

**§ 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 the excluded food items specified in paragraph (a)(3)(iii) of this section, agricultural commodities that do not fall within the definition of *food* set forth in paragraph (a)(3)(ii) of this section, food (as defined in paragraph (a)(3)(ii) of this section) intended for military or law enforcement purchasers or importers, 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 any of the foregoing, shall only be made pursuant to a one-year specific license issued by the 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 devices 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 its or 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), medicine, and medical devices to any individual or entity in the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to any of the foregoing, 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, shipping of the goods, receipt of payment, and the entry into contracts (including executory contracts), are hereby authorized, 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, and

provided that such activities or transactions relating to the exportation or reexportation of the excluded food items specified in paragraph (a)(3)(iii) of this section, agricultural commodities that do not fall within the definition of *food* set forth in paragraph (a)(3)(ii) of this section, food (as defined in paragraph (a)(3)(ii) of this section) intended for military or law enforcement purchasers or importers, medicine, and medical devices 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. The transshipment of agricultural commodities that fall within the definition of *food* set forth in paragraph (a)(3)(ii) of this section, other than the excluded food items specified in paragraph (a)(3)(iii) of this section and other than food intended for military or law enforcement purchasers or importers, through an area of Sudan other than the Specified Areas of Sudan destined for the Specified Areas of Sudan also is authorized by this general license. Nothing in this general license authorizes the transshipment of the excluded food items specified in paragraph (a)(3)(iii) of this section, agricultural commodities that do not fall within the definition of *food* set forth in paragraph (a)(3)(ii) of this section, food (as defined in paragraph (a)(3)(ii) of this section) intended for military or law enforcement purchasers or importers, medicine, and medical devices through an area of Sudan other than the Specified Areas of Sudan destined for the Specified Areas of Sudan. See § 538.417.

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.

(3)(i) *General license for the exportation or reexportation of food.* Except as provided in paragraphs (a)(3)(iii) and (a)(3)(iv) of this section, the exportation or reexportation of food (includ-

ing bulk agricultural commodities listed in appendix A to this part) 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 any of the foregoing, 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, shipping of the goods, receipt of payment, and the entry into contracts (including executory contracts), are hereby authorized, 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.

(ii) *Definition of food.* For purposes of this general license, the term *food* means items that are intended to be consumed by and provide nutrition to humans or animals in Sudan, including vitamins and minerals, food additives and supplements, and bottled drinking water, and seeds that germinate into items that are intended to be consumed by and provide nutrition to humans or animals in Sudan. For purposes of this general license, the term *food* does not include alcoholic beverages, cigarettes, gum, or fertilizer.

(iii) *Excluded food items.* Paragraph (a)(3)(i) of this section does not authorize the exportation or reexportation of the following food items: castor beans, castor bean seeds, raw eggs, fertilized eggs (other than fish and shrimp roe), dried egg albumin, live animals, Rosary/Jequirity peas, non-food-grade gelatin powder, and peptones and their derivatives.

(iv) *Excluded persons.* Paragraph (a)(3)(i) of this section does not authorize the exportation or reexportation of food to military or law enforcement purchasers or importers.

NOTE 1 TO § 538.523(a)(3): 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 on October 12, 2011, the Office of Foreign Assets Control will determine whether to revoke this general license. Unless revoked, the general license will remain in effect.

## § 538.523

## 31 CFR Ch. V (7–1–13 Edition)

NOTE 2 TO § 538.523(a)(3): See § 538.418 for additional requirements with respect to financial transactions in Sudan.

(b) *General license for arrangement of exportation or reexportation of covered products.* (1) With respect to sales pursuant to paragraph (a)(1) of this section, the making of shipping arrangements, cargo inspection, obtaining of insurance, and arrangement of financing (consistent with § 538.525) for the exportation or reexportation of the excluded food items specified in paragraph (a)(3)(iii) of this section, agricultural commodities that do not fall within the definition of *food* set forth in paragraph (a)(3)(ii) of this section, food (as defined in paragraph (a)(3)(ii) of this section) intended for military or law enforcement purchasers or importers, 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 any of the foregoing, are authorized.

(2) 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 the excluded food items specified in paragraph (a)(3)(iii) of this section, agricultural commodities that do not fall within the definition of *food* set forth in paragraph (a)(3)(ii) of this section, food (as defined in paragraph (a)(3)(ii) of this section) intended for military or law enforcement purchasers or importers, 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 any of the foregoing, is authorized, provided that the 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 ex-

porter 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/tradesanctionsreformelexportenhancementact.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. non-proliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

(5) Nothing in this section authorizes any transaction or dealing with a person whose property and interests in property are blocked under, or who is designated or otherwise subject to any sanction under, the terrorism, proliferation of weapons of mass destruction, or narcotics trafficking programs administered by OFAC, 31 CFR parts 536, 544, 594, 595, 597, and 598, or with any foreign organization, group, or person subject to any restriction for its

involvement in weapons of mass destruction or missile proliferation, or involving property blocked pursuant to this chapter or any other activity prohibited by this chapter not otherwise authorized in or pursuant to 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 part, 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 part, 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 part, 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).

(f) *Excluded items.* For the purposes of this part, agricultural commodities do not include furniture made from wood; clothing manufactured from plant or animal materials; agricultural equipment (whether hand tools or motorized equipment); pesticides, insecticides, or herbicides; or cosmetics (unless derived entirely from plant materials).

[74 FR 61032, Nov. 23, 2009, as amended at 76 FR 63194, Oct. 12, 2011]

**§ 538.524 [Reserved]**

**§ 538.525 Payment for and financing of commercial sales of certain agricultural commodities, medicine, and medical devices.**

(a) *General license for payment terms.* The following payment terms for sales, pursuant to § 538.523(a)(1), of the excluded food items specified in § 538.523(a)(3)(iii), agricultural commodities that do not fall within the definition of *food* set forth in § 538.523(a)(3)(ii), food (as defined in § 538.523(a)(3)(ii)) intended for military or law enforcement purchasers or importers, medicine, or medical devices 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 any of 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, as amended at 76 FR 63195, Oct. 12, 2011]

**§ 538.526 Brokering commercial 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 sales and exportations or reexportations by United States persons that are described in paragraphs (a)(1), (a)(2), and (a)(3) of § 538.523, provided that the sale and exportation or reexportation is authorized, as applicable, by a one-year specific license issued pursuant to paragraph (a)(1) of § 538.523 or by one of the general licenses set forth in paragraphs (a)(2) and (3) of § 538.523.

(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