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Dated: November 17, 2009.

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Evaluation, Center for Veterinary Medicine.  
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**DEPARTMENT OF THE TREASURY****Office of Foreign Assets Control****31 CFR Parts 538 and 560****Sudanese Sanctions Regulations;  
Iranian Transactions Regulations****AGENCY:** Office of Foreign Assets  
Control, Treasury.**ACTION:** Interim final rule with request  
for comments.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is adopting an interim final rule which makes technical changes to certain sections of the Sudanese Sanctions Regulations and the Iranian Transactions Regulations, 31 CFR parts 538 and 560, respectively, relating to the Trade Sanctions Reform and Export Enhancement Act of 2000, as amended ("TSRA"). The preamble to this interim final rule clarifies OFAC's policy with respect to the process for issuing one-year licenses to export agricultural commodities, medicine, and medical devices to Sudan and Iran pursuant to section 906 of TSRA.

**DATES:** The interim final rule is effective November 23, 2009. Written comments may be submitted on or before January 22, 2010.

**ADDRESSES:** You may submit comments by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>.

Follow the instructions for submitting comments.

*Fax:* Attn: Request for Comments (Trade Sanctions Reform and Export Enhancement Act) (202) 622-1657

*Mail:* Attn: Request for Comments (Trade Sanctions Reform and Export Enhancement Act): Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

*Instructions:* All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. Comments received will be made available to the public via [www.regulations.gov](http://www.regulations.gov) or upon request, without change and including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

Assistant Director for Compliance, Outreach and Implementation, tel.: 202/622-2490, Assistant Director for Licensing, tel.: 202/622-2480, Assistant Director for Policy, tel.: 202/622-4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622-2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

**SUPPLEMENTARY INFORMATION:****Electronic and Facsimile Availability**

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

**Procedural Requirements**

Because the amendment of 31 CFR parts 538 and 560 involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), 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.

Although a prior notice of proposed rulemaking is not required, OFAC is soliciting comments on this interim final rule in order to consider how it might make improvements to these sections of the Sudanese Sanctions Regulations and the Iranian Transactions Regulations, 31 CFR parts 538 and 560, respectively. Comments must be submitted in writing. The addresses and deadline for submitting comments appear near the beginning of this notice. OFAC will not accept comments accompanied by a request that all or part of the submission be treated confidentially because of its business proprietary nature or for any other reason. All comments received by the deadline will be a matter of public record and will be made available to the public via regulations.gov.

**Background**

The Office of Foreign Assets Control ("OFAC") today is adopting an interim final rule which makes technical changes to certain sections of the Sudanese Sanctions Regulations, 31 CFR part 538 (the "SSR"), and the Iranian Transactions Regulations, 31 CFR part 560 (the "ITR"), relating to the

Trade Sanctions Reform and Export Enhancement Act of 2000, as amended (22 U.S.C. 7201 *et seq.*) ("TSRA"). This interim final rule and accompanying preamble serve to clarify OFAC's policy with respect to the process for issuing one-year licenses to export agricultural commodities, medicine, and medical devices to Sudan and Iran, and the considerations relevant to such licensing decisions.

TSRA provides that, with certain exceptions, the President may not impose a unilateral agricultural sanction or unilateral medical sanction against a foreign country or foreign entity unless, at least 60 days before imposing such a sanction, the President submits a report to Congress describing the proposed sanction and the reasons for it and Congress enacts a joint resolution approving the report. Section 906 of TSRA, however, requires that the export of agricultural commodities, medicine, and medical devices to Cuba, or to the government of a country that has been determined by the Secretary of State, pursuant to, *inter alia*, section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), to have repeatedly provided support for acts of international terrorism, or to any entity in such a country, shall only be made pursuant to one-year licenses issued by the United States Government. Section 906 also requires that procedures shall be in place to deny licenses for exports to any entity within such country that promotes international terrorism.

Effective July 26, 2001, OFAC promulgated amendments to the SSR and the ITR to implement section 906 of TSRA. See 66 FR 36683 (July 12, 2001) (the "2001 interim rule"). The preamble to the 2001 interim rule described an expedited process for the issuance of the one-year license required by section 906 for all exports and reexports of agricultural commodities, medicine, and medical devices to Sudan or Iran.

OFAC published the 2001 interim rule describing the expedited licensing process in July 2001. As OFAC has stated publicly, circumstances developed almost immediately after publication of the 2001 interim rule that seriously limited OFAC's ability to process applications as expeditiously as had been hoped. See Clarification of Policy With Respect to the Process for Issuing One-Year Licenses to Export Agricultural Commodities, Medicine, and Medical Devices to Sudan and Iran, 72 FR 12980 (March 20, 2007). To begin with, the terrorist attacks of September 11, 2001, magnified concerns about international terrorism and proliferation of weapons of mass destruction. These concerns prompted greater scrutiny on

the part of OFAC and other agencies of the U.S. Government of those entities within state sponsors of terrorism to whom agricultural commodities, medicine, and medical devices were being exported. Moreover, the volume of license requests has increased substantially since the inception of the TSRA program, and applications are now much more complicated than earlier ones, often involving dozens and sometimes hundreds of products and parties to the transaction.

All of these factors have contributed to longer OFAC and interagency reviews of the applications, and thus longer processing times for the applications than indicated in the preamble to the 2001 interim rule. This review has often been further complicated by the fact that these license requests are evaluated both in terms of whether the foreign entities involved in the transaction “promote international terrorism,” as required by section 906 of TSRA, and in terms of whether the products at issue implicate independent export control regimes involving chemical or biological weapons, missiles, or weapons of mass destruction, as provided in section 904(2)(C) of TSRA. Scrutiny of license applications on the latter ground often results in requests for additional information by the reviewing agencies, which neither the applicant nor OFAC can anticipate, further delaying the review process.

While TSRA specifies that the requirements of the one-year licenses shall be no more restrictive than general licenses administered by the Department of the Treasury, it also requires that procedures be in place to deny licenses for exports of agricultural commodities, medicine, and medical devices to any entity within a country promoting international terrorism. In addition, TSRA itself provides that the restrictions on the imposition of unilateral agricultural sanctions or unilateral medical sanctions shall not affect any authority or requirement to impose a sanction to the extent such sanction applies to any agricultural commodity, medicine or medical device that is (1) controlled on the United States Munitions List (the “USML”), (2) controlled on any control list established under the Export Administration Act of 1979 or any successor statute, or (3) used to facilitate the design, development or production of chemical or biological weapons, missiles, or weapons of mass destruction.

Moreover, shortly after the issuance of the 2001 interim rule and in response to the events of September 11, Congress enacted the Uniting and Strengthening

America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. 107–56) (the “USA Patriot Act”). Section 221 of the USA Patriot Act amended or modified the application of TSRA in several ways, including by adding a section, codified at 22 U.S.C. 7210, which provides:

Nothing in the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. § 7201 et seq.) shall limit the application or scope of any law establishing criminal or civil penalties, including any Executive order or regulation promulgated pursuant to such laws (or similar or successor laws), for the unlawful export of any agricultural commodity, medicine, or medical device to—

(1) A foreign organization, group, or person designated pursuant to Executive Order No. 12947 of January 23, 1995, as amended;

(2) a Foreign Terrorist Organization pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132);

(3) a foreign organization, group, or person designated pursuant to Executive Order No. 13224 (September 23, 2001);

(4) any narcotics trafficking entity designated pursuant to Executive Order No. 12978 (October 21, 1995) or the Foreign Narcotics Kingpin Designation Act (Public Law 106–120) (21 U.S.C. § 1901 et seq.); or

(5) any foreign organization, group, or persons subject to any restriction for its involvement in weapons of mass destruction or missile proliferation.

Neither the legislative history surrounding TSRA nor the statute itself specifies a timeline for the issuance of the one-year licenses. As the TSRA and USA Patriot Act provisions cited above make clear, the licensing process must account for the requirements that the licensing and reviewing agencies take measures to ensure that (1) no agricultural commodity, medicine or medical device is exported to any entity, organization or other person designated pursuant to any law or Executive order sanctioning terrorists, weapons of mass destruction or missile proliferators, or narcotics traffickers and (2) licenses under section 906 of TSRA are not granted for the export of any agricultural commodity, medicine, or medical device that is controlled on the USML or the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, or that is used to facilitate the design, development or production of chemical or biological weapons, missiles, or weapons of mass destruction.

Accordingly, OFAC is adopting an interim final rule which makes technical changes to the TSRA-related sections of the SSR and the ITR. The preamble to this interim final rule clarifies OFAC’s policy with respect to the licensing process for TSRA-related

exports. Although this interim final rule is effective immediately, OFAC invites comments on this interim final rule. OFAC will continue to conduct a review of applications for one-year licenses consistent with the requirements of section 906 of TSRA and other applicable provisions of law, which may include a referral to other government agencies for guidance, and will respond to such applications upon completion of the review. The specific timing with respect to any application will continue to depend on factors such as the nature of the goods being exported, the complexity of the transactions, and the need for interagency review. Therefore, OFAC’s processing of one-year license requests may take significantly longer than the time periods indicated in the preamble to the 2001 interim rule published at the inception of the TSRA program. OFAC will continue to respond to such applications in as timely a manner as is possible under the circumstances of each individual license application, consistent with OFAC’s obligations under TSRA, the SSR, the ITR, and other applicable provisions of law.

#### **Paperwork Reduction Act**

The collections of information related to 31 CFR parts 538 and 560 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**

##### *31 CFR Part 538*

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Blocking of assets, Drugs, Exports, Foods, Foreign trade, Humanitarian aid, Imports, Information, Investments, Loans, Medical devices, Medicine, Penalties, Reporting and recordkeeping requirements, Specially designated nationals, Services, Sudan, Terrorism, Transportation.

##### *31 CFR Part 560*

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Blocking of assets, Drugs, Exports, Foods, Foreign trade, Humanitarian aid, Imports, Information, Investments, Iran, Loans, Medical

devices, Medicine, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control adopts an interim final rule amending 31 CFR parts 538 and 560, as follows:

#### **PART 538—SUDANESE SANCTIONS REGULATIONS**

■ 1. The authority citation for part 538 continues to read as follows:

**Authority:** 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 7201–7211; Pub. L. 109–344, 120 Stat. 1869; Pub. L. 110–96, 121 Stat. 1011; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13412, 71 FR 61369, 3 CFR, 2006 Comp., p. 244.

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

■ 2. Revise § 538.523 to read as follows:

##### **§ 538.523 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.**

(a)(1) *One-year specific license requirement.* The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part 538), medicine, or medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing, shall only be made pursuant to a one-year specific license issued by the U.S. Department of the Treasury, Office of Foreign Assets Control, for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No specific license will be granted for the exportation or reexportation of agricultural commodities, medicine, or medical equipment to any entity or individual in Sudan promoting international terrorism, to any narcotics trafficking entity designated pursuant to Executive Order 12978 of October 21, 1995 (60 FR 54579, October 24, 1995) or the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908), or to any foreign organization, group, or persons subject to any restriction for their involvement in weapons of mass destruction or missile proliferation.

Executory contracts entered into pursuant to paragraph (b)(2) of this section prior to the issuance of the one-year specific license described in this paragraph shall be deemed to have been signed on the date of issuance of that one-year specific license (and, therefore, the exporter is authorized to make shipments under that contract within the 12-month period beginning on the date of issuance of the one-year specific license).

(2) *General license for the Specified Areas of Sudan.* The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part 538), medicine, and medical devices to the Specified Areas of Sudan and the conduct of related transactions, including, but not limited to, the making of shipping and cargo inspection arrangements, the obtaining of insurance, the arrangement of financing and payment, the entry into executory contracts, and the provision of brokerage services for such sales and exports or reexports, are hereby authorized, provided that such activities or transactions do not involve any property or interests in property of the Government of Sudan and do not relate to the petroleum or petrochemical industries in Sudan, and also provided that all such exports or reexports are shipped within the 12-month period beginning on the date of the signing of the contract for export or reexport.

**Note 1 to § 538.523(a)(2):** Consistent with section 906(a)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7205), each year by the anniversary of its effective date of September 9, 2009, the Office of Foreign Assets Control will determine whether to revoke this general license. Unless revoked, the general license will remain in effect.

**Note 2 to § 538.523(a)(2):** See §§ 538.417 and 538.418 for additional requirements with respect to transshipments through, and financial transactions in, Sudan.

(b) *General license for arrangement of exportation or reexportation of covered products.* (1) With respect to sales pursuant to § 538.523(a)(1), the making of shipping arrangements, cargo inspection, obtaining of insurance, and arrangement of financing (consistent with § 538.525) for the exportation or reexportation of agricultural commodities, medicine, or medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing, are authorized.

(2) If desired, entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing, is authorized, provided that performance of an executory contract is expressly made contingent upon the prior issuance of the one-year specific license described in paragraph (a)(1) of this section.

(c) *Instructions for obtaining one-year specific licenses.* In order to obtain the one-year specific license described in paragraph (a)(1) of this section, the exporter must provide to the Office of Foreign Assets Control:

(1) The applicant's full legal name (if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business).

(2) The applicant's mailing and street address (so that OFAC may reach a responsible point of contact, the applicant should also include the name of the individual(s) responsible for the application and related commercial transactions along with their telephone and fax numbers and, if available, e-mail addresses).

(3) The names, mailing addresses, and if available, fax and telephone numbers of all parties with an interest in the transaction. If the goods are being exported or reexported to a purchasing agent in Sudan, the exporter must identify the agent's principals at the wholesale level for whom the purchase is being made. If the goods are being exported or reexported to an individual, the exporter must identify any organizations or entities with which the individual is affiliated that have an interest in the transaction.

(4) A description of all items to be exported or reexported pursuant to the requested one-year license, including a statement that the item is classified as EAR 99, and, if necessary, documentation sufficient to verify that the items to be exported or reexported are classified as EAR 99 and do not fall within any of the limitations contained in paragraph (d) of this section.

(5) An Official Commodity Classification of EAR 99 issued by the Department of Commerce, Bureau of Industry and Security ("BIS"), certifying that the product is EAR 99, is required to be submitted to OFAC with the request for a license authorizing the

exportation or reexportation of all fertilizers, live horses, western red cedar, and medical devices other than basic medical supplies, such as syringes, bandages, gauze and similar items, that are specifically listed on BIS's Web site, <http://www.bis.doc.gov/policiesandregulations/tradesanctionsreformexportenhancementact.html>. Medical supplies that are specifically listed on BIS's Web site may not require an Official Commodity Classification of EAR 99 from BIS. BIS will also provide a list on its Web site of medicines that are ineligible for a one-year license under these procedures. Exporters should seek an Official Commodity Classification of EAR 99 from BIS for medicines and submit a copy to OFAC. See 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BIS.

(d) *Limitations.* (1) Nothing in this section or in any license issued pursuant to paragraph (a) of this section relieves the exporter from compliance with the export license application requirements of another Federal agency.

(2) Nothing in this section or in any license issued pursuant to paragraph (a) of this section authorizes the exportation or reexportation of any agricultural commodity, medicine, or medical device controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 *et seq.*); or used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.

(3) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects prohibitions on the sale or supply of U.S. technology or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices.

(4) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

(5) This section does not apply to any transaction or dealing involving property blocked pursuant to this chapter or to any other activity prohibited by this chapter that is not otherwise authorized in this part.

(e) *Covered items.* For the purposes of this part, agricultural commodities,

medicine, and medical devices are defined below.

(1) *Agricultural commodities.* For the purposes of this section, agricultural commodities are:

(i) Products that are not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, and that fall within the term "agricultural commodity" as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that are intended for ultimate use in Sudan as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this section, the term medicine has the same meaning given the term "drug" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this section, the term medical device has the meaning given the term "device" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

■ 3. Revise § 538.525 to read as follows:

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

(a) *General license for payment terms.* The following payment terms for sales, pursuant to § 538.523(a)(1), of agricultural commodities and products, medicine, and medical equipment to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas, or to persons in third countries purchasing specifically for resale to the foregoing are authorized:

(1) Payment of cash in advance;

(2) Sales on open account, provided that the account receivable may not be

transferred by the person extending the credit; or

(3) Financing by third-country financial institutions that are neither United States persons nor Government of Sudan entities. Such financing may be confirmed or advised by U.S. financial institutions.

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to § 538.523(a)(1). See § 501.801(b) of this chapter for specific licensing procedures.

(c) *No debits to blocked accounts.* Nothing in this section authorizes payment terms or trade financing involving a debit to an account of the Government of Sudan blocked pursuant to this part.

(d) *Transfers through the U.S. financial system.* Before a United States financial institution initiates a payment on behalf of any customer, or credits a transfer to the account on its books of the ultimate beneficiary, the United States financial institution must determine that the underlying transaction is not prohibited by this part. Any payment relating to a transaction authorized in or pursuant to § 538.523 or § 538.526 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the blocking or rejection of the transfer.

(e) Notwithstanding any other provision of this part, no commercial exportation to Sudan may be made with United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees absent a Presidential waiver.

■ 4. Revise § 538.526 to read as follows:

**§ 538.526 Brokering sales of agricultural commodities, medicine, and medical devices.**

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sale and exportation or reexportation by United States persons of agricultural commodities, medicine, and medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing, provided that the sale and exportation or reexportation is authorized by a one-

year specific license issued pursuant to § 538.523(a)(1).

(b) *Specific licensing for brokering sales by non-U.S. persons of bulk agricultural commodities.* Specific licenses may be issued on a case-by-case basis to permit United States persons to provide brokerage services on behalf of non-United States, non-Sudanese persons for the sale and exportation or reexportation of bulk agricultural commodities to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing. Specific licenses issued pursuant to this section will authorize the brokering only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix A to this part 538;

(2) Are to purchasers permitted pursuant to § 538.523(a)(1); and

**Note to paragraph (b)(2) of § 538.526:** Requests for specific licenses to provide brokerage services under this paragraph must include all of the information described in § 538.523(c).

(3) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, items classified EAR 99 under the Export Administration Regulations, 15 CFR parts 730 through 774, may in certain instances require a license from the Department of Commerce, Bureau of Industry and Security. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9.)

(c) *No debit to blocked accounts.* Payment for any brokerage fee earned pursuant to this section may not involve a debit to an account blocked pursuant to this part.

(d) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

## PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 5. The authority citation for part 560 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 7201–7211; Pub. L. 110–96, 121 Stat. 1011; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959,

60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

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

■ 6. Revise § 560.530 to read as follows:

#### § 560.530 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.

(a) *One-year license requirement.* The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix B to this part 560), medicine, or medical devices to the Government of Iran, any entity in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, shall only be made pursuant to a one-year license issued by the United States Department of the Treasury, Office of Foreign Assets Control, for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No license will be granted for the exportation or reexportation of agricultural commodities, medicine, or medical equipment to any entity or individual in Iran promoting international terrorism. Executory contracts entered into pursuant to paragraph (b)(2) of this section prior to the issuance of the one-year license described in this paragraph shall be deemed to have been signed on the date of issuance of that one-year license (and, therefore, the exporter is authorized to make shipments under that contract within the 12-month period beginning on the date of issuance of the one-year license).

(b) *General license for arrangement of exportation and reexportation of covered products.* (1) The making of shipping arrangements, cargo inspections, obtaining of insurance, and arrangement of financing (consistent with § 560.532) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Iran, entities in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized.

(2) If desired, entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Iran,

entities in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized, provided that performance of an executory contract is expressly made contingent upon the prior issuance of the one-year license described in paragraph (a) of this section.

(c) *Instructions for obtaining one-year licenses.* In order to obtain the one-year license described in paragraph (a), the exporter must provide to the Office of Foreign Assets Control:

(1) The applicant's full legal name (if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business).

(2) The applicant's mailing and street address (so that OFAC may reach a responsible point of contact, the applicant should also include the name of the individual(s) responsible for the application and related commercial transactions along with their telephone and fax numbers and, if available, e-mail addresses).

(3) The names, mailing addresses, and, if available, fax and telephone numbers of all parties with an interest in the transaction. If the goods are being exported or reexported to a purchasing agent in Iran, the exporter must identify the agent's principals at the wholesale level for whom the purchase is being made. If the goods are being exported or reexported to an individual, the exporter must identify any organizations or entities with which the individual is affiliated that have an interest in the transaction.

(4) A description of all items to be exported or reexported pursuant to the requested one-year license, including a statement that the item is classified as EAR 99, and, if necessary, documentation sufficient to verify that the items to be exported or reexported are classified as EAR 99 and do not fall within any of the limitations contained in paragraph (d) of this section.

(5) An Official Commodity Classification of EAR 99 issued by the Department of Commerce, Bureau of Industry and Security ("BIS"), certifying that the product is EAR 99, is required to be submitted to OFAC with the request for a license authorizing the exportation or reexportation of all fertilizers, live horses, western red cedar, and medical devices other than basic medical supplies, such as syringes, bandages, gauze and similar items, that are specifically listed on BIS's Web site, <http://www.bis.doc.gov/policiesandregulations/tradesanctionsreformexportenhancementact.html>. Medical supplies that are specifically listed on BIS's Web site may not require

an Official Commodity Classification of EAR 99 from BIS. BIS will also provide a list on its Web site of medicines that are ineligible for a one-year license under these procedures. Exporters should seek an Official Commodity Classification of EAR 99 from BIS for medicines and submit a copy to OFAC. See 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BIS.

(d) *Limitations.* (1) Nothing in this section or in any license issued pursuant to paragraph (a) of this section relieves the exporter from compliance with the export license application requirements of another Federal agency.

(2) Nothing in this section or in any license issued pursuant to paragraph (a) of this section authorizes the exportation or reexportation of any agricultural commodity, medicine, or medical device controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 *et seq.*); or used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.

(3) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects prohibitions on the sale or supply of U.S. technology or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices.

(4) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

(5) This section does not apply to any transaction or dealing involving property blocked pursuant to this chapter or any other activity prohibited by this chapter not otherwise authorized in this part.

(e) *Covered items.* For the purposes of this part, agricultural commodities, medicine, and medical devices are defined below.

(1) *Agricultural commodities.* For the purposes of this section, agricultural commodities are:

(i) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, and that fall within the term “agricultural commodity” as defined in section 102 of

the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that are intended for ultimate use in Iran as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this section, the term medicine has the same meaning given the term “drug” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this section, the term medical device has the meaning given the term “device” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

■ 7. Revise § 560.532 to read as follows:

**§ 560.532 Payment for and financing of exports and reexports of agricultural commodities, medicine, and medical devices.**

(a) *General license for payment terms.* The following payment terms for sales of agricultural commodities and products, medicine, and medical equipment pursuant to §§ 560.530 and 560.531 are authorized:

(1) Payment of cash in advance;

(2) Sales on open account, provided that the account receivable may not be transferred by the person extending the credit; or

(3) Financing by third-country financial institutions that are neither United States persons nor Government of Iran entities. Such financing may be confirmed or advised by U.S. financial institutions.

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to § 560.530. See § 501.801(b)

of this chapter for specific licensing procedures.

(c) *No debits or credits to Iranian accounts on the books of U.S. depository institutions.* Nothing in this section authorizes payment terms or trade financing involving debits or credits to Iranian accounts, as defined in § 560.320.

(d) *Transfers through the U.S. financial system.* Any payment relating to a transaction authorized in or pursuant to § 560.530 or § 560.533 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the rejection of the transfer. See § 560.516(c).

(e) Notwithstanding any other provision of this part, no commercial exportation to Iran may be made with United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees absent a Presidential waiver.

■ 8. Revise § 560.533 to read as follows:

**§ 560.533 Brokering sales of agricultural commodities, medicine, and medical devices.**

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sale and exportation or reexportation by United States persons of agricultural commodities, medicine, and medical devices, provided that the sale and exportation or reexportation is authorized by a one-year license issued pursuant to § 560.530.

(b) *Specific licensing for brokering sales by non-U.S. persons of bulk agricultural commodities.* Specific licenses may be issued on a case-by-case basis to permit United States persons to provide brokerage services on behalf of non-United States, non-Iranian persons for the sale and exportation or reexportation of bulk agricultural commodities to the Government of Iran, entities in Iran or individuals in Iran. Specific licenses issued pursuant to this section will authorize the brokering only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix B to this part 560;

(2) Are to purchasers permitted pursuant to § 560.530; and

**Note to § 560.533(b)(2):** Requests for specific licenses to provide brokerage services under this paragraph must include all of the information described in § 560.530(c).

(3) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, items classified EAR 99 under the Export Administration Regulations, 15 CFR parts 730 through 774, may in certain instances require a license from the Department of Commerce, Bureau of Industry and Security. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9.)

(c) *No debits or credits to Iranian accounts on the books of U.S. depository institutions.* Payment for any brokerage fee earned pursuant to this section may not involve debits or credits to Iranian accounts, as defined in § 560.320.

(d) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

Dated: November 17, 2009.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

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## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### 31 CFR Part 594

#### Global Terrorism Sanctions Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is amending the Global Terrorism Sanctions Regulations to define the term "financial, material, or technological support," as used in these regulations. Providing "financial, material, or technological support," for either acts of terrorism that threaten the United States, or any person whose property or interests in property are blocked under these regulations, constitutes one of the criteria for designation as a person whose property and interests in property are blocked.

**DATES:** *Effective Date:* November 23, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Assistant Director for Policy, tel.: 202/622-4855, or Chief Counsel (Foreign Assets Control), tel.: 202/622-2410 (not toll free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

##### Background

OFAC administers the Global Terrorism Sanctions Regulations, 31 CFR part 594 ("GTSR"), which implement Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (66 FR 49079, Sept. 25, 2001) ("E.O. 13224"). Section 594.201(a) of the GTSR implements section 1 of E.O. 13224 and blocks the property and interests in property that are in or come within the United States, or that are in or come within the possession or control of U.S. persons, including their overseas branches, of (1) foreign persons listed in the Annex to E.O. 13224, as may be amended; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security, and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; and (3) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General, to be owned or controlled by, or to act for or on behalf of, any person whose property and interests in property are blocked pursuant to this section.

In particular, paragraph (a)(4)(i) of section 594.201 of the GTSR implements section 1(d)(i) of E.O. 13224 by blocking the U.S. property and interests in property of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General:

To assist in, sponsor, or provide *financial, material, or technological support* for, or financial or other services to or in support of:

(A) Acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States, or

(B) Any person whose property or interests in property are blocked pursuant to paragraph (a) of this section. \* \* \*

GTSR, section 594.201(a)(4)(i) (emphasis added).

Acting under authority delegated by the Secretary of the Treasury, OFAC today is amending the GTSR to add a new definition of the term "financial, material, or technological support," as used in section 594.201(a)(4)(i) of the GTSR. New section 594.317, in subpart C of the GTSR, defines the term "financial, material, or technological support" to mean any property, tangible or intangible, and includes a list of specific examples.

The definition of the term "financial, material, or technological support" in new section 594.317 may include concepts that overlap with existing provisions in the GTSR, such as interpretive section 594.406 on the "provision of services." However, in light of the threat posed by acts of terrorism to the national security, foreign policy, and economy of the United States, OFAC has determined that the benefit of greater specificity in the new definition outweighs any concerns with regard to redundancy.

Please note that, in promulgating this regulation, OFAC does not imply any limitation on the scope of paragraphs (a)(1), (a)(2), (a)(3), or (a)(4)(ii) of section 594.201. Furthermore, the designation criteria in these paragraphs as well as in paragraph (a)(4)(i) of section 594.201 will be applied in a manner consistent with pertinent Federal law, including, where applicable, the First Amendment to the United States Constitution.

##### Public Participation

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

##### Paperwork Reduction Act

The collections of information related to the GTSR 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