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APPENDIX A TO PART 501—ECONOMIC  
SANCTIONS ENFORCEMENT GUIDELINES.

NOTE: This appendix provides a general framework for the enforcement of all economic sanctions programs administered by the Office of Foreign Assets Control (OFAC).

I. DEFINITIONS

A. *Apparent violation* means conduct that constitutes an actual or possible violation of U.S. economic sanctions laws, including the International Emergency Economic Powers Act (IEEPA), the Trading With the Enemy Act (TWEA), the Foreign Narcotics Kingpin Designation Act, and other statutes administered or enforced by OFAC, as well as Executive orders, regulations, orders, directives, or licenses issued pursuant thereto.

B. *Applicable schedule amount* means:

1. \$1,000 with respect to a transaction valued at less than \$1,000;
2. \$10,000 with respect to a transaction valued at \$1,000 or more but less than \$10,000;
3. \$25,000 with respect to a transaction valued at \$10,000 or more but less than \$25,000;
4. \$50,000 with respect to a transaction valued at \$25,000 or more but less than \$50,000;
5. \$100,000 with respect to a transaction valued at \$50,000 or more but less than \$100,000;
6. \$170,000 with respect to a transaction valued at \$100,000 or more but less than \$170,000;
7. \$250,000 with respect to a transaction valued at \$170,000 or more, except that where the applicable schedule amount as defined above exceeds the statutory maximum civil penalty amount applicable to an apparent violation, the applicable schedule amount shall equal such applicable statutory maximum civil penalty amount.

C. *OFAC* means the Department of the Treasury’s Office of Foreign Assets Control.

D. *Penalty* is the final civil penalty amount imposed in a Penalty Notice.

E. *Proposed penalty* is the civil penalty amount set forth in a Pre-Penalty Notice.

F. *Regulator* means any Federal, State, local or foreign official or agency that has authority to license or examine an entity for

compliance with federal, state, or foreign law.

G. *Subject Person* means an individual or entity subject to any of the sanctions programs administered or enforced by OFAC.

H. *Transaction value* means the dollar value of a subject transaction. In export and import cases, the transaction value generally will be the domestic value in the United States of the goods, technology, or services sought to be exported from or imported into the United States, as demonstrated by commercial invoices, bills of lading, signed Customs declarations, or similar documents. In cases involving seizures by U.S. Customs and Border Protection (CBP), the transaction value generally will be the domestic value as determined by CBP. If the apparent violation at issue is a prohibited dealing in blocked property by a Subject Person, the transaction value generally will be the dollar value of the underlying transaction involved, such as the value of the property dealt in or the amount of the funds transfer that a financial institution failed to block or reject. Where the transaction value is not otherwise ascertainable, OFAC may consider the market value of the goods or services that were the subject of the transaction, the economic benefit conferred on the sanctioned party, and/or the economic benefit derived by the Subject Person from the transaction, in determining transaction value. For purposes of these Guidelines, “transaction value” will not necessarily have the same meaning, nor be applied in the same manner, as that term is used for import valuation purposes at 19 CFR 152.103.

I. *Voluntary self-disclosure* means self-initiated notification to OFAC of an apparent violation by a Subject Person that has committed, or otherwise participated in, an apparent violation of a statute, Executive order, or regulation administered or enforced by OFAC, prior to or at the same time that OFAC, or any other federal, state, or local government agency or official, discovers the apparent violation or another substantially similar apparent violation. For these purposes, “substantially similar apparent violation” means an apparent violation that is part of a series of similar apparent violations or is related to the same pattern or practice of conduct. Notification of an apparent violation to another government agency (but not to OFAC) by a Subject Person, which is considered a voluntary self-disclosure by that agency, may be considered a voluntary self-disclosure by OFAC, based on a case-by-case assessment. Notification to OFAC of an apparent violation is not a voluntary self-disclosure if: a third party is required to and does notify OFAC of the apparent violation or a substantially similar apparent violation because a transaction was blocked or rejected by that third party (regardless of when OFAC receives such notice from the

third party and regardless of whether the Subject Person was aware of the third party's disclosure); the disclosure includes false or misleading information; the disclosure (when considered along with supplemental information provided by the Subject Person) is materially incomplete; the disclosure is not self-initiated (including when the disclosure results from a suggestion or order of a federal or state agency or official); or, when the Subject Person is an entity, the disclosure is made by an individual in a Subject Person entity without the authorization of the entity's senior management. Responding to an administrative subpoena or other inquiry from, or filing a license application with, OFAC is not a voluntary self-disclosure. In addition to notification, a voluntary self-disclosure must include, or be followed within a reasonable period of time by, a report of sufficient detail to afford a complete understanding of an apparent violation's circumstances, and should also be followed by responsiveness to any follow-up inquiries by OFAC. (As discussed further below, a Subject Person's level of cooperation with OFAC is an important factor in determining the appropriate enforcement response to an apparent violation even in the absence of a voluntary self-disclosure as defined herein; disclosure by a Subject Person generally will result in mitigation insofar as it represents cooperation with OFAC's investigation.)

## II. TYPES OF RESPONSES TO APPARENT VIOLATIONS

Depending on the facts and circumstances of a particular case, an OFAC investigation may lead to one or more of the following actions:

**A. No Action.** If OFAC determines that there is insufficient evidence to conclude that a violation has occurred and/or, based on an analysis of the General Factors outlined in Section III of these Guidelines, concludes that the conduct does not rise to a level warranting an administrative response, then no action will be taken. In those cases in which OFAC is aware that the Subject Person has knowledge of OFAC's investigation, OFAC generally will issue a letter to the Subject Person indicating that the investigation is being closed with no administrative action being taken. A no-action determination represents a final determination as to the apparent violation, unless OFAC later learns of additional related violations or other relevant facts.

**B. Request Additional Information.** If OFAC determines that additional information regarding the apparent violation is needed, it may request further information from the Subject Person or third parties, including through an administrative subpoena issued pursuant to 31 CFR 501.602. In the case of an institution subject to regulation where

OFAC has entered into a Memorandum of Understanding (MOU) with the Subject Person's regulator, OFAC will follow the procedures set forth in such MOU regarding consultation with the regulator. Even in the absence of an MOU, OFAC may seek relevant information about a regulated institution and/or the conduct constituting the apparent violation from the institution's federal, state, or foreign regulator. Upon receipt of information determined to be sufficient to assess the apparent violation, OFAC will decide, based on an analysis of the General Factors outlined in Section III of these Guidelines, whether to pursue further enforcement action or whether some other response to the apparent violation is appropriate.

**C. Cautionary Letter:** If OFAC determines that there is insufficient evidence to conclude that a violation has occurred or that a Finding of Violation or a civil monetary penalty is not warranted under the circumstances, but believes that the underlying conduct could lead to a violation in other circumstances and/or that a Subject Person does not appear to be exercising due diligence in assuring compliance with the statutes, Executive orders, and regulations that OFAC enforces, OFAC may issue a cautionary letter, which may convey OFAC's concerns about the underlying conduct and/or the Subject Person's OFAC compliance policies, practices and/or procedures. A cautionary letter represents a final enforcement response to the apparent violation, unless OFAC later learns of additional related violations or other relevant facts, but does not constitute a final agency determination as to whether a violation has occurred.

**D. Finding of Violation:** If OFAC determines that a violation has occurred and considers it important to document the occurrence of a violation and, based on an analysis of the General Factors outlined in Section III of these Guidelines, concludes that the Subject Person's conduct warrants an administrative response but that a civil monetary penalty is not the most appropriate response, OFAC may issue a Finding of Violation that identifies the violation. A Finding of Violation may also convey OFAC's concerns about the violation and/or the Subject Person's OFAC compliance policies, practices and/or procedures, and/or identify the need for further compliance steps to be taken. A Finding of Violation represents a final enforcement response to the violation, unless OFAC later learns of additional related violations or other relevant facts, and constitutes a final agency determination that a violation has occurred. A Finding of Violation will afford the Subject Person an opportunity to respond to OFAC's determination that a violation has occurred before that determination becomes final. In the event a Subject Person so responds, the initial Finding of Violation

will not constitute a final agency determination that a violation has occurred. In such cases, after considering the response received, OFAC will inform the Subject Person of its final enforcement response to the apparent violation.

**E. Civil Monetary Penalty.** If OFAC determines that a violation has occurred and, based on an analysis of the General Factors outlined in Section III of these Guidelines, concludes that the Subject Person's conduct warrants the imposition of a monetary penalty, OFAC may impose a civil monetary penalty. Civil monetary penalty amounts will be determined as discussed in Section V of these Guidelines. The imposition of a civil monetary penalty constitutes a final agency determination that a violation has occurred and represents a final civil enforcement response to the violation. OFAC will afford the Subject Person an opportunity to respond to OFAC's determination that a violation has occurred before a final penalty is imposed.

**F. Criminal Referral.** In appropriate circumstances, OFAC may refer the matter to appropriate law enforcement agencies for criminal investigation and/or prosecution. Apparent sanctions violations that OFAC has referred for criminal investigation and/or prosecution also may be subject to OFAC civil penalty or other administrative action.

**G. Other Administrative Actions.** In addition to or in lieu of other administrative actions, OFAC may also take the following administrative actions in response to an apparent violation:

1. *License Denial, Suspension, Modification, or Revocation.* OFAC authorizations to engage in a transaction (including the release of blocked funds) pursuant to a general or specific license may be withheld, denied, suspended, modified, or revoked in response to an apparent violation.

2. *Cease and Desist Order.* OFAC may order the Subject Person to cease and desist from conduct that is prohibited by any of the sanctions programs enforced by OFAC when OFAC has reason to believe that a Subject Person has engaged in such conduct and/or that such conduct is ongoing or may recur.

### III. GENERAL FACTORS AFFECTING ADMINISTRATIVE ACTION

As a general matter, OFAC will consider some or all of the following General Factors in determining the appropriate administrative action in response to an apparent violation of U.S. sanctions by a Subject Person, and, where a civil monetary penalty is imposed, in determining the appropriate amount of any such penalty:

**A. Willful or Reckless Violation of Law:** a Subject Person's willfulness or recklessness in violating, attempting to violate, conspiring to violate, or causing a violation of the law. Generally, to the extent the conduct at issue is the result of willful conduct or a

deliberate intent to violate, attempt to violate, conspire to violate, or cause a violation of the law, the OFAC enforcement response will be stronger. Among the factors OFAC may consider in evaluating willfulness or recklessness are:

1. *Willfulness.* Was the conduct at issue the result of a decision to take action with the knowledge that such action would constitute a violation of U.S. law? Did the Subject Person know that the underlying conduct constituted, or likely constituted, a violation of U.S. law at the time of the conduct?

2. *Recklessness.* Did the Subject Person demonstrate reckless disregard for U.S. sanctions requirements or otherwise fail to exercise a minimal degree of caution or care in avoiding conduct that led to the apparent violation? Were there warning signs that should have alerted the Subject Person that an action or failure to act would lead to an apparent violation?

3. *Concealment.* Was there an effort by the Subject Person to hide or purposely obfuscate its conduct in order to mislead OFAC, Federal, State, or foreign regulators, or other parties involved in the conduct about an apparent violation?

4. *Pattern of Conduct.* Did the apparent violation constitute or result from a pattern or practice of conduct or was it relatively isolated and atypical in nature?

5. *Prior Notice.* Was the Subject Person on notice, or should it reasonably have been on notice, that the conduct at issue, or similar conduct, constituted a violation of U.S. law?

6. *Management Involvement.* In cases of entities, at what level within the organization did the willful or reckless conduct occur? Were supervisory or managerial level staff aware, or should they reasonably have been aware, of the willful or reckless conduct?

**B. Awareness of Conduct at Issue:** the Subject Person's awareness of the conduct giving rise to the apparent violation. Generally, the greater a Subject Person's actual knowledge of, or reason to know about, the conduct constituting an apparent violation, the stronger the OFAC enforcement response will be. In the case of a corporation, awareness will focus on supervisory or managerial level staff in the business unit at issue, as well as other senior officers and managers. Among the factors OFAC may consider in evaluating the Subject Person's awareness of the conduct at issue are:

1. *Actual Knowledge.* Did the Subject Person have actual knowledge that the conduct giving rise to an apparent violation took place? Was the conduct part of a business process, structure or arrangement that was designed or implemented with the intent to prevent or shield the Subject Person from having such actual knowledge, or was the conduct part of a business process, structure or arrangement implemented for other legitimate reasons that made it difficult or

impossible for the Subject Person to have actual knowledge?

2. *Reason to Know.* If the Subject Person did not have actual knowledge that the conduct took place, did the Subject Person have reason to know, or should the Subject Person reasonably have known, based on all readily available information and with the exercise of reasonable due diligence, that the conduct would or might take place?

3. *Management Involvement.* In the case of an entity, was the conduct undertaken with the explicit or implicit knowledge of senior management, or was the conduct undertaken by personnel outside the knowledge of senior management? If the apparent violation was undertaken without the knowledge of senior management, was there oversight intended to detect and prevent violations, or did the lack of knowledge by senior management result from disregard for its responsibility to comply with applicable sanctions laws?

C. *Harm to Sanctions Program Objectives:* the actual or potential harm to sanctions program objectives caused by the conduct giving rise to the apparent violation. Among the factors OFAC may consider in evaluating the harm to sanctions program objectives are:

1. *Economic or Other Benefit to the Sanctioned Individual, Entity, or Country:* the economic or other benefit conferred or attempted to be conferred to sanctioned individuals, entities, or countries as a result of an apparent violation, including the number, size, and impact of the transactions constituting an apparent violation(s), the length of time over which they occurred, and the nature of the economic or other benefit conferred. OFAC may also consider the causal link between the Subject Person's conduct and the economic benefit conferred or attempted to be conferred.

2. *Implications for U.S. Policy:* the effect that the circumstances of the apparent violation had on the integrity of the U.S. sanctions program and the related policy objectives involved.

3. *License Eligibility:* whether the conduct constituting the apparent violation likely would have been licensed by OFAC under existing licensing policy.

4. *Humanitarian activity:* whether the conduct at issue was in support of a humanitarian activity.

D. *Individual Characteristics:* the particular circumstances and characteristics of a Subject Person. Among the factors OFAC may consider in evaluating individual characteristics are:

1. *Commercial Sophistication:* the commercial sophistication and experience of the Subject Person. Is the Subject Person an individual or an entity? If an individual, was the conduct constituting the apparent violation for personal or business reasons?

2. *Size of Operations and Financial Condition:* the size of a Subject Person's business operations and overall financial condition, where such information is available and relevant. Qualification of the Subject Person as a small business or organization for the purposes of the Small Business Regulatory Enforcement Fairness Act, as determined by reference to the applicable regulations of the Small Business Administration, may also be considered.

3. *Volume of Transactions:* the total volume of transactions undertaken by the Subject Person on an annual basis, with attention given to the apparent violations as compared with the total volume.

4. *Sanctions History:* the Subject Person's sanctions history, including OFAC's issuance of prior penalties, findings of violations or cautionary, warning or evaluative letters, or other administrative actions (including settlements). As a general matter, OFAC will only consider a Subject Person's sanctions history for the five years preceding the date of the transaction giving rise to the apparent violation.

E. *Compliance Program:* the existence, nature and adequacy of a Subject Person's risk-based OFAC compliance program at the time of the apparent violation, where relevant. In the case of an institution subject to regulation where OFAC has entered into a Memorandum of Understanding (MOU) with the Subject Person's regulator, OFAC will follow the procedures set forth in such MOU regarding consultation with the regulator with regard to the quality and effectiveness of the Subject Person's compliance program. Even in the absence of an MOU, OFAC may take into consideration the views of federal, state, or foreign regulators, where relevant. Further information about risk-based compliance programs for financial institutions is set forth in the annex hereto.

F. *Remedial Response:* the Subject Person's corrective action taken in response to the apparent violation. Among the factors OFAC may consider in evaluating the remedial response are:

1. The steps taken by the Subject Person upon learning of the apparent violation. Did the Subject Person immediately stop the conduct at issue?

2. In the case of an entity, the processes followed to resolve issues related to the apparent violation. Did the Subject Person discover necessary information to ascertain the causes and extent of the apparent violation, fully and expeditiously? Was senior management fully informed? If so, when?

3. In the case of an entity, whether the Subject Person adopted new and more effective internal controls and procedures to prevent a recurrence of the apparent violation. If the Subject Person did not have an OFAC compliance program in place at the time of the apparent violation, did it implement one

upon discovery of the apparent violations? If it did have an OFAC compliance program, did it take appropriate steps to enhance the program to prevent the recurrence of similar violations? Did the entity provide the individual(s) responsible for the apparent violation with additional training, and/or take other appropriate action, to ensure that similar violations do not occur in the future?

4. Where applicable, whether the Subject Person undertook a thorough review to identify other possible violations.

*G. Cooperation with OFAC:* the nature and extent of the Subject Person's cooperation with OFAC. Among the factors OFAC may consider in evaluating cooperation with OFAC are:

1. Did the Subject Person voluntarily self-disclose the apparent violation to OFAC?

2. Did the Subject Person provide OFAC with all relevant information regarding an apparent violation (whether or not voluntarily self-disclosed)?

3. Did the Subject Person research and disclose to OFAC relevant information regarding any other apparent violations caused by the same course of conduct?

4. Was information provided voluntarily or in response to an administrative subpoena?

5. Did the Subject Person cooperate with, and promptly respond to, all requests for information?

6. Did the Subject Person enter into a statute of limitations tolling agreement, if requested by OFAC (particularly in situations where the apparent violations were not immediately notified to or discovered by OFAC, in particularly complex cases, and in cases in which the Subject Person has requested and received additional time to respond to a request for information from OFAC)? If so, the Subject Person's entering into a tolling agreement will be deemed a mitigating factor. NOTE: a Subject Person's refusal to enter into a tolling agreement will not be considered by OFAC as an aggravating factor in assessing a Subject Person's cooperation or otherwise under the Guidelines.

Where appropriate, OFAC will publicly note substantial cooperation provided by a Subject Person.

*H. Timing of apparent violation in relation to imposition of sanctions:* the timing of the apparent violation in relation to the adoption of the applicable prohibitions, particularly if the apparent violation took place immediately after relevant changes in the sanctions program regulations or the addition of a new name to OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List).

*I. Other enforcement action:* other enforcement actions taken by federal, state, or local agencies against the Subject Person for the apparent violation or similar apparent violations, including whether the settlement of alleged violations of OFAC regulations is

part of a comprehensive settlement with other federal, state, or local agencies.

*J. Future Compliance/Deterrence Effect:* the impact administrative action may have on promoting future compliance with U.S. economic sanctions by the Subject Person and similar Subject Persons, particularly those in the same industry sector.

*K. Other relevant factors on a case-by-case basis:* such other factors that OFAC deems relevant on a case-by-case basis in determining the appropriate enforcement response and/or the amount of any civil monetary penalty. OFAC will consider the totality of the circumstances to ensure that its enforcement response is proportionate to the nature of the violation.

#### IV. CIVIL PENALTIES FOR FAILURE TO COMPLY WITH A REQUIREMENT TO FURNISH INFORMATION OR KEEP RECORDS

As a general matter, the following civil penalty amounts shall apply to a Subject Person's failure to comply with a requirement to furnish information or maintain records:

A. The failure to comply with a requirement to furnish information pursuant to 31 CFR 501.602 may result in a penalty in an amount up to \$20,000, irrespective of whether any other violation is alleged. Where OFAC has reason to believe that the apparent violation(s) that is the subject of the requirement to furnish information involves a transaction(s) valued at greater than \$500,000, a failure to comply with a requirement to furnish information may result in a penalty in an amount up to \$50,000, irrespective of whether any other violation is alleged. A failure to comply with a requirement to furnish information may be considered a continuing violation, and the penalties described above may be imposed each month that a party has continued to fail to comply with the requirement to furnish information. OFAC may also seek to have a requirement to furnish information judicially enforced. Imposition of a civil monetary penalty for failure to comply with a requirement to furnish information does not preclude OFAC from seeking such judicial enforcement of the requirement to furnish information.

B. The late filing of a required report, whether set forth in regulations or in a specific license, may result in a civil monetary penalty in an amount up to \$2,500, if filed within the first 30 days after the report is due, and a penalty in an amount up to \$5,000 if filed more than 30 days after the report is due. If the report relates to blocked assets, the penalty may include an additional \$1,000 for every 30 days that the report is overdue, up to five years.

C. The failure to maintain records in conformance with the requirements of OFAC's

regulations or of a specific license may result in a penalty in an amount up to \$50,000.

#### V. CIVIL PENALTIES

OFAC will review the facts and circumstances surrounding an apparent violation and apply the General Factors for Taking Administrative Action in Section III above in determining whether to initiate a civil penalty proceeding and in determining the amount of any civil monetary penalty. OFAC will give careful consideration to the appropriateness of issuing a cautionary letter or Finding of Violation in lieu of the imposition of a civil monetary penalty.

##### A. Civil Penalty Process

1. *Pre-Penalty Notice.* If OFAC has reason to believe that a sanctions violation has occurred and believes that a civil monetary penalty is appropriate, it will issue a Pre-Penalty Notice in accordance with the procedures set forth in the particular regulations governing the conduct giving rise to the apparent violation. The amount of the proposed penalty set forth in the Pre-Penalty Notice will reflect OFAC's preliminary assessment of the appropriate penalty amount, based on information then in OFAC's possession. The amount of the final penalty may change as OFAC learns additional relevant information. If, after issuance of a Pre-Penalty Notice, OFAC determines that a penalty in an amount that represents an increase of more than 10 percent from the proposed penalty set forth in the Pre-Penalty Notice is appropriate, or if OFAC intends to allege additional violations, it will issue a revised Pre-Penalty Notice setting forth the new proposed penalty amount and/or alleged violations.

a. In general, the Pre-Penalty Notice will set forth the following with respect to the specific violations alleged and the proposed penalties:

i. Description of the alleged violations, including the number of violations and their value, for which a penalty is being proposed;

ii. Identification of the regulatory or other provisions alleged to have been violated;

iii. Identification of the base category (defined below) according to which the proposed penalty amount was calculated and the General Factors that were most relevant to the determination of the proposed penalty amount;

iv. The maximum amount of the penalty to which the Subject Person could be subject under applicable law; and

v. The proposed penalty amount, determined in accordance with the provisions set forth in these Guidelines.

b. The Pre-Penalty Notice will also include information regarding how to respond to the Pre-Penalty Notice including:

i. A statement that the Subject Person may submit a written response to the Pre-Penalty Notice by a date certain addressing the alleged violation(s), the General Factors Affecting Administrative Action set forth in Section III of these Guidelines, and any other information or evidence that the Subject Person deems relevant to OFAC's consideration.

ii. A statement that a failure to respond to the Pre-Penalty Notice may result in the imposition of a civil monetary penalty.

2. *Response to Pre-Penalty Notice.* A Subject Person may submit a written response to the Pre-Penalty Notice in accordance with the procedures set forth in the particular regulations governing the conduct giving rise to the apparent violation. Generally, the response should either agree to the proposed penalty set forth in the Pre-Penalty Notice or set forth reasons why a penalty should not be imposed or, if imposed, why it should be a lesser amount than proposed, with particular attention paid to the General Factors Affecting Administrative Action set forth in Section III of these Guidelines. The response should include all documentary or other evidence available to the Subject Person that supports the arguments set forth in the response. OFAC will consider all relevant materials submitted.

3. *Penalty Notice.* If OFAC receives no response to a Pre-Penalty Notice within the time prescribed in the Pre-Penalty Notice, or if following the receipt of a response to a Pre-Penalty Notice and a review of the information and evidence contained therein OFAC concludes that a civil monetary penalty is warranted, a Penalty Notice generally will be issued in accordance with the procedures set forth in the particular regulations governing the conduct giving rise to the violation. A Penalty Notice constitutes a final agency determination that a violation has occurred. The penalty amount set forth in the Penalty Notice will take into account relevant additional information provided in response to a Pre-Penalty Notice. In the absence of a response to a Pre-Penalty Notice, the penalty amount set forth in the Penalty Notice will generally be the same as the proposed penalty set forth in the Pre-Penalty Notice.

4. *Referral to Financial Management Division.* The imposition of a civil monetary penalty pursuant to a Penalty Notice creates a debt due the U.S. Government. OFAC will advise Treasury's Financial Management Division upon the imposition of a penalty. The Financial Management Division may take follow-up action to collect the penalty assessed if it is not paid within the prescribed time period set forth in the Penalty Notice. In addition or instead, the matter may be referred to the U.S. Department of Justice for appropriate action to recover the penalty.

5. *Final Agency Action.* The issuance of a Penalty Notice constitutes final agency action with respect to the violation(s) for which the penalty is assessed.

*B. Amount of Civil Penalty*

1. *Egregious case.* In those cases in which a civil monetary penalty is deemed appropriate, OFAC will make a determination as to whether a case is deemed “egregious” for purposes of the base penalty calculation. This determination will be based on an analysis of the applicable General Factors. In making the egregiousness determination, OFAC generally will give substantial weight to General Factors A (“willful or reckless violation of law”), B (“awareness of conduct at issue”), C (“harm to sanctions program objectives”) and D (“individual characteristics”), with particular emphasis on General Factors A and B. A case will be considered an “egregious case” where the analysis of the applicable General Factors, with a focus on those General Factors identified above, indicates that the case represents a particularly serious violation of the law calling for a strong enforcement response. A determination that a case is “egregious” will be made by the Director or Deputy Director.

2. *Pre-Penalty Notice.* The penalty amount proposed in a Pre-Penalty Notice shall generally be calculated as follows, except that neither the base amount nor the proposed penalty will exceed the applicable statutory maximum amount:<sup>6</sup>

<sup>6</sup>For apparent violations identified in the Cuba Penalty Schedule, 68 Fed. Reg. 4429 (Jan. 29, 2003), for which a civil monetary penalty has been deemed appropriate, the base penalty amount shall equal the amount set forth in the Schedule for such violation, except that the base penalty amount shall be reduced by 50% in cases of voluntary self-disclosure.

a. Base Category Calculation

i. In a non-egregious case, if the apparent violation is disclosed through a voluntary self-disclosure by the Subject Person, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be one-half of the transaction value, capped at a maximum base amount of \$125,000 per violation (except in the case of transactions subject to the Trading With the Enemy Act, in which case the base amount of the proposed civil penalty will be capped at the lesser of \$125,000 or one-half of the maximum statutory penalty under TWEA, which at the time of publication of these Guidelines equaled \$32,500 per violation).

ii. In a non-egregious case, if the apparent violation comes to OFAC’s attention by means other than a voluntary self-disclosure, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be the “applicable schedule amount,” as defined above (capped at a maximum base amount of \$250,000 per violation, or, in the case of transactions subject to the Trading With the Enemy Act, capped at the lesser of \$250,000 or the maximum statutory penalty under TWEA, which at the time of publication of these Guidelines equaled a maximum of \$65,000 per violation).

iii. In an egregious case, if the apparent violation is disclosed through a voluntary self-disclosure by a Subject Person, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be one-half of the applicable statutory maximum penalty applicable to the violation.

iv. In an egregious case, if the apparent violation comes to OFAC’s attention by means other than a voluntary self-disclosure, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be the applicable statutory maximum penalty amount applicable to the violation.

The following matrix represents the base amount of the proposed civil penalty for each category of violation:

**BASE PENALTY MATRIX**

**Egregious Case**

		<b>NO</b>	<b>YES</b>
<b>YES</b>	<b>Voluntary</b>	(1) One-Half of Transaction Value (capped at \$125,000 per violation/ \$32,500 per TWEA violation)	(3) One-Half of Applicable Statutory Maximum
	<b>Self-Disclosure</b>	(2) Applicable Schedule Amount (capped at \$250,000 per violation/ \$65,000 per TWEA violation)	(4) Applicable Statutory Maximum
<b>NO</b>			

*Where the base penalty amount would otherwise exceed the statutory maximum civil penalty amount applicable to an apparent violation, the base penalty amount shall equal such applicable statutory maximum amount.*

**b. Adjustment for Applicable Relevant General Factors**

The base amount of the proposed civil penalty may be adjusted to reflect applicable General Factors for Administrative Action set forth in Section III of these Guidelines. Each factor may be considered mitigating or aggravating, resulting in a lower or higher proposed penalty amount. As a general matter, in those cases where the following General Factors are present, OFAC will adjust the base proposed penalty amount in the following manner:

i. In cases involving substantial cooperation with OFAC but no voluntary self-disclosure as defined herein, including cases in which an apparent violation is reported to OFAC by a third party but the Subject Person provides substantial additional information regarding the apparent violation and/or other related violations, the base penalty

amount generally will be reduced between 25 and 40 percent. Substantial cooperation in cases involving voluntary self-disclosure may also be considered as a further mitigating factor.

ii. In cases involving a Subject Person's first violation, the base penalty amount generally will be reduced up to 25 percent. An apparent violation generally will be considered a "first violation" if the Subject Person has not received a penalty notice or Finding of Violation from OFAC in the five years preceding the date of the transaction giving rise to the apparent violation. A group of substantially similar apparent violations addressed in a single Pre-Penalty Notice shall be considered as a single violation for purposes of this subsection. In those cases where a prior penalty notice or Finding of Violation within the preceding five years involved conduct of a substantially different nature

from the apparent violation at issue, OFAC may consider the apparent violation at issue a “first violation.” In determining the extent of any mitigation for a first violation, OFAC may consider any prior OFAC enforcement action taken with respect to the Subject Person, including any cautionary, warning or evaluative letters issued, or any civil monetary settlements entered into with OFAC.

In all cases, the proposed penalty amount will not exceed the applicable statutory maximum.

In cases involving a large number of apparent violations, where the transaction value of all apparent violations is either unknown or would require a disproportionate allocation of resources to determine, OFAC may estimate or extrapolate the transaction value of the total universe of apparent violations in determining the amount of any proposed civil monetary penalty.

3. *Penalty Notice.* The amount of the proposed civil penalty in the Pre-Penalty Notice will be the presumptive starting point for calculation of the civil penalty amount in the Penalty Notice. OFAC may adjust the penalty amount in the Penalty Notice based on:

a. Evidence presented by the Subject Person in response to the Pre-Penalty Notice, or otherwise received by OFAC with respect to the underlying violation(s); and/or

b. Any modification resulting from further review and reconsideration by OFAC of the proposed civil monetary penalty in light of the General Factors for Administrative Action set forth in Section III above.

In no event will the amount of the civil monetary penalty in the Penalty Notice exceed the proposed penalty set forth in the Pre-Penalty Notice by more than 10 percent, or include additional alleged violations, unless a revised Pre-Penalty Notice has first been sent to the Subject Person as set forth above. In the event that OFAC determines upon further review that no penalty is appropriate, it will so inform the Subject Person in a no-action letter, a cautionary letter, or a Finding of Violation.

### C. Settlements

A settlement does not constitute a final agency determination that a violation has occurred.

1. *Settlement Process.* Settlement discussions may be initiated by OFAC, the Subject Person or the Subject Person’s authorized representative. Settlements generally will be negotiated in accordance with the principles set forth in these Guidelines with respect to appropriate penalty amounts. OFAC may condition the entry into or continuation of settlement negotiations on the execution of a tolling agreement with respect to the statute of limitations.

2. *Settlement Prior to Issuance of Pre-Penalty Notice.* Where settlement discussions occur prior to the issuance of a Pre-Penalty Notice, the Subject Person may request in writing that OFAC withhold issuance of a Pre-Penalty Notice pending the conclusion of settlement discussions. OFAC will generally agree to such a request as long as settlement discussions are continuing in good faith and the statute of limitations is not at risk of expiring.

3. *Settlement Following Issuance of Pre-Penalty Notice.* If a matter is settled after a Pre-Penalty Notice has been issued, but before a final Penalty Notice is issued, OFAC will not make a final determination as to whether a sanctions violation has occurred. In the event no settlement is reached, the period specified for written response to the Pre-Penalty Notice remains in effect unless additional time is granted by OFAC.

4. *Settlements of Multiple Apparent Violations.* A settlement initiated for one apparent violation may also involve a comprehensive or global settlement of multiple apparent violations covered by other Pre-Penalty Notices, apparent violations for which a Pre-Penalty Notice has not yet been issued by OFAC, or previously unknown apparent violations reported to OFAC during the pendency of an investigation of an apparent violation.

### ANNEX

The following matrix can be used by financial institutions to evaluate their compliance programs:

OFAC RISK MATRIX

Low	Moderate	High
<p>Stable, well-known customer base in a localized environment</p> <p>Few high-risk customers; these may include nonresident aliens, foreign customers (including accounts with U.S. powers of attorney), and foreign commercial customers.</p> <p>No overseas branches and no correspondent accounts with foreign banks.</p> <p>No electronic services (e.g., e-banking) offered, or products available are purely informational or non-transactional.</p> <p>Limited number of funds transfers for customers and non-customers, limited third-party transactions, and no international funds transfers.</p> <p>No other types of international transactions, such as trade finance, cross-border ACH, and management of sovereign debt.</p> <p>No history of OFAC actions. No evidence of apparent violation or circumstances that might lead to a violation.</p>	<p>Customer base changing due to branching, merger, or acquisition in the domestic market.</p> <p>A moderate number of high-risk customers .....</p> <p>Overseas branches or correspondent accounts with foreign banks.</p> <p>The institution offers limited electronic (e.g., e-banking) products and services.</p> <p>A moderate number of funds transfers, mostly for customers. Possibly, a few international funds transfers from personal or business accounts.</p> <p>Limited other types of international transactions .....</p>	<p>A large, fluctuating client base in an international environment.</p> <p>A large number of high-risk customers.</p> <p>Overseas branches or multiple correspondent accounts with foreign banks.</p> <p>The institution offers a wide array of electronic (e.g., e-banking) products and services (i.e., account transfers, e-bill payment, or accounts opened via the Internet).</p> <p>A high number of customer and non-customer funds transfers, including international funds transfers.</p> <p>A high number of other types of international transactions.</p>
<p>Management has fully assessed the institution's level of risk based on its customer base and product lines. This understanding of risk and strong commitment to OFAC compliance is satisfactorily communicated throughout the organization.</p> <p>The board of directors, or board committee, has approved an OFAC compliance program that includes policies, procedures, controls, and information systems that are adequate, and consistent with the institution's OFAC risk profile.</p> <p>Staffing levels appear adequate to properly execute the OFAC compliance program.</p> <p>Authority and accountability for OFAC compliance are clearly defined and enforced, including the designation of a qualified OFAC officer.</p>	<p>A small number of recent actions (i.e., actions within the last five years) by OFAC, including notice letters, or civil money penalties, with evidence that the institution addressed the issues and is not at risk of similar violations in the future.</p> <p>Management exhibits a reasonable understanding of the key aspects of OFAC compliance and its commitment is generally clear and satisfactorily communicated throughout the organization, but it may lack a program appropriately tailored to risk.</p> <p>The board has approved an OFAC compliance program that includes most of the appropriate policies, procedures, controls, and information systems necessary to ensure compliance, but some weaknesses are noted.</p> <p>Staffing levels appear generally adequate, but some deficiencies are noted.</p> <p>Authority and accountability are defined, but some refinements are needed. A qualified OFAC officer has been designated.</p>	<p>Multiple recent actions by OFAC, where the institution has not addressed the issues, thus leading to an increased risk of the institution undertaking similar violations in the future.</p> <p>Management does not understand, or has chosen to ignore, key aspects of OFAC compliance risk. The importance of compliance is not emphasized or communicated throughout the organization.</p> <p>The board has not approved an OFAC compliance program, or policies, procedures, controls, and information systems are significantly deficient.</p> <p>Management has failed to provide appropriate staffing levels to handle workload.</p> <p>Authority and accountability for compliance have not been clearly established. No OFAC compliance officer, or an unqualified one, has been appointed. The role of the OFAC officer is unclear.</p> <p>Training is sporadic and does not cover important regulatory and risk areas or is nonexistent.</p>
<p>The institution employs strong quality control methods .....</p>	<p>The institution employs limited quality control methods .....</p>	<p>The institution does not employ quality control methods.</p>

[74 FR 57601, Nov. 9, 2009]

**PART 505—REGULATIONS PROHIBITING TRANSACTIONS INVOLVING THE SHIPMENT OF CERTAIN MERCHANDISE BETWEEN FOREIGN COUNTRIES**

Sec.

- 505.01 Short title.
- 505.10 Prohibitions.
- 505.20 Definitions.
- 505.30 Licenses.
- 505.31 General license for offshore transactions from certain countries.
- 505.40 Records and reports.
- 505.50 Penalties.
- 505.60 Procedures.

AUTHORITY: 31 U.S.C. 321(b); 50 U.S.C. App. 1-44; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748.

SOURCE: 18 FR 4291, July 23, 1953, unless otherwise noted.

**§ 505.01 Short title.**

The regulations in this part may be referred to as the Transaction Control Regulations.

[19 FR 5483, Aug. 27, 1954]

**§ 505.10 Prohibitions.**

Except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, no person within the United States, for his own account or that of another, may purchase or sell or arrange the purchase or sale of any merchandise in any foreign country or obtain from any banking institution a credit or payment in connection therewith, or attempt to do any of the foregoing, if:

(a) The transaction involves the shipment from any foreign country of any merchandise directly or indirectly to any destination within a country on the attached schedule, and

(b) The merchandise is of a type the unauthorized exportation of which from the United States is prohibited by regulations issued under the Arms Export Control Act of 1976, 22 U.S.C. 2778, or the Atomic Energy Act of 1954, 42 U.S.C. 2011-2297g-4, or successor acts

restricting the exportation of strategic goods.

SCHEDULE

Albania  
Bulgaria  
Cambodia  
The Czech Republic  
Estonia  
Latvia  
Lithuania  
North Korea  
Mongolia  
People's Republic of China  
Poland  
Romania  
The Slovak Republic  
The geographic area formerly known as the Union of Soviet Socialist Republics  
Vietnam

[30 FR 1284, Feb. 6, 1965, as amended at 50 FR 27437, July 3, 1985; 56 FR 45895, Sept. 9, 1991; 58 FR 13198, Mar. 10, 1993; 60 FR 34144, June 30, 1995]

**§ 505.20 Definitions.**

The definitions contained in subpart C, part 500 of this chapter are applicable to any terms therein defined which are used in this part.

[19 FR 5483, Aug. 27, 1954]

**§ 505.30 Licenses.**

No regulation, ruling, instruction or license authorizes a transaction prohibited by § 505.10 unless the regulation, ruling, instruction or license is issued by the Treasury Department and specifically refers to that section. For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[18 FR 4291, July 23, 1953, as amended at 68 FR 53657, Sept. 11, 2003]

**§ 505.31 General license for offshore transactions from certain countries.**

(a) Except as provided in paragraph (b) of this section, all transactions prohibited by § 505.10 are hereby authorized provided:

(1) Shipment is to a country listed in the schedule to § 505.10, other than North Korea; and