107th Congress, 1st Session – – – – – – – – – – – – – House Document 107–154

SIX MONTH PERIODIC REPORT ON THE NATIONAL EMERGENCY WITH RESPECT TO YUGOSLAVIA (SERBIA AND MONTENEGRO) AND KOSOVO

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A SIX MONTH PERIODIC REPORT ON THE NATIONAL EMERGENCY WITH RESPECT TO THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) DECLARED IN EXECUTIVE ORDER 12808 ON MAY 30, 1992 AND WITH RESPECT TO THE KOSOVO EMERGENCY DECLARED IN EXECUTIVE ORDER 13088 ON JUNE 9, 1998, PURSUANT TO 50 U.S.C. 1641(c) AND 50 U.S.C. 1703(c)

DECEMBER 4, 2001.—Message and accompanying papers referred to the Committee on International Relations and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

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To the Congress of the United States:

As required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), I transmit herewith a combined 6-month periodic report on the national emergencies declared with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) in Executive Order 12808 on May 30, 1992, and Kosovo in Executive Order 13088 on June 9, 1998.

GEORGE W. BUSH.

THE WHITE HOUSE, *December 4, 2001.*

Periodic Report on the National Emergencies with respect to the Federal Republic of Yugoslavia (Serbia & Montenegro) and Kosovo

I hereby report to the Congress on developments over the course of the past 6 months concerning the national emergency with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) (the "FRY (S&M)") that was declared in Executive Order 12808 on May 30, 1992, as supplemented by Executive Orders 12810, 12831, and 12846, issued on June 5, 1992, January 15, 1993, and April 25, 1993, respectively, and as expanded in Executive Order 12934, issued on October 25, 1994, with respect to the Bosnian Serbs. I am also reporting to the Congress on developments over the course of the past 6 months concerning the national emergency with respect to the FRY (S&M) and Kosovo that was declared in Executive Order 13088 on June 9, 1998, as supplemented by Executive Order 13121, issued on April 30, 1999, and as amended in Executive Order 13192 of January 17, 2001. This report is submitted pursuant to section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c) ("IEEPA"), and section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c).

With regard to the national emergency declared in 1992, the Office of Foreign Assets Control ("OFAC") has continued during the past 6 months to oversee the maintenance of FRY (S&M) accounts blocked pursuant to the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, 31 CFR Part 585 (the "Bosnia and Herzegovina Regulations"), and records with respect to: (1) liquidated tangible assets and personalty of the 15 blocked U.S. subsidiaries of entities organized in the FRY (S&M); (2) the blocked personalty, files, and records of the two Serbian banking institutions in New York previously placed in secure storage; and (3) remaining blocked FRY (S&M) tangible property, including real estate. The Departments of State and Treasury continue to work closely with European Union member states and other U.N. member nations to implement the provisions of United Nations Security Council Resolutions 1022 and 1074 regarding the status of assets subject to claims and encumbrances previously blocked under that authority.

With regard to the national emergency declared in 1998, following the peaceful democratic transition begun in the FRY (S&M), the President issued Executive Order 13192 on January 17, 2001, amending Executive Order 13088 to lift and modify, with respect to future transactions, most of the economic sanctions imposed against the FRY (S&M). Executive Order 13192 imposes restrictions on transactions with certain persons described in Section 1(a) of the Order, namely Slobodan Milosevic, his close supporters and persons under open indictment for war crimes by the International Criminal Tribunal for the former Yugoslavia ("ICTY"). It also provides for the continued blocking of property or interests in property blocked prior to the Order's effective date pending resolution of claims and encumbrances, until unblocked in accordance with applicable law.

Further information with regard to the national emergencies declared in 1992 and 1998 is provided below.

1. OFAC issued regulations implementing Executive Order 13192 on October 3, 2001, (66 FR 50506, October 3, 2001). These regulations include conforming amendments to the Federal Republic of Yugoslavia (Serbia & Montenegro) Kosovo Sanctions Regulations, 31 CFR Part 586 (the "Kosovo Regulations"), as well as new regulations, the Federal Republic of Yugoslavia (Serbia & Montenegro) Milosevic Regulations, 31 CFR Part 587 (the "Milosevic Regulations"). The amendments to the Kosovo Regulations reflect the lifting of certain economic sanctions relating to the FRY (S&M), the unblocking of certain previously blocked wire transfers and debt, and the effecting of other appropriate conforming and technical changes. The new Milosevic Regulations are being added to maintain and modify sanctions targeted against designated family members, supporters, and members of the regime of former President Slobodan Milosevic, as well as certain persons under open indictment by the ICTY, and other specified parties. A copy of the Federal Register notice containing the amendments to Kosovo Regulations, as well as the new Milosevic Regulations, is attached.

2. During this reporting period, OFAC issued a total of 33 specific licenses pursuant to the Kosovo Regulations. Specific licenses were issued to: (1) unblock wire transfers where it was determined that there was no FRY (S&M) property interest in the funds; (2) authorize the sale of a set amount of Yugoslavia New Financing Agreement of 1988/Serbia C3 Bonds; (3) release or transfer a set amount of First Emerging Markets, Second Emerging Markets, Yugoslavian Asset Backed Securities, and/or debt obligations issued under the New Financing Agreement

of 1988 or the Trade and Deposit Facility Agreement of 1988; (4) authorize the sale and assignment of legal title and beneficial interest in a National Bank of Yugoslavia loan facility and; (5) authorize the release of assets consisting of liabilities incurred by the Federal Republic of Yugoslavia and the National Bank of Yugoslavia pursuant to the New Financing Agreement of 1988. No licenses were issued pursuant to the Bosnia and Herzegovina Regulations.

As the Kosovo sanctions were lifted prospectively on January 19, 2001, there were no blocked or rejected transactions during the current reporting period. No reports were received involving blocked or rejected transactions pursuant to the Milosevic Regulations.

Since my last report, OFAC reports collecting six civil monetary penalties totaling more than $27,200 for violations of the sanctions. These violations involved payments either to the Government of the FRY (S&M), persons in the FRY (S&M), or to blocked entities owned or controlled by the Government of the FRY (S&M), as well as the unauthorized export of services to the FRY (S&M). The violators included three U.S. financial institutions, one company, one carrier, and one individual. An additional case is undergoing penalty action for violation of the 1992 sanctions program and an additional 68 cases are undergoing penalty action for violation of the Kosovo Regulations.

3. The trial of a resident alien, along with his company, who were named in a February 16, 2000, 40-count indictment in the Central District of California, has been rescheduled for December 4, 2001. The indictment alleged unauthorized sales and exportation from the United States of aircraft parts to Jugoslovenski Aerotransport ("JAT") in the FRY (S&M) and further alleged conspiracy with U.S. persons to acquire U.S.-manufactured aircraft parts from companies such as Boeing, Pratt & Whitney, Honeywell, and others for resale and exportation to JAT. The defendant allegedly shipped the aircraft parts to JAT in third countries with the knowledge that they would be transshipped to the FRY (S&M) without authorization by the United States Government. Trial was originally scheduled for February 2001.

4. The expenses incurred by the Federal Government in the 6-month period from May 31, 2001 through November 30, 2001, that are directly attributable to the declaration of the national emergencies in Executive Orders 12808 and 13088 are estimated at

approximately $745,000, most of which represents wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in OFAC, the Chief Counsel's Office (Office of Foreign Assets Control), and the U.S. Customs Service), the Department of State, the National Security Council, and the Department of Commerce.

5. It is in the United States foreign policy interest to support Yugoslavia's newly elected government as they work toward building a society based on democratic ideals. We also have a strong interest in avoiding prejudice to the claims of U.S. persons and successor States of the former Socialist Federal Republic of Yugoslavia with respect to previously blocked funds and assets. Further, we will ensure that sanctions-lifting measures do not allow supporters of Milosevic to benefit from the systematic theft of resources that have marked the last 13 years.

Federal Register

Wednesday,
October 3, 2001

Part II

Department of the Treasury

Office of Foreign Assets Control

31 CFR Parts 586 and 587
Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations; Federal Republic of Yugolsavia (Serbia and Montenegro) Milosevic Regulations; Final Rule

50506 Federal Register / Vol. 66, No. 192 / Wednesday, October 3, 2001 / Rules and Regulations

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 586 and 587

Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations; Federal Republic of Yugoslavia (Serbia and Montenegro) Milosevic Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendments; Interim Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending existing regulations and adding new regulations consistent with Executive Order 13192 of January 17, 2001, which lifts certain economic sanctions imposed with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) pursuant to Executive Orders 13088 of June 9, 1998, and 13121 of April 30, 1999, while maintaining and modifying sanctions targeted against members and supporters of the regime of former President Slobodan Milosevic and certain persons under open indictment by the International Criminal Tribunal for the former Yugoslavia.

DATES: *Effective Date:* October 3, 2001.

Comments: Written comments must be received no later than December 3, 2001. Comments may be sent either via regular mail to David W. Mills, Chief, Policy Planning and Program Management Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave. NW, Annex—2d Floor, Washington, DC 20220, or via OFAC's Web site (*http://www.treas.gov/ofac*).

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Acting Chief of Licensing, tel.: 202/622–2480, or Barbara C. Hammerle, Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Background

In Executive Order 13088 of June 9, 1998 (63 FR 32109, June 12, 1998), President Clinton declared a national emergency with respect to the actions and policies of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro) (the "FRY(S&M)") and the Republic of Serbia regarding Kosovo and imposed sanctions with respect to those governments, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"). Executive Order 13088, which was effective at 12:01 a.m. eastern daylight time on June 10, 1998, blocked, with certain exceptions, all property and interests in property of the Governments of the FRY(S&M), the Republic of Serbia, and the Republic of Montenegro within the United States or within the possession or control of U.S. persons (including foreign branches). It also prohibited all new investment by U.S. persons in the territory of the Republic of Serbia and the approval or other facilitation by U.S. persons of other persons' new investment in the territory of Serbia. In implementation of Executive Order 13088, the Office of Foreign Assets Control ("OFAC") issued the Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations, 31 CFR part 586 (63 FR 54576, October 13, 1998).

In Executive Order 13121 of April 30, 1999 (64 FR 24021, May 5, 1999), the President responded to the continuing human rights and humanitarian crises in Kosovo by amending Executive Order 13088 to broaden the scope and nature of the sanctions previously imposed on the FRY(S&M). Executive Order 13121 expanded the blocking regime imposed on the assets of the Governments of the FRY(S&M), the Republic of Serbia, and the Republic of Montenegro by revoking an exemption for certain financial transactions provided in Executive Order 13088 (as previously implemented in § 586.201(c)); banned all U.S. exports and reexports to and imports from the FRY(S&M) or the Governments of the FRY(S&M), the Republic of Serbia, or the Republic of Montenegro; and prohibited any transaction or dealing by a U.S. person related to trade with or to the FRY(S&M) or the Governments of the FRY(S&M), the Republic of Serbia, or the Republic of Montenegro.

On January 17, 2001, in light of the peaceful democratic transition begun by the newly elected leaders in the FRY(S&M), the President issued Executive Order 13192, which took effect on January 19, 2001. Executive Order 13192 further amended Executive Order 13088, as revised by Executive Order 13121, to lift with, respect to future transactions, remaining sanctions imposed on the Governments of the FRY (S&M) and the Republic of Serbia. (Sanctions imposed on the Government of the Republic of Montenegro under Executive Order 13088 previously had been suspended by OFAC general licenses.) Consistent with the lifting of the remaining sanctions on a prospective basis, OFAC is taking separate steps to remove all entries for individuals or entities identified by the term "[FRYK]" from appendix A to 31 CFR chapter V. Executive Order 13192 also further amended Executive Order 13088 to impose sanctions on designated family members, supporters, and members of the regime of former FRY(S&M) President Slobodan Milosevic, as well as on individuals under open indictment by the International Criminal Tribunal for the former Yugoslavia (the "ICTY"), and other specified parties.

OFAC is amending part 586 to chapter V of 31 CFR to reflect the lifting of certain economic sanctions relating to the FRY(S&M) and to make appropriate conforming and technical changes to the regulations. A new part 587 is being added to chapter V of 31 CFR to maintain and modify sanctions targeted against designated family members, supporters, and members of the regime of former President Slobodan Milosevic as well as certain persons under open indictment by the ICTY, and other specified parties.

Amendments to Part 586

Lifting of Certain Sanctions. Explanatory notes are added to paragraphs (a), (b), and (d) of § 586.201, and the existing note to § 586.201 is revised, to reflect the prospective elimination by Section 1(a) of Executive Order 13192 of the prohibition on transactions involving property and interests in property of the Governments of the FRY(S&M), the Republic of Serbia, and the Republic of Montenegro. Executive Order 13192 also prospectively lifts the ban imposed pursuant to Executive Order 13088, as revised by Executive Order 13121, on

U.S. exports and reexports to and imports from the FRY(S&M), as well as the prohibition on transactions or dealings by U.S. persons relating to trade with or to the FRY(S&M). Consequently, with the exception of transactions involving property or interests in property of designated family members, supporters, and members of the regime of former President Slobodan Milosevic, as well as certain persons under open indictment by the ICTY, and other specified parties (as discussed below with respect to 31 CFR § 587.201(a)), transactions on or after January 19, 2001, by U.S. persons involving the FRY(S&M) will no longer fall under the scope of the prohibitions outlined in part 586.

An explanatory note is added to § 586.204 to reflect the prospective elimination by section 1(b) of Executive Order 13192 of the prohibition on all new investment by United States persons in the territory of the Republic of Serbia and the approval and other facilitation by United States persons of other persons' new investment in the territory of the Republic of Serbia. Consequently, with the exception of transactions involving property or interests in property of persons designated in or pursuant to 31 CFR § 587.201(a), the new investment activities of United States persons in the territory of the Republic of Serbia on or after January 19, 2001, are no longer prohibited by § 586.204.

Previously Blocked Property. Revised § 586.201(c) implements Section 1(a) of Executive Order 13192 by continuing the blocking of any property and interests in property blocked pursuant to Executive Order 13088 before January 19, 2001. The continued blocking of previously blocked property is necessary until provision is made to address claims or encumbrances with respect to such property. Because Executive Order 13192 requires all property blocked before January 19, 2001, to remain blocked, a separate comprehensive list of the "[FRYK]" entries being removed from appendix A to 31 CFR chapter V is available to the public upon request from OFAC's Compliance Programs Division at (202) 622-2490. Similar lists are available with respect to persons whose property and interests in property continue to be blocked pursuant to part 585 of 31 CFR chapter V. *See* 61 FR 12 (Jan. 19, 1996); 61 FR 24696 (May 16, 1996).

Unblocking of Certain Debt. Notwithstanding the generally continued blocking of previously blocked property, new § 586.517(a) authorizes by general license the unblocking of debt obligations included within the rescheduling of Yugoslav debt pursuant to the New Financing Agreement of September 20, 1988, negotiated between the Socialist Federal Republic of Yugoslavia and the London Club of commercial banks. Section 586.517(b) provides for case-by-case review of requests to unblock all other previously blocked debt. Section 586.517(c) excludes from the general license transactions with any person designated in or pursuant to 31 CFR § 587.201(a).

Release of Certain Blocked Transfers. Notwithstanding the generally continued blocking of previously blocked property, new § 586.518 authorizes by general license U.S. financial institutions to unblock and return to the remitting party certain funds that came into the U.S. financial institution's possession or control through wire transfers or check remittances. Funds may not be unblocked and returned if they were originally destined for an account established on the books of a U.S. financial institution by a person whose property or interests in property were blocked immediately prior to January 19, 2001, or if they were remitted by or destined for any person designated in or pursuant to 31 CFR § 587.201(a). Under this authorization, funds may generally be returned to, among others, the Government of the FRY(S&M), the Government of the Republic of Serbia, the Government of the Republic of Montenegro, or any persons purporting to act for or on their behalf.

Funds Held at Overseas Branches of U.S. Financial Institutions. New § 586.519 provides that OFAC will review on a case-by-case basis requests to unblock deposit accounts established outside the United States at overseas branches of U.S. institutions.

Revision of Penalties Provisions. Subpart G of part 586 is revised in certain respects to describe more fully OFAC's procedures in order to enhance transparency of the penalty process.

New Part 587—Sanctions Relating to Members and Supporters of the Milosevic Regime

In addition to lifting certain of the sanctions on the Governments of the FRY(S&M) and the Republic of Serbia, Executive Order 13192 imposes sanctions on designated family members, supporters and members of the regime of former President Slobodan Milosevic, as well as certain persons under open indictment by the ICTY, and other specified parties. A new part 587 is added to chapter V of 31 CFR to implement these ongoing sanctions.

Subpart B of part 587 implements the prohibitions set forth in Executive Order 13192. Section 587.201(a) implements Section 1(a) of the order by blocking the property or interests in property of persons identified by the President in the Annex to the order, to the extent the property or property interests are in the United States, hereafter come within the United States, or are or hereafter come within the possession or control of U.S. persons, including their overseas branches. Section 587.201(a) also implements Section 1(a) by blocking the property or interests in property of individuals and entities determined by the Secretary of the Treasury, in consultation with the Secretary of State, either (i) to be under open indictment by the ICTY; (ii) to have sought or to be seeking through illegitimate means or otherwise to maintain or re-establish illegitimate control over the political processes or institutions or the economic resources or enterprises of the FRY(S&M), the Republic of Serbia, the Republic of Montenegro or the territory of Kosovo; (iii) to have provided material support or resources to any person designated in or pursuant to § 587.201(a); or (iv) to be owned or controlled by or acting or purporting to act directly or indirectly for or on behalf of any person designated in or pursuant to § 587.201(a). The names of persons identified by the President or designated by the Secretary of the Treasury will be incorporated into appendix A to 31 CFR chapter V. These persons are referred to throughout the regulations as "persons designated in or pursuant to § 587.201(a)."

Section 587.201(b) implements section 1(b) of Executive Order 13192 by prohibiting any transaction or dealing within the United States or by a United States person, wherever located, in property or interests in property of any person designated in or pursuant to § 587.201(a).

Sections 587.202 and 587.203 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. Section 587.204 implements section 1(d) of the Executive Order by prohibiting any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this part. Conspiracies formed for the purpose of engaging in a prohibited transaction are also prohibited.

Section 587.205 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 587.206 details exempt transactions. The exemptions derive from the exemptions set out in section 203(b) of IEEPA (50 U.S.C. 1702(b)) and relate to personal communications, donations of articles to relieve human suffering, the importation and exportation of information or informational materials, and travel.

Subpart C of part 587 defines key terms used throughout the regulations and subpart D sets forth interpretive sections regarding the general prohibitions of subpart B. Section 587.403 of subpart D describes the termination and acquisition of an interest in blocked property and § 587.404 explains that, subject to certain exceptions, transactions incidental and necessary to the effectuation of a licensed transaction are authorized.

Section 587.405 provides that the prohibitions of § 587.201 apply to the provision of services, such as financial or transportation services, performed by U.S. persons, wherever located. Section 587.406 makes clear that even while outside the United States, U.S. persons are prohibited from dealing in property in which a person designated in or pursuant to § 587.201(a) has an interest. Sections 587.407, 587.408, and 587.409 explain that debits generally may not be made to a blocked account to pay obligations to any person, U.S. financial institutions may not perform under existing credit agreements with a person designated in or pursuant to § 587.201(a), including charge or debit cards issued to such a person, and no U.S. person may effect a setoff against blocked property.

Transactions otherwise prohibited under part 587 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. Sections 587.504, 587.505, and 587.506 authorize U.S. financial institutions to make certain transfers of funds or credit between blocked accounts, to debit blocked accounts for normal service charges, and, subject to certain conditions, to invest and reinvest blocked assets. Sections 587.507 and 587.508 authorize the provision of certain legal and medical services, but require that receipt of payment for such services must be specifically licensed.

Subpart F of part 587 refers, for the recordkeeping and reporting requirements of this part, to the Reporting and Procedures Regulations in subpart C of 31 CFR part 501. Subpart G of the regulations 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 587 provides certain administrative procedures applicable to this part by reference to the Reporting and Procedures Regulations in subpart D of 31 CFR part 501, which contain provisions relating to administrative procedures. Subpart I of the regulations sets forth a Paperwork Reduction Act notice.

Request for Comments

Because the amendment of 31 CFR part 586 and the addition of 31 CFR Part 587 pursuant to Executive Order 13192 involve 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. However, because of the importance of the issues addressed in the amendments to part 586 and the introduction of part 587, comments will be considered in the development of final rules. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments may address the impact of the regulations on the submitter's activities, whether of a commercial, non-commercial or humanitarian nature, as well as changes that would improve the clarity and organization of the regulations.

The period for submission of comments will close December 3, 2001. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments 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. The Department will return such comments and materials when submitted by regular mail to the person submitting the comments and will not consider them in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form.

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 January 2, 2002 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., Annex —2d Floor, N.W. Washington, DC 20220, Attn: Merete Evans.

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 31 CFR parts 586 and 587 are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget 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 586

Administrative practice and procedure, Banks, Banking, Blocking of assets, Federal Republic of Yugoslavia (Serbia & Montenegro), Investments, Kosovo, Montenegro, New investment, Penalties, Reporting and recordkeeping requirements, Serbia.

31 CFR Part 587

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Federal Republic of Yugoslavia (Serbia & Montenegro), Investments, Milosevic, Penalties, Reporting and recordkeeping requirements, Securities, Services.

For the reasons set forth in the preamble, 31 CFR part 586 is amended and part 587 is added to read as follows:

PART 586—FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA & MONTENEGRO) KOSOVO SANCTIONS REGULATIONS

1. The authority citation for part 586 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13088, 63 FR 32109, 3 CFR, 98 Comp., p. 191; E.O. 13121, 64 FR 24021, 3 CFR, 99 Comp. p. 176; E.O. 13192, 66 FR 7379, January 23, 2001.

Subpart B—Prohibitions

2. Section 586.201 is amended by adding a note to paragraphs (a), (b), and (d); revising paragraph (c) and the accompanying note; and revising the note at the end of the section to read as follows:

§ 586.201 Prohibited transactions involving blocked property.

(a) * * *

Note to paragraph (a) of § 586.201: *See* note at end of this section with regard to the lifting of certain sanctions effective January 19, 2001.

(b) * * *

Note to paragraph (b) of § 586.201: *See* note at end of this section with regard to the lifting of certain sanctions effective January 19, 2001.

(c) Property or interests in property blocked pursuant to Executive Order 13088 of June 9, 1998, as amended by Executive Order 13121 of April 30, 1999, and this part prior to 12:01 a.m. eastern standard time, January 19, 2001, are blocked, and may not be transferred, paid, exported or otherwise dealt in except as otherwise authorized by the Secretary of the Treasury.

Note to paragraph (c) of § 586.201: See note at end of this section with regard to the lifting of certain sanctions effective January 19, 2001.

(d) * * *

Note to paragraph (d) of § 586.201: *See* note at end of this section with regard to the lifting of certain sanctions effective January 19, 2001.

(e) * * *

Note to § 586.201: Section 1(a) of Executive Order 13192 of January 17, 2001 (66 FR 7379, January 23, 2001), amended Executive Order 13088 of June 9, 1998 (63 FR 32109, June 12, 1998), to remove prospectively the prohibition on transactions that involve blocked property and interests in property of the Governments of the FRY(S&M), the Republic of Serbia, and the Republic of Montenegro. Consequently, with the exception of transactions involving property or interests in property of persons designated in or pursuant to 31 CFR § 587.201(a), transactions or transfers by U.S. persons that involve the property or interests in property of the FRY(S&M) and that occur on or after January 19, 2001, are not prohibited by §§ 586.201(a), (b), or (d). Executive Order 13088, as amended by Executive Order 13192, however, also requires that all property or interests in property blocked pursuant to Executive Order 13088 prior to January 19, 2001, shall remain blocked, except as otherwise authorized by the Secretary of the Treasury. See § 586.201(c). The continued blocking of previously blocked property is necessary until provision is made to address claims or encumbrances with respect to such property.

3. Section 586.204 is amended by adding a note to read as follows:

§ 586.204 Prohibited new investment within Serbia.

* * * * *

Note to § 586.204: Section 1(b) of Executive Order 13192 of January 17, 2001 (66 FR 7379, January 23, 2001), revoked section 3 of Executive Order 13088 of June 9, 1998 (63 FR 32109, June 12, 1998), which prohibited all new investment by United States persons in the territory of the Republic of Serbia and the approval and other facilitation by United States persons of other persons' new investment in the territory of the Republic of Serbia. Consequently, with the exception of transactions involving property or interests in property of persons designated in or pursuant to 31 CFR § 587.201(a), the new investment activities of United States persons in the territory of the Republic of Serbia on or after January 19, 2001, are not prohibited by § 586.204.

Subpart C—General Definitions

4. Section 586.302 is revised to read as follows:

§ 586.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part which is 12:01 a.m. eastern daylight time, June 10, 1998, except, with respect to § 586.201(c), 12:01 a.m. eastern standard time, January 19, 2001, shall apply.

5. Section 586.319 is revised to read as follows:

§ 586.319. 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

6. Section 586.405 is revised to read as follows:

§ 586.405 Transactions incidental to a licensed transaction.

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

(a) An incidental transaction, not explicitly authorized within the terms of the license, by or with a person whose property or interests in property are blocked pursuant to § 586.201; or

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

§ 586.406 Provision of services. [Amended]

7. Section 586.406 is amended by removing the phrase "as provided in § 586.201(c) or" in the first sentence of paragraph (a).

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

§ 586.501 General and specific licensing procedures. [Amended]

8. Section 586.501 is amended by removing the phrase "subpart C" and adding in its place the phrase "subpart D".

9. Section 586.517 is added to subpart E to read as follows:

§ 586.517 Unblocking of certain debt.

(a) Subject to the limitations in paragraph (c) below, debt obligations in the possession or control of U.S. persons for which the National Bank of Yugoslavia has joint or several liability and that were rescheduled pursuant to the "New Financing Agreement" of September 20, 1988, are unblocked.

(b) Specific licenses may be issued on a case-by-case basis to permit the unblocking of debt obligations not otherwise authorized under either paragraph (a) of this section or 31 CFR 585.509.

(c) Nothing in this section authorizes transactions with any person designated in or pursuant to 31 CFR 587.201(a).

10. Section 586.518 is added to subpart E to read as follows:

§ 586.518 Authorization of release of certain blocked transfers by U.S. financial institutions.

(a) Subject to the limitation set forth in this paragraph, U.S. financial institutions are authorized to unblock and return to the remitting party funds blocked pursuant to this part that came into their possession or control through wire transfer instructions or check remittances, provided those funds were not destined for an account established on the books of a U.S. financial institution by a person whose property or interests in property were blocked immediately prior to January 19, 2001. Funds otherwise eligible for release under this general license, however, may not be unblocked and returned if

they were remitted by or destined for a person designated in or pursuant to 31 CFR 587.201(a).

(b) Funds blocked pursuant to this part that were destined through wire transfer instructions or check remittances for an account established on the books of a U.S. financial institution by a person whose property or interests in property were blocked immediately prior to January 19, 2001, remain blocked. If such funds are not already held in the account for which they were destined, they must be transferred to such an account by October 15, 2001, and maintained in blocked status pursuant to § 586.201(c).

11. Section 586.519 is added to subpart E to read as follows:

§ 586.519 Release of certain funds held at overseas branches of U.S. financial institutions.

Specific licenses may be issued on a case-by-case basis to permit the overseas branches of U.S. financial institutions to unblock deposit accounts that were blocked pursuant to this part prior to January 19, 2001, and that were established outside of the United States in situations in which such accounts are not owned or controlled, directly or indirectly, by any person designated in or pursuant to 31 CFR § 587.201(a).

Subpart G—Penalties

12. Section 586.701 is revised to read as follows:

§ 586.701 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 (Public Law 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.

13. Section 586.702 is revised to read as follows:

§ 586.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

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

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to make a written presentation within the applicable 30-day period set forth in § 586.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

14. Section 586.703 is revised to read as follows:

§ 586.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in writing and may be handwritten or typed. The response need not be in any particular form. A copy of the written response

may be sent by facsimile, but the original must also be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response should also set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Default.* If the respondent elects not to submit a written response within the time limit set forth in paragraph (a) of this section, the Office of Foreign Assets Control will conclude that the respondent has decided not to respond to the prepenalty notice. The agency generally will then issue a written penalty notice imposing the penalty proposed in the prepenalty notice.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice 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.

15. Section 586.704 is revised to read as follows:

§ 586.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

16. Section 586.705 is revised to read as follows:

§ 586.705 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 federal district court.

17. Part 587 is added to 31 CFR Chapter V to read as follows:

PART 587—FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) MILOSEVIC SANCTIONS REGULATIONS

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

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587.601 Records and reports.

Subpart G—Penalties

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587.702 Prepenalty notice.
587.703 Response to prepenalty notice; informal settlement.
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587.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

587.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 22 U.S.C. 287c, 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13088, 63 FR 32109, 3 CFR, 98 Comp, p. 191; E.O. 13121, 64 FR 24021, 3 CFR, 99 Comp. p. 176; E.O. 13192, 65 FR 7379, January 23, 2001.

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

§ 587.101 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 contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 587.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, property or interests in property of any person designated below that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13192 of January 17, 2001 (66 FR 7379, January 23, 2001); and

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

(i) To be under open indictment by the International Criminal Tribunal for the former Yugoslavia, subject to applicable laws and procedures;

(ii) To have sought, or to be seeking, through repressive measures or otherwise, to maintain or reestablish illegitimate control over the political processes or institutions or the economic resources or enterprises of the Federal Republic of Yugoslavia, the Republic of Serbia, the Republic of Montenegro or the territory of Kosovo;

(iii) To have provided material support or resources to any person designated in the Annex to Executive Order 13192 or any person otherwise designated by the Secretary of the Treasury pursuant to this section; or

(iv) To be owned or controlled by or acting or purporting to act directly or indirectly for or on behalf of any person designated in the Annex to Executive Order 13192 or any person otherwise designated by the Secretary of the Treasury pursuant to this section.

Note to paragraph (a) of § 587.201: Persons designated pursuant to § 587.201(a)(1) or (2) are listed with the acronym [FRYM] 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 designation or who wish to assert that the circumstances resulting in 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.

(b) 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, any transaction or dealing by U.S. persons, wherever located, or within the United States in property or interests in property of any person designated in or pursuant to § 587.201(a) are prohibited.

(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 designated in or pursuant to § 587.201(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.

§ 587.202 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 § 587.201(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 § 587.201(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 § 587.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the effective date of § 587.201 there existed an interest of a person designated in or pursuant to § 587.201(a).

§ 587.203 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 § 587.201(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 § 587.201(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 § 587.201(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 § 587.201(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 designated in or pursuant to § 587.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 587.204 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by any U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is prohibited.

§ 587.205 Expenses of maintaining blocked property; liquidation of blocked account.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted before 12:01 a.m., eastern standard time, January 19, 2001, all expenses incident to the maintenance of physical property blocked pursuant to § 587.201(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 § 587.201(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.

§ 587.206 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) *Humanitarian donations.* The prohibitions contained in this part do not apply to donations by U.S. persons of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering.

(c) *Information or informational materials.* (1) The importation from any country and the exportation to any country of information or informational materials, as defined in § 587.304, 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 designated in or pursuant to § 587.201(a), payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt or authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730 through 774, or to the exportation of goods, technology or software, 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 designated in or pursuant to § 587.201(a) are prohibited.

(d) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including exportation or importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 587.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 587.201 held in the name of a person designated in or pursuant to § 587.201(a), or in which a person designated in or pursuant to § 587.201(a) 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.

§ 587.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part, which is 12:01 a.m. eastern standard time, January 19, 2001, or, in the case of any person designated pursuant to § 587.201(a)(2), the earlier of the date on which a person receives actual or constructive notice of such designation.

§ 587.303 Entity.

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

§ 587.304 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 § 587.304. 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.

§ 587.305 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.

§ 587.306 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 § 587.306: See § 501.801 of this chapter on licensing procedures.

§ 587.307 Person.

The term *person* means an individual or entity.

§ 587.308 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.

§ 587.309 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.

§ 587.310 United States.

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

§ 587.311 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 terms 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.

§ 587.312 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

§ 587.401 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.

§ 587.402 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.

§ 587.403 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 § 587.201(a), unless there exists in the property another interest that is blocked pursuant to § 587.201(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 designated in or pursuant to § 587.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 587.404 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 § 587.201(a); or

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

§ 587.405 Provision of services.

(a) Except as provided in § 587.206, the prohibitions contained in § 587.201 apply to services performed by U.S. persons, wherever located:

(1) On behalf of or for the benefit of a person designated in or pursuant to § 587.201(a); or

(2) With respect to property interests of a person designated in or pursuant to § 587.201(a).

(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 designated in or pursuant to § 587.201(a). See §§ 587.507 and 587.508, respectively, on licensing policy with regard to the provision of certain legal or medical services.

§ 587.406 Offshore transactions.

The prohibitions in § 587.201 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 designated in or pursuant to § 587.201(a) or in which the U.S. person knows, or has reason to know, a person designated in or pursuant to § 587.201(a) has or has had an interest since the effective date.

§ 587.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 587.201, 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.

§ 587.408 Credit extended and cards issued by U.S. financial institutions.

Section 587.201 on dealing in property in which a person designated in or pursuant to § 587.201(a) has an interest prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person designated in or pursuant to § 587.201(a).

§ 587.409 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 587.201 if effected after the effective date.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 587.501 General and specific licensing procedures.

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

§ 587.502 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.

§ 587.503 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.

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

Any payment of funds or transfer of credit in which a person designated in or pursuant to § 587.201(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 § 587.504. Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 587.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 587.505 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.

§ 587.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 587.201, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 587.201, 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 designated in or pursuant to § 587.201(a).

§ 587.507 Provision of certain legal services authorized.

(a) Provision of the legal services set forth in paragraph (b) of this section to or on behalf of persons designated in or pursuant to § 587.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed.

(b) Specific licenses may be issued on a case-by-case basis authorizing receipt from unblocked sources of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to persons specified in paragraph (a) of this section:

(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.

(c) Provision of any other legal services to persons designated in or pursuant to § 587.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(d) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 587.201 is prohibited unless specifically licensed in accordance with § 587.202(e).

§ 587.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons designated in or pursuant to § 587.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 587.601 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

§ 587.701 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 (Public Law 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 directed to section 5 of the United Nations Participation Act (22 U.S.C. 287c(b)), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackles, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States. The criminal penalties provided in the United Nations Participation Act are subject to increase pursuant to 18 U.S.C. 3571.

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

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

§ 587.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

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

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to make a written presentation within the applicable 30 day period set forth in § 587.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 587.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30 day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day

after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in writing and may be handwritten or typed. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Default.* If the respondent elects not to submit a written response within the time limit set forth in paragraph (a) of this section, the Office of Foreign Assets Control will conclude that the respondent has decided not to respond to the prepenalty notice. The agency generally will then issue a written penalty notice imposing the penalty proposed in the prepenalty notice.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 587.704 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 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.

§ 587.705 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

§ 587.801 Procedures.

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

§ 587.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13192 of January 17, 2001 (66 FR 7379, January 23, 2001) and

any further Executive orders relating to the national emergency declared in Executive Order 13088 of June 9, 1988 (63 FR 32109, June 12, 1998) 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

§ 587.901 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: September 4, 2001.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: September 5, 2001.

Jimmy Gurulé,

Under Secretary (Enforcement), Department of the Treasury.

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