

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13485 (69 FR 8098, February 23, 2004), and by adding a new airworthiness directive, Amendment 39–14033, to read as follows:

2005–07–09 General Electric Company:
Amendment 39–14033. Docket No. 2004–NE–06–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 20, 2005.

Affected ADs

(b) This AD supersedes AD 2004–04–04, Amendment 39–13485.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–8E series turbofan engines with the master variable geometry (VG) actuators, GE part number (P/N) 4120T02P02, serial number (SN) APM238AE, and SNs APM242AE and up; and Arkwin Industries, Inc. Parts Manufacturer Approval (PMA) P/N 1211508–002, SN 238AE, and SNs 242AE and up installed. The Arkwin PMA parts are also marked with P/N 4120T02P02. These engines are installed on, but not limited to, Embraer 170 series airplanes.

Unsafe Condition

(d) This AD results from the need to add to the list of affected parts, master VG actuators made by PMA holder, Arkwin Industries, Inc. We are issuing this AD to prevent dual-channel electrical signal faults in the VG master actuator, which will cause an uncommanded reduction of thrust to idle with a subsequent loss of the ability to advance thrust above idle, and which will result in a multiengine loss of thrust if dual-channel faults occur on more than one engine simultaneously.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) After the effective date of this AD, do not install master VG actuators specified in this AD onto any engine.

Initial Review

(g) Within 10 days after the effective date of this AD, initially review the airplane computer systems for fault messages, and replace actuators with faults reported by the full-authority digital electronic control (FADEC). Follow the review and replacement requirements of paragraph 3 of the Accomplishment Instructions of GE Alert Service Bulletin (ASB) No. CF34–8E–AL S/B 75–A0001, Revision 3, dated February 14, 2005. The specific review instructions depend on the version of FADEC software installed at the time of the review, as detailed in the ASB.

Repetitive Review

(h) At intervals not to exceed 10 days, repetitively review the computer systems for fault messages, and replace actuators with faults reported by the FADEC. Follow the review and replacement requirements of paragraph 3 of the Accomplishment Instructions of GE ASB No. CF34–8E–AL S/B 75–A0001, Revision 3, dated February 14, 2005. The specific review instructions depend on the version of FADEC software installed at the time of the review, as detailed in the ASB.

Optional Terminating Action

(i) As an optional terminating action to the repetitive reviews specified in this AD, replace the master VG actuator with a master VG actuator not specified in this AD.

Previous Credit

(j) Previous credit is allowed for reviews and replacements of master VG actuators performed before the effective date of this AD, using paragraph 3 of GE ASB No. CF34–8E–AL S/B 75–A0001 Revision 1, dated February 10, 2004, or Revision 2, dated December 15, 2004, or Revision 3, dated February 14, 2005.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(l) Under 39.23, the FAA imposes the following conditions and limitations on the issuance and use of Special Flight Permits for this AD:

(1) If both engines report FADEC status messages, with dispatch classification the same as an actuator LVDT fault, at the same time, whether intermittent or continuous, at least one engine must be cleared of faults before further flight, even if none of the faults are VG actuator-related.

(2) If both engines report FADEC status messages with dispatch classification the same as an actuator LVDT fault, at the same time, whether intermittent or continuous, the airplane computer systems must be reviewed for master VG actuator faults before further flight. If actuator faults are present for both engines, then at least one master VG actuator must be replaced before further flight.

(3) If intermittent status messages are posted for both engines, with the same dispatch classification as LVDT faults, and the cause cannot be found, one of the actuators must be replaced before further flight.

(4) If a master VG actuator with a single channel fault switches channels, the actuator must be replaced before further flight.

Material Incorporated by Reference

(m) You must use GE Alert Service Bulletin No. CF34–8E–AL S/B 75–A0001, Revision 3, dated February 14, 2005, to perform the reviews and actuator dispositions required by this AD. You can get a copy from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Related Information

(n) None.

Issued in Burlington, Massachusetts, on March 25, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–6343 Filed 4–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****31 CFR Part 542****Syrian 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 adding new part 542 to chapter V of 31 CFR to carry out the purposes of Executive Order 13338 of May 11, 2004, “Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria.”

DATES: *Effective Date:* March 31, 2005.

FOR FURTHER INFORMATION CONTACT: Chief of Policy Planning and Program Management, tel. 202/622–4855, Chief of Licensing, tel.: 202/622–2480, Chief of Compliance, tel. 202/622–2490, or Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury,

Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This file is available for download without charge in ASCII and Adobe Acrobat readable (*.PDF) formats at GPO Access. GPO Access supports HTTP, FTP, and Telnet at fedbbs.access.gpo.gov. It may also be accessed by modem dialup at 202/512-1387 followed by typing "/GO/FAC." Paper copies of this document can be obtained by calling the Government Printing Office at 202/512-1530. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: <http://www.treas.gov/ofac>, or via FTP at [ofacftp.treas.gov](ftp://ofacftp.treas.gov). Facsimiles of information are available through the Office's 24-hour fax-on-demand service: call 202/622-0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On May 11, 2004, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA") and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108-175 (the "SAA"), issued Executive Order 13338 (69 FR 26751, May 13, 2004) (the "Order"). The President found that "the actions of the Government of Syria in supporting terrorism, continuing its occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq" constituted an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and declared a national emergency to deal with that threat.

Section 9 of 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, and to employ all powers granted to the President by the IEEPA as may be necessary to carry out sections 3, 4, and 5" of the Order. (As also set forth in section 9, other Federal agencies are responsible for implementing sanctions imposed in other sections of the Order. For example, see Department of Commerce, Bureau of Industry and Security General Order Implementing

the Syria Accountability and Lebanese Sovereignty Act of 2003 (69 FR 26766, May 14, 2004) for the implementation of an export ban against Syria.)

Section 3 of the Order blocks, with certain exceptions, all property and interests in property of those persons designated by the Secretary of the Treasury, in consultation with the Secretary of State, pursuant to criteria set forth in the Order. This blocking of property and interests in property includes, but is not limited to, the prohibition of (i) 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 the Order, and (ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

Section 4 of the Order prohibits any transaction by a United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Order, as well as any conspiracy formed to violate such prohibitions. Section 5 of the Order prohibits the exportation or reexportation of donated articles to Syria and the making of such donations by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 3 of the Order.

Pursuant to section 9 of the Order, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") is promulgating the Syrian Sanctions Regulations, 31 CFR part 542 (the "Regulations").

Subpart B of the Regulations sets forth the prohibitions contained in sections 3, 4, and 5 of the Order. See §§ 542.201 and 542.205. Persons designated under section 3 of the Order are referred to throughout the Regulations as "persons whose property or interests in property are blocked pursuant to § 542.201(a)." Their names will be published on OFAC's Web site, announced in the **Federal Register**, and incorporated on an ongoing basis into Appendix A to 31 CFR chapter V, which lists persons that are the targets of various sanctions programs administered by OFAC.

Section 542.201, with certain exceptions, blocks 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, of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to meet the criteria set forth in section 3 of the Order. These criteria include directing or otherwise

significantly contributing to: (1) The Government of Syria's provision of safe haven to or other support for any persons whose property is blocked under U.S. law for terrorism-related reasons; (2) the Government of Syria's military or security presence in Lebanon; (3) the Government of Syria's pursuit of the development and production of weapons of mass destruction and medium- and long-range surface-to-surface missiles; and (4) any steps taken by the Government of Syria to undermine U.S. and international efforts with respect to the stabilization and reconstruction of Iraq. Also subject to designation are those individuals or entities owned or controlled by, or acting for or on behalf of, directly or indirectly, any person whose property or interests in property is blocked pursuant to the Order.

Sections 542.202 and 542.203 of subpart B detail the effect of transfers of blocked property in violation of the Regulations and the required holding of blocked property in interest-bearing blocked accounts, respectively. Section 542.204 of subpart B provides that all expenses incident to the maintenance of blocked physical property shall be the responsibility of the owners and operators of such property, and that such expenses shall not be met from blocked funds. The section further provides that blocked property may, in the discretion of the Director of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Section 542.205 implements the prohibitions in section 4 of the Order on any transaction that evades or avoids, has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Order, and on any conspiracy formed to violate such prohibitions.

Section 542.206 of subpart B details transactions that are exempt from the prohibitions of part 542 pursuant to sections 203(b)(1), (3) and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)). These exemptions relate to personal communications, the importation and exportation of information or informational materials, and transactions relating to travel. The President determined in section 5 of the Order that donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), *i.e.*, articles such as food, clothing, and medicine intended to relieve human suffering, would seriously impair the President's ability to deal with the declared national emergency. Accordingly, the donation of such items

is not exempt from the scope of these Regulations and is prohibited, unless authorized by OFAC or otherwise authorized by law.

Subpart C of part 542 defines key terms used throughout the Regulations and subpart D sets forth interpretations regarding the general prohibitions contained in subpart B. Transactions otherwise prohibited under part 542 but found to be consistent with U.S. policy may be authorized by one of the general licenses contained in subpart E or by a specific license issued pursuant to the procedures described in subpart D of part 501 of 31 CFR chapter V.

Subpart F of part 542 refers to subpart C of part 501 for applicable recordkeeping and reporting requirements. Subpart G describes the civil and criminal penalties applicable to violations of the Regulations, as well as the procedures governing the potential imposition of a civil monetary penalty.

Subpart H of part 542 refers to subpart D of part 501 for applicable provisions relating to administrative procedures. Subpart I of the Regulations sets forth a Paperwork Reduction Act notice.

Public Participation

Because 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. However, OFAC encourages interested persons who wish to comment to do so in writing by any of the following methods:

- Agency Web Site: <http://www.treas.gov/offices/enforcement/ofac/comment.html>.
- Fax: Chief of Records, 202/622–1657.
- Mail: Chief of Records, ATTN: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OFAC will not accept public comments in languages other than English or accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason. OFAC will return any such submission to the originator. All public comments on these Regulations will be a matter of public record. Copies of the public record concerning these Regulations will be made available not

sooner than July 5, 2005 and will be obtainable from OFAC's Web site (<http://www.treas.gov/ofac>). If that service is unavailable, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220, Attn: Chief, Records Division.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties 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 under 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 the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 542

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Penalties, Reporting and recordkeeping requirements, Securities, Services, Syria.

- For the reasons set forth in the preamble, part 542 is added to 31 CFR chapter V to read as follows:

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; E.O. 13338, 69 FR 26751, May 13, 2004.

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 to paragraph (a) of § 542.201: The names of persons whose property or interests in property are blocked pursuant to § 542.201(a) will be published on OFAC's Web site, announced in the **Federal Register**, and incorporated on an ongoing basis with the identifier [SYRIA] in appendix A to 31 CFR chapter V. Section 501.807 of this chapter V sets forth the procedures to be followed by persons seeking administrative reconsideration of their designations pursuant to § 542.201(a) or who wish to assert that the circumstances resulting in a designation no longer apply. Similarly, 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 to 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.

Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) explicitly authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The name of any individual or entity whose property or interests in property are blocked under this part pending investigation will be published as noted above with the descriptor "[BPI-SYRIA]." The scope of the blocking of property or interests in property during the pendency of an investigation may be more limited than the scope of the blocking set forth in § 542.201(a). Inquiries regarding the scope of any such blocking should be directed to OFAC's Compliance Division at 202/622-2490.

(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.

§ 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. 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 not to exceed \$11,000 per violation may be imposed on any person who violates or attempts to violate any license, order, or regulation issued under the Act;

(2) Whoever willfully violates or willfully attempts to violate any license, order, or regulation issued under the Act, upon conviction, shall be fined not more than \$50,000, and if a natural person, may also be imprisoned for not more than 10 years; 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 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.

§ 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.

Dated: February 10, 2005.

Robert W. Werner,

Director, Office of Foreign Assets Control.

Approved: February 18, 2005.

Juan C. Zarate,

*Assistant Secretary (Terrorist Financing),
Department of the Treasury.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

Threatened Marine and Anadromous Species

CFR Correction

In Title 50 of the Code of Federal Regulations, parts 200 to 599, revised as of October 1, 2004, in § 223.206, on page 176, remove paragraphs (B) *Regulated waters*, (C) *Reporting requirement*, (D) *Monitoring*, and (E) *Expedited modification of restrictions and effective dates*.

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