560 (a)(5), (6), (7), (c)(4)(i), (ii) and (f) revised; (d)(3) added 5074
515.563 (b) revised 5075
515.565 Revised 5075
515.566 Revised 5076
515.567 Heading and (b) revised 5076
515.570 Revised 5076
515.571 (a)(5)(i) and note revised 5077
515.577 (a) introductory text revised 5077
536.312 Note revised 38536
536.408 (a) revised 38536
537.201 (a) Note removed; (a) Notes 1, 2 and 3 added 38536
538.305 Note revised 38536
541.201 (a) Note removed; (a) Notes 1, 2 and 3 added 38537

31 CFR—Continued

76 FR Page

Chapter V—Continued

542.201 (a) Note removed; (a) Notes 1, 2 and 3 added 38537
543.201 (a) Note removed; (a) Notes 1, 2 and 3 added 38537
544.201 (a) Note removed; (a) Notes 1, 2 and 3 added 38537
545 Removed 31471
546.201 (a) Notes 1 and 2 revised 38538
547.201 (a) Notes 1 and 2 revised 38538
548.201 (a) Notes 1 and 2 revised 38538
548.509 Removed 5483
549.201 (a) Notes 1 and 2 revised 38538
551.201 Notes 1 and 2 revised 38539
560 Appendix A revised 38539
561.201 (a)(5) Note revised 38542
561.202 Note 1 revised 38542
561.405 Revised 38542
562 Added 7695
562.201 Notes 1 and 2 revised 38543
570 Added 38562
576.201 (a) Notes 1 and 2 revised 38543
576.512 (b) revised 38543
585 Removed 38002
586 Removed 38002
587 Removed 38002
588 Revised 38004
588.201 (a) Notes 1 and 2 revised 38543
593.201 (a) Note removed; (a) Notes 1, 2 and 3 added 38544
594.201 (a) Notes 2 and 3 and section Note 1 revised 38544
595.311 Note revised 38544
597.301 Note revised 38544
598.314 Note removed; Notes 1, 2 and 3 added 38545
598.408 (a) revised 38545

31 CFR—Continued

76 FR Page

Chapter V—Continued

500—599 Note to Appendices removed; Appendix A revised 38545
Appendix B removed 38546

Chapter X

1010.350 Revised 10245
(d) correctly revised 37000
1020 Authority citation added 10516
1020.320 (d) amended; (e) and (f) revised; (g) added 10517
1021 Authority citation added 10517
1021.320 (d) amended; (f) and (g) redesignated as (g) and (h); new (f) added; (e) and new (g) revised 10517
1022 Authority citation revised 10518
1022.320 (c) amended; (e) and (f) redesignated as (f) and (g); new (e) added; (d) and new (f) revised 10518
1023 Authority citation added 10519
1023.320 (d) amended; (e), (f) and (g) revised 10519
1024 Authority citation added 10519
1024.320 (c) amended; (d), (e) and (f) revised 10519
1025 Authority citation added 10520
1025.320 (d) amended; (f), (g) and (h) redesignated as (g), (h) and (i); new (f) added; (e) and new (g) revised 10520
1026 Authority citation added 10521
1026.311 Added 10521
1026.312 Added 10521
1026.313 Added 10521
1026.314 Added 10521
1026.320 (d) amended; (e), (f) and (g) revised 10521
1027 Authority citation added 10522
1028 Authority citation added 10522