

DEVELOPMENTS CONCERNING NATIONAL
EMERGENCY WITH BURMA

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A REPORT ON DEVELOPMENTS CONCERNING THE NATIONAL
EMERGENCY WITH RESPECT TO BURMA THAT WAS DECLARED
IN EXECUTIVE ORDER 13047 OF MAY 20, 1997, PURSUANT TO
50 U.S.C. 1703(c)



DECEMBER 17, 1998.—Referred to the Committee on International
Relations and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

THE WHITE HOUSE,
Washington, November 23, 1998.

Hon. NEWT GINGRICH,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I hereby report to the Congress on developments concerning the national emergency with respect to Burma that I declared in Executive Order 13047 of May 20, 1997, pursuant to section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, Public Law 104-208 (the "Act"), and the International Emergency Economic Powers Act (IEEPA). This report is submitted pursuant to section 204(c) of IEEPA, 50 U.S.C. 1703(c) and section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c). This report discusses only matters concerning the national emergency with respect to Burma that was declared in Executive Order 13047.

1. On May 20, 1997, I issued Executive Order 13047 (62 Fed. Reg. 28301, May 22, 1997), effective on May 21, 1997, to declare a national emergency with respect to Burma and to prohibit new investment in Burma by United States persons, except to the extent provided in regulations, orders, directives, or licenses that may be issued in conformity with section 570 of the Act. The order also prohibits any approval or other facilitation by a United States person, wherever located, of a transaction by a foreign person where the transaction would constitute new investment in Burma prohibited by the order if engaged in by a United States person or within the United States. This action was taken in response to the large-scale repression of the democratic opposition by the Government of Burma since September 30, 1996. A copy of the order was transmitted to the Congress on May 20, 1997.

By its terms, Executive Order 13047 does not prohibit the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology, except: (1) where the entry into such contract on or after May 21, 1997, is for the general supervision and guarantee of another person's performance of a contract for the economic development of resources located in Burma; or (2) where such contract provides for payment, in whole or in part, in (i) shares of ownership, including an equity interest, in the economic development of resources located in Burma; or (ii) participation in royalties, earnings, or profits in the economic development of resources located in Burma.

2. On May 21, 1998, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued the Burmese Sanctions Regulations (the "Regulations"), 31 C.F.R. Part 537, to implement the prohibitions of Executive Order 13047 (63 Fed. Reg. 27846, May 21, 1998). The Regulations apply to United States persons, defined to include U.S. citizens and permanent resident aliens wherever they

are located, entities organized under U.S. law (including their foreign branches), and entities and individuals actually located in the United States. The sanctions do not apply directly to foreign subsidiaries of U.S. firms, although foreign firms' activities may be affected by the restriction on United States persons' facilitation of a foreign person's investment transactions in Burma. A copy of the Regulations is attached to this report.

The term "new investment" means any of the following activities, if such an 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: (a) the entry into a contract that includes the economic development of resources located in Burma; (b) 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; (c) the purchase of a share of ownership, including an equity interest, in the economic development of resources located in Burma; or (d) 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 participation.

3. Since the issuance of Executive Order 13047 on May 20, 1997, OFAC, acting under authority delegated by the Secretary of the Treasury, has implemented sanctions against Burma as imposed by the order. OFAC has issued several determinations with respect to transactions provided for by agreements and/or rights pursuant to contracts entered into by United States persons prior to May 21, 1997. One license was issued to authorize a United States person's disinvestment in Burma, since this transaction facilitated a foreign person's investment in Burma.

On May 21, 1997, OFAC disseminated details of this program to the financial, securities, and international trade communities by both electronic and conventional media. This included posting notices on the Internet and on ten computer bulletin boards and two fax-on-demand services, and providing the material to the U.S. Embassy in Rangoon for distribution to U.S. companies operating in Burma.

In addition, in early July 1997, OFAC sent notification letters to approximately 50 U.S. firms with operations in or ties to Burma informing them of the restrictions on new investment. The letters included copies of Executive Order 13047, provided clarification of several technical issues, and urged firms to contact OFAC if they had specific questions on the application of the Executive order to their particular circumstances.

4. The expenses incurred by the Federal Government in the 6-month period from May 20 through November 19, 1998, that are directly attributable to the exercise of powers and authorities conferred by the declaration of a national emergency with respect to Burma are estimated at approximately \$300,000, most of which represent wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in the Office of Foreign Assets Control, the Office of the Under Secretary for Enforcement, and the Office of the General

Counsel), and the Department of State (particularly the Bureau of Economic and Business Affairs, the Bureau of East Asian and Pacific Affairs, and the Office of the Legal Adviser).

5. The situation reviewed above continues to present an extraordinary and unusual threat to the national security and foreign policy of the United States. The declaration of the national emergency with respect to Burma contained in Executive Order 13047 in response to the large-scale repression of the democratic opposition by the Government of Burma since September 30, 1996, reflected the belief that it is in the national security and foreign policy interests of the United States to seek an end to abuses of human rights in Burma, to support efforts to achieve democratic reform that would promote regional peace and stability, and to urge effective counter-narcotics policies.

In the past 6 months the State Law and Order Restoration Council (SLORC), recently renamed the State Peace and Development Council, has shown no sign of willingness to cede its hold on absolute power. Since refusing to recognize the results of the free and fair 1990 elections in which the National League for Democracy won a vast majority of both the popular vote and the parliamentary seats, the ruling junta has continued to refuse to negotiate with pro-democracy forces and ethnic groups for a genuine political settlement to allow a return to the rule of law and respect for basic human rights. Burma has taken limited but insufficient steps to counter narcotic production and trafficking.

The net effect of U.S. and international measures to pressure the SLORC to end its repression and move toward democratic government has been a further decline in investor confidence in Burma and deeper stagnation of the Burmese economy. Observers agree that the Burmese economy appears to be weakening further and the government has a serious shortage of foreign exchange reserves with which to pay for imports. While Burma's economic crisis is largely a result of the SLORC's own heavy-handed mismanagement, the SLORC is unlikely to find a way out of the crisis unless political developments permit an easing of international pressure. I shall continue to exercise the powers at my disposal to deal with these problems and will report periodically to the Congress on significant developments.

Sincerely,

WILLIAM J. CLINTON.

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Background

On May 20, 1997, the President issued Executive Order 13047 (the "Order"), effective at 12:01 a.m. EDT on May 21, 1997, certifying to Congress under section 570(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, (Public Law 104-208) (the "Act") that the Government of Burma has committed large-scale repression of the Democratic opposition in Burma after September 30, 1996, thereby invoking the prohibition on new investment in Burma by U.S. persons, contained in that section. The President also declared a national emergency to deal with the threat posed to the national security and foreign policy of the United States by the actions and policies of the Government of Burma, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706). The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the Order. In implementation of the Order, the Treasury Department is issuing the

Burmese Sanctions Regulations, 31 CFR part 537 (the "Regulations").

Section 537.201 of the Regulations implements section 1 of the Order, and prohibits new investment in Burma by U.S. persons. The term *new investment*, defined in section 4(d) of the Order, means any of the following activities, if such an 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;
- (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.

Section 537.202 of the Regulations implements section 2(a) of the Order and prohibits any approval or other facilitation by a United States person, wherever located, of a transaction by a foreign person where the transaction would constitute prohibited new investment in Burma if engaged in by a United States person or within the United States.

Section 537.203 of the Regulations implements section 2(b) of the Order and prohibits any transaction by a U.S. person or within the United States that evades or avoids, or that has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Order.

The prohibitions contained in these sections are subject to the exemption contained in section 3 of the Order, implemented in § 537.204 of the Regulations, which excludes from the new investment and facilitation prohibitions the entry into or performance or financing of a contract to sell or purchase goods, services, or technology. This exemption, however, does not apply where the entry into such a contract on or after the effective date of the Order is for the general supervision and guarantee of another person's performance of a contract for the economic development of resources located in Burma; or where such

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 537

Burmese Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is issuing the Burmese Sanctions Regulations to implement Executive Order 13047 of May 20, 1997, "Prohibiting New Investment in Burma."

EFFECTIVE DATE: May 21, 1998.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing, tel.: 202/622-2480, or William B. Hoffman, Chief Counsel, tel.: 202/622-2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin*

contract provides for payment, in whole or in part, in: (1) shares of ownership, including an equity interest, in the economic development of resources located in Burma; or (2) participation in royalties, earnings or profits in the economic development of resources located in Burma. Section 537.301 indicates that the term *economic development of resources located in Burma* shall not be construed to include not-for-profit educational, health, or other humanitarian programs or activities. See § 537.301.

Transactions otherwise prohibited under § 537.201 may not be authorized unless the President, or the President's duly authorized designee, exercises waiver authority provided in section 570(e) of the Act, upon a determination and certification to Congress that application of the waived sanction would be contrary to the national security interests of the United States. Transactions otherwise prohibited under §§ 537.202 and 537.203 but found to be consistent with U.S. policy may be authorized by a general license contained in subpart E of this part or by a specific license issued pursuant to the procedures described in subpart C of 31 CFR part 501. Civil and criminal penalties for violation of the Regulations are described in subpart G.

Since the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply.

Paperwork Reduction Act

As authorized in the APA, the Regulations are being issued without prior notice and public comment procedure. The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget ("OMB") under control number 1505-0164. An adjustment to the approved burden hours to reflect the additional burden imposed in administering the Regulations has been filed with OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the

collection of information displays a valid control number.

List of Subjects in 31 CFR Part 537

Administrative practice and procedure, Burma, Penalties, New investment, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 537 is added to read as follows:

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 new investment by U.S. persons.
537.202 Prohibited approval or other facilitation by a U.S. person of a foreign person's investment.
537.203 Evasions; attempts; conspiracies.
537.204 Exempt transactions.

Subpart C—General Definitions

537.301 Economic development of resources located in Burma.
537.302 Effective date.
537.303 Entity.
537.304 Foreign person.
537.305 General license.
537.306 Government of Burma.
537.307 License.
537.308 New investment.
537.309 Nongovernmental entity in Burma.
537.310 Person.
537.311 Resources located in Burma.
537.312 Specific license.
537.313 United States.
537.314 United States person; U.S. person.

Subpart D—Interpretations

537.401 Reference to amended sections.
537.402 Effect of amendment.
537.403 Economic development of resources located in Burma.
537.404 Purchase of shares in economic development projects in Burma.
537.405 Investment in entities involved in economic development projects in Burma.
537.406 General supervision and guarantee.
537.407 Activities under pre-May 21, 1997 agreements.
537.408 Sale or purchase of goods, services or technology.
537.409 Approval or other facilitation of a foreign person's investment.

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 and authorizations.
537.504 Divestiture of U.S. person's equity investment in Burma.

Subpart F—Reports

537.601 Recordkeeping and reporting requirements.

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 action; 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; sec. 570, Pub. L. 104-208, 110 stat. 3009-166; E.O. 13047, 61 FR 28301, 3 CFR, Comp., p. 202.

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

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

(a) This part is separate from, and independent of, the other parts of this chapter. 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.

(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

§ 537.201 Prohibited new investment by U.S. persons.

Except to the extent provided in regulations, orders, directives, or licenses that may be issued in conformity with section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104-208) (the "Act"), new investment in Burma by United States persons is prohibited.

Note to § 537.201: Section 570 of the Act 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.

§ 537.202 Prohibited approval or other facilitation by a U.S. person of a foreign person's investment.

Except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this part, any approval or other facilitation by a United States person, wherever located, of a transaction by a foreign person where the transaction would constitute prohibited new investment in Burma under this part if engaged in by a United States person or within the United States is prohibited.

§ 537.203 Evasions; attempts; conspiracies.

Except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this part, any transaction by a 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.

§ 537.204 Exempt transactions.

Nothing in this part shall be construed to prohibit the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology, except:

(a) Where the entry into such a contract on or after the effective date is for the general supervision and guarantee of another person's performance of a contract for the economic development of resources located in Burma; or

(b) Where such contract provides for payment, in whole or in part, in:

(1) Shares of ownership, including an equity interest, in the economic development of resources located in Burma; or

(2) Participation in royalties, earnings, or profits in the economic development of resources located in Burma.

Note to § 537.204: The term *economic development of resources located in Burma* is defined in § 537.301 to exclude not-for-profit educational, health or other humanitarian programs or activities.

Subpart C—General Definitions

§ 537.301 Economic development of resources located in Burma.

The term *economic development of resources located in Burma* shall not be construed to include not-for-profit educational, health, or other humanitarian programs or activities.

§ 537.302 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, May 21, 1997.

§ 537.303 Entity.

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

§ 537.304 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.

§ 537.305 General license.

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

§ 537.306 Government of Burma.

The term *Government of Burma* includes:

(a) The state and the Government of Burma, as well as any political subdivision, agency, or instrumentality thereof;

(b) Any entity owned or controlled directly or indirectly by the foregoing.

§ 537.307 License.

Except as otherwise specified, the term *license* means any license or authorization contained in this part, or issued pursuant to the authority of this part or in subpart C of part 501 of this chapter.

§ 537.308 New investment.

The term *new investment* means any of the following activities, if such an 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 the effective date:

(a) The entry into a contract that includes the economic development of resources located in Burma;

(b) 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;

(c) The purchase of a share of ownership, including an equity interest, in the economic development of resources located in Burma; or

(d) 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.

§ 537.309 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.

§ 537.310 Person.

The term *person* means an individual or entity.

§ 537.311 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.

§ 537.312 Specific license.

The term *specific license* means any license or authorization not set forth in this part but issued pursuant to the authority of this part.

§ 537.313 United States.

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

§ 537.314 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 (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 537.401 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.

§ 537.402 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.

§ 537.403 Economic development of resources located in Burma.

The term *economic development of resources located in Burma* refers to 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. Examples include contracts conferring rights to explore for, develop, extract, or refine petroleum, natural gas, or minerals in the ground in Burma; contracts to take over a mining operation in Burma; acquire a forest or agricultural area and exploit the timber or other crops; or acquire land and construct and run a hotel or factory on it. The term *economic development of resources located in Burma* is defined in § 537.301 specifically to exclude contracts for not-for-profit educational, health or other humanitarian programs or activities. See also § 537.204 for the exception that applies to the entry into, performance of, or financing of a contract to sell or purchase goods, services or technology.

§ 537.404 Purchase of shares in economic development projects in Burma.

The purchase of shares, including an equity interest, in the economic development of resources located in Burma, is prohibited when those shares are purchased after the effective date directly or indirectly from the Government of Burma or a nongovernmental entity in Burma, unless purchased pursuant to an agreement entered into prior to May 21, 1997. U.S. persons may purchase debt instruments issued by the Government of Burma or a nongovernmental entity in Burma, directly or indirectly, provided that such instruments are not convertible into equity, and do not provide for participation, including as collateral or security, in royalties, earnings, or profits in the economic development of resources located in Burma.

§ 537.405 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 § 537.201 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 exclusively or predominantly in the economic development of resources located in Burma or subsequently derives its income exclusively or predominantly from such economic development, the United States person is not required to relinquish its shares, but may not purchase additional shares. Divestment of the shares in such an entity to a foreign person — constituting the facilitation of that foreign person's investment in Burma — is authorized under general license pursuant to § 537.504.

§ 537.406 General supervision and guarantee.

Section 537.201 prohibits the entry by a U.S. person 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, if the U.S. person's contract is entered into on or after the effective date, unless undertaken pursuant to, or in exercise of rights under, a pre-effective date agreement. For the purposes of § 537.201, only the entry into contracts for supervision and guarantee at the top 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, will be considered new investment in Burma. By contrast, subcontracts to provide goods, services, or technology to a prime contractor or general manager of a development project are exempt from the prohibitions of this part pursuant to § 537.204 unless:

(a) The functional scope of the subcontractor's obligations is substantially similar to that of a prime contractor's or general manager's obligations; or

(b) The consideration for such subcontracts includes a share of ownership in, or participation in the royalties, earnings or profits of, the economic development of resources located in Burma.

§ 537.407 Activities under pre-May 21, 1997 agreements.

(a) Activities undertaken by a U.S. person pursuant to an agreement entered into prior to May 21, 1997, between the U.S. person and the Government of Burma or a nongovernmental entity in Burma are

not prohibited new investments, as defined in § 537.308.

(b) A U.S. person who is a party to a pre-effective date agreement for the development of economic resources located in Burma may enter into subsequent agreements with foreign persons where such agreements are pursuant to, or in exercise of rights under, the pre-effective date agreement. The facilitation of foreign persons' investment in Burma under these circumstances is authorized pursuant to the general license contained in § 537.504.

(c) A U.S. person may not enter into a contract for the economic development of resources located in Burma after May 21, 1997, if pursuant to, or in exercise of rights under, a pre-effective date agreement, unless the contractual arrangement is specifically contemplated in the pre-effective date agreement.

(d) The exercise of rights under pre-effective date agreements 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-effective date agreement, and the degree to which the party wishing to renew can enforce its decision to exercise the option.

§ 537.408 Sale or purchase of goods, services or technology.

(a) Section 537.204 exempts from any prohibition under this part the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology, except:

(1) Where the entry into a contract on or after the effective date is for the general supervision and guarantee of another person's performance of a contract for the economic development of resources located in Burma; or

(2) Where such contract provides for payment, in whole or in part, in:

(i) Shares of ownership, including an equity interest, in the economic development of resources located in Burma; or

(ii) Participation in royalties, earnings, or profits in the economic development of resources located in Burma.

(b) *Examples:* The following examples are based upon the assumption that neither § 537.204(a) nor § 537.204(b) applies.

(1) A U.S. person may market goods or services in Burma through a sales representative or sales agent, or through a U.S. person or subsidiary established and operating in Burma before May 21, 1997, or through any established foreign (including Burmese) distributorship.

The U.S. person may not, however, establish and operate a new business, branch, office or showroom in Burma to market such goods or services or facilitate the establishment of a new foreign entity to do so. This would constitute the development of a commercial resource.

(2) A U.S. person may rent, lease or purchase space in existing buildings in connection with the continued operation of a business in operation prior to the effective date. It may change locations, modify and renovate existing space and upgrade machinery or equipment. Unless pursuant to a pre-effective date agreement or the exercise of specific rights under such agreement, however, the U.S. person may not expand its business operations by opening additional stores, branches, offices or showrooms beyond the number that were in existence immediately prior to May 21, 1997. The U.S. person may not construct a new commercial building to house its business as this would constitute the economic development of land and commercial resources in Burma.

(3) A U.S. person involved in exempt activities may hire and train Burmese employees to carry out such activities. The employment of personnel in Burma under these circumstances is considered the purchase of employment services which is exempt from prohibition under § 537.204. Any training incidental to the performance of the employee's services is likewise exempt. For example, a U.S. person engaged in the sale of copy machines may hire and train a Burmese employee to carry out activities pursuant to such sales, including office support personnel, personnel to provide after-sale service and maintenance in accordance with the terms of a purchase or lease agreement, sales representatives and supervisory personnel. A U.S. person may not, however, open a business after the effective date, the purpose of which is the sale of vocational skills training in the maintenance of copy machines, as this would constitute the economic development of human resources in Burma.

(4) Contracts for the purchase or sale of services incident to the registration and renewal of patents, trademarks and copyrights are not prohibited by this part.

(5) A U.S. bank is allowed to provide trade financing as a service either to the Government of Burma or to nongovernmental entities in Burma, but cannot provide them loans earmarked for economic development of resources in Burma if loan repayment is secured by the project. A U.S. bank can provide

development project financing as a service, so long as the financing instruments are not convertible into equity, and do not provide for participation, including as collateral or security, in royalties, earnings, or profits in the economic development of resources located in Burma.

§ 537.406 Approval or other facilitation of a foreign person's investment.

(a) The prohibition contained in § 537.202 against approval or other facilitation of a foreign person's investment in Burma bars any action by a U.S. person that assists or supports a foreign person's activity that would constitute prohibited new investment under § 537.201 if engaged in by a U.S. person. This facilitation prohibition is subject to the exemption for trade in goods, services and technology set forth in § 537.204.

(b) *Examples:* (1) A U.S. corporation is prohibited from brokering, financing, guaranteeing, or approving the entry by any foreign person, including a foreign affiliate, into a contract for the development of, e.g., a natural gas field, a tourist hotel complex, or a rubber plantation in Burma, unless pursuant to the affiliate's exercise of rights under an agreement entered into prior to the effective date. An independent U.S. contractor, however, may perform brokerage, financing, or guarantee services if under a service contract meeting the conditions of § 537.204.

(2) 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-effective date agreement. Such a sale, however, is authorized by general license under § 537.504.

(3) A U.S. national or permanent resident alien employed in Burma or in a third country by a foreign person may participate in any decision-making role in an activity by the foreign person that includes economic development of resources located in Burma as exempt employment services pursuant to § 537.204, unless such services are undertaken pursuant to a post-effective date agreement between the foreign person and the Government of Burma or a nongovernmental entity in Burma and:

- (i) involve the general supervision and guarantee of the foreign person's performance of a contract for the economic development of resources located in Burma, or
- (ii) where the individual U.S. person's compensation is provided for, in whole or in part, from shares of ownership in the development project or participation

in royalties, earnings, or profits in the development project.

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

§ 537.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see subpart C of part 501 of this chapter.

§ 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, 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.

§ 537.503 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.

§ 537.504 Divestiture of U.S. person's equity investment in Burma.

Notwithstanding the prohibition in § 537.202 against the facilitation by a

U.S. person of a foreign person's investment, all transactions 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 transactions valued at more than \$10,000 are required, within 10 business days after the agreement is signed, 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.

Note to § 537.504: This authorization includes arrangements by U.S. persons with pre-effective date investments in Burma to "farm in" or sell a stake in the investment to a foreign person. For purposes of this section, the term *farm-in arrangement* is defined to mean the sale of an equity interest in an investment in the economic development of resources located in Burma.

Subpart F—Reports

§ 537.601 Recordkeeping and reporting requirements.

For provisions relating to records and reports, see subpart B of part 501 of this chapter.

Subpart G—Penalties

§ 537.701 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. Section 206 of the Act, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty of not to exceed \$11,000 per violation may be imposed on any person who violates any license, order, or regulation issued under the Act;

(2) Whoever willfully violates any license, order, or regulation issued under the 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 knowingly participates in such violation may be punished by a like fine, imprisonment or both.

(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 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.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 537.702 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 respond.* The prepenalty notice also shall inform the respondent of respondent's 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.

§ 537.703 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 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 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 to 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 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.

§ 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 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 the prepenalty notice, 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 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 collection and

reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

§ 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 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

§ 537.801 Procedures.

For provisions relating to procedures, see subpart C of part 501 of this chapter.

§ 537.802 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 13047 or any further executive orders relating to the national emergency declared in Executive Order 13047 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 under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures pursuant to statements of licensing policy, and to other procedures, see § 501.901 of this chapter.

Dated April 21, 1998

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved May 11, 1998

James E. Johnson,

Assistant Secretary (Enforcement),

Department of the Treasury.

[FR Doc. 98-13477 Filed 5-18-98; 9:52 am]

BILLING CODE 4810-25-F