

PART 500 [RESERVED]

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

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APPENDIX A TO PART 501—ECONOMIC SANCTIONS ENFORCEMENT GUIDELINES

AUTHORITY: 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901-3913; 21 U.S.C. 1901-1908; 22 U.S.C. 287c; 22 U.S.C. 2370(a), 6009, 6032,

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7205; 28 U.S.C. 2461 note; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44.

SOURCE: 62 FR 45101, Aug. 25, 1997, unless otherwise noted.

Subpart A—Relation of This Part to Other Parts in This Chapter

§ 501.101 Relation of this part to other parts in this chapter.

This part sets forth standard reporting and recordkeeping requirements and license application and other procedures governing transactions regulated pursuant to other parts codified in this chapter, as well as to economic sanctions programs for which implementation and administration are delegated to the Office of Foreign Assets Control. Substantive prohibitions and policies particular to each economic sanctions program are not contained in this part but are set forth in the particular part of this chapter dedicated to that program, or, in the case of economic sanctions programs not yet implemented in regulations, in the applicable executive order or other authority. License application procedures and reporting requirements set forth in this part govern transactions undertaken pursuant to general or specific licenses. The criteria for general and specific licenses pertaining to a particular economic sanctions program are set forth in subpart E of the individual parts in this chapter. Statements of licensing policy contained in subpart E of the individual parts in this chapter, however, may contain additional information collection provisions that require production of specified documentation unique to a given general license or statement of licensing policy.

[62 FR 52494, Oct. 8, 1997]

Subpart B—Definitions

§ 501.301 Definitions.

Definitions of terms used in this part are found in subpart C of the part within this chapter applicable to the relevant application, record, report, procedure or transaction. In the case of economic sanctions programs for which implementation and administration are delegated to the Office of Foreign

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Assets Control but for which regulations have not yet been issued, the definitions of terms in this part are governed by definitions contained in the implementing statute or Executive order.

Subpart C—Reports

§ 501.601 Records and recordkeeping requirements.

Except as otherwise provided, every person engaging in any transaction subject to the provisions of this chapter shall keep a full and accurate record of each such transaction engaged in, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 5 years after the date of such transaction. Except as otherwise provided, every person holding property blocked pursuant to the provisions of this chapter or funds transfers retained pursuant to § 596.504(b) of this chapter shall keep a full and accurate record of such property, and such record shall be available for examination for the period of time that such property is blocked and for at least 5 years after the date such property is unblocked.

NOTE: See subpart F of part 597 for the relationship between this section and part 597.

[62 FR 45101, Aug. 25, 1997, as amended at 62 FR 52494, Oct. 8, 1997]

§ 501.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Director, Office of Foreign Assets Control, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this chapter or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect. The Director may require that such reports include the production of any books of account, contracts, letters or other papers connected with any such transaction or property, in the custody or control of

the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. Except as provided in parts 596 and 597, the Director may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

NOTE: See subpart F of part 597 for the relationship between this section and part 597.

[62 FR 45101, Aug. 25, 1997, as amended at 62 FR 52494, Oct. 8, 1997]

§ 501.603 Reports on blocked property.

(a) *Who must report*—(1) *Holders of blocked property.* Any person, including a financial institution, holding property blocked pursuant to this chapter must report. The requirement includes financial institutions that receive and block payments or transfers. This requirement is mandatory and applies to all U.S. persons (or persons subject to U.S. jurisdiction in the case of parts 500 and 515 of this chapter) who have in their possession or control any property or interests in property blocked pursuant to this chapter.

(2) *Primary responsibility to report.* A report may be filed on behalf of a holder of blocked property by an attorney, agent, or other person. Primary responsibility for reporting blocked property, however, rests with the actual holder of the property, or the person exercising control over property located outside the United States, with the following exceptions: primary responsibility for reporting any trust assets rest with the trustee; and primary responsibility for reporting real property rests with any U.S. co-owner, legal representative, agent, or property manager in the United States. No person is excused from filing a report by reason of the fact that another person has submitted a report with regard to the same property, except upon actual knowledge of the report filed by such

other person. Reports filed are regarded as privileged and confidential.

(3) *Financial institutions.* For purposes of this section, the term “financial institution” shall include a banking institution, domestic bank, United States depository institution, financial institution, or U.S. financial institution, as those terms are defined in the applicable part of this chapter.

(b) *What must be reported*—(1) *Initial reports*—(i) *When reports are due.* Reports are required to be filed within 10 business days from the date that property becomes blocked. This reporting requirement includes payments or transfers that are received and blocked by financial institutions.

(ii) *Contents of reports.* Initial reports on blocked property shall describe the owner or account party, the property, its location, any existing or new account number or similar reference necessary to identify the property, actual or estimated value and the date it was blocked, and shall include the name and address of the holder, along with the name and telephone number of a contact person from whom compliance information can be obtained. If the report is filed by a financial institution and involves the receipt of a payment or transfer of funds which are blocked by the financial institution, the report shall also include a photocopy of the payment or transfer instructions received and shall confirm that the payment has been deposited into a new or existing blocked account which is labeled as such and is established in the name of, or contains a means of clearly identifying the interest of, the individual or entity subject to blocking pursuant to the requirements of this chapter.

(2) *Annual reports*—(i) *When reports are due.* A comprehensive report on all blocked property held as of June 30 of the current year shall be filed annually by September 30. The first annual report is due September 30, 1997.

(ii) *Contents of reports.* Annual reports shall be filed using Form TDF 90-22.50, Annual Report of Blocked Property. Copies of Form TDF 90-22.50 may be obtained directly from the Office of Foreign Assets Control, by calling the fax-on-demand service maintained by the Office of Foreign Assets Control at 202/

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622-0077, or by downloading the form from the “OFAC Press Releases and Miscellaneous Documents” file library (“FAC_MISC”) located on the Government Printing Office’s Federal Bulletin Board Online via GPO Access (Internet site: http://fedbbs.access.gpo.gov/lib/fac_misc.htm). Photocopies of the report form may be used. Requests to submit the information required on Form TDF 90-22.50 in an alternative format developed by the reporter are invited and will be considered by the Office of Foreign Assets Control on a case-by-case basis. A copy of reports filed using form TDF 90-22.50 or in alternative formats must be retained for the reporter’s records.

(c) *Reports on retained funds pursuant to § 596.504(b) of this chapter.* The reporting requirements set forth in this section are applicable to any financial institution retaining funds pursuant to § 596.504(b) of this chapter, except that the account name shall reflect the name of the person whose interest required retention of the funds.

(d) *Where to report.* All reports must be filed with the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW.—Annex, Washington, DC 20220.

NOTE: See subpart F of part 597 for the relationship between this section and part 597.

[62 FR 45101, Aug. 25, 1997, as amended at 62 FR 52495, Oct. 8, 1997]

§ 501.604 Reports by U.S. financial institutions on rejected funds transfers.

(a) *Who must report.* Any financial institution that rejects a funds transfer where the funds are not blocked under the provisions of this chapter, but where processing the transfer would nonetheless violate, or facilitate an underlying transaction that is prohibited under, other provisions contained in this chapter, must report. For purposes of this section, the term “financial institution” shall include a banking institution, depository institution or United States depository institution, domestic bank, financial institution or U.S. financial institution, as those terms are defined in the applicable part of this chapter.

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(b) *Rejected transfers.* Examples of transactions involving rejected funds transfers include funds transfer instructions:

(1) Referencing a blocked vessel but where none of the parties or financial institutions involved in the transaction is a blocked person;

(2) Sending funds to a person in Iraq;

(3) Transferring unlicensed gifts or charitable donations from the Government of Syria to a U.S. person;

(4) Crediting Iranian accounts on the books of a U.S. financial institution; and

(5) Making unauthorized transfers from U.S. persons to Iran or the Government of Iran.

(c) *When reports are due.* Reports are required to be filed within 10 business days by any financial institution rejecting instructions to execute payments or transfers involving underlying transactions prohibited by the provisions of this chapter.

(d) *What must be reported.* The report shall include the name and address of the transferee financial institution, the date of the transfer, the amount of the payment transfer, and a photocopy of the payment or transfer instructions received, and shall state the basis for the rejection of the transfer instructions. The report shall also provide the name and telephone number of a contact person at the transferee financial institution from whom compliance information may be obtained.

(e) *Where to report.* Reports must be filed with the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW.—Annex, Washington, DC 20220.

[62 FR 45101, Aug. 25, 1997, as amended 70 FR 34061, June 13, 2005]

§ 501.605 Reports on litigation, arbitration, and dispute resolution proceedings.

(a) U.S. persons (or persons subject to the jurisdiction of the United States in the case of parts 500 and 515 of this chapter) participating in litigation, arbitration, or other binding alternative dispute resolution proceedings in the United States on behalf of or against persons whose property or interests in property are blocked or whose funds

have been retained pursuant to § 596.504(b) of this chapter, or when the outcome of any proceeding may affect blocked property or retained funds, must:

(1) Provide notice of such proceedings upon their commencement or upon submission or receipt of documents bringing the proceedings within the terms of the introductory text to this paragraph (a);

(2) Submit copies of all pleadings, motions, memoranda, exhibits, stipulations, correspondence, and proposed orders or judgments (including any proposed final judgment or default judgment) submitted to the court or other adjudicatory body, and all orders, decisions, opinions, or memoranda issued by the court, to the Chief Counsel, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220, within 10 days of filing, submission or issuance. This paragraph (a)(2) shall not apply to discovery requests or responses, documents filed under seal, or requests for procedural action not seeking action dispositive of the proceedings (such as requests for extension of time to file); and

(3) Report by immediate facsimile transmission to the Chief Counsel, Office of Foreign Assets Control, at facsimile number 202/622-1911, the scheduling of any hearing or status conference in the proceedings whenever it appears that the court or other adjudicatory body may issue an order or judgment in the proceedings (including a final judgment or default judgment) or is considering or may decide any pending request dispositive of the merits of the proceedings or of any claim raised in the proceedings.

(b) The reporting requirements of paragraph (a) of this section do not apply to proceedings to which the Office of Foreign Assets Control is a party.

(c) Persons initiating proceedings subject to the reporting requirements of this section must notify the court or other adjudicatory body of the restrictions set forth under the applicable part in this chapter governing the transfer of blocked property or funds retained pursuant to § 596.504(b) of this

chapter, including the prohibition on any unlicensed attachment, judgment, decree, lien, execution, garnishment or other judicial process with respect to any property in which, on or after the applicable effective date, there existed an interest of any person whose property and property interests were subject to blocking pursuant to this chapter or were subject to retention pursuant to § 596.504(b) of this chapter.

§ 501.606 Reporting and recordkeeping requirements applicable to economic sanctions programs.

The reporting and recordkeeping requirements set forth in this subpart are applicable to economic sanctions programs for which implementation and administration have been delegated to the Office of Foreign Assets Control.

Subpart D—Trading With the Enemy Act (TWEA) Penalties

SOURCE: 68 FR 53642, Sept. 11, 2003, unless otherwise noted.

§ 501.700 Applicability.

This subpart is applicable only to those parts of chapter V promulgated pursuant to the TWEA, which include parts 500, 505, and 515.

§ 501.701 Penalties.

(a) Attention is directed to section 16 of the TWEA, as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, as amended, 28 U.S.C. 2461 note), which provides that:

(1) Persons who willfully violate any provision of TWEA or any license, rule, or regulation issued thereunder, and persons who willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of TWEA shall, upon conviction, be fined not more than \$1,000,000 or, if an individual, be fined not more than \$100,000 or imprisoned for not more than 10 years, or both; and an officer, director, or agent of any corporation who knowingly participates in such violation shall, upon conviction, be fined not more than \$100,000 or imprisoned for not more than 10 years, or both.

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(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, concerned in a violation of TWEA may upon conviction be forfeited to the United States Government.

(3) The Secretary of the Treasury may impose a civil penalty of not more than \$65,000 per violation on any person who violates any license, order, or regulation issued under TWEA.

NOTE TO PARAGRAPH (a)(3): The current \$65,000 civil penalty cap may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

(4) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation subject to a civil penalty issued pursuant to TWEA shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

(b) The criminal penalties provided in TWEA are subject to increase pursuant to 18 U.S.C. 3571 which, when read in conjunction with section 16 of TWEA, provides that persons convicted of violating TWEA may be fined up to the greater of either \$250,000 for individuals and \$1,000,000 for organizations or twice the pecuniary gain or loss from the violation.

(c) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

[68 FR 53642, Sept. 11, 2003, as amended at 68 FR 61361, Oct. 28, 2003]

§ 501.702 Definitions.

(a) *Chief Counsel* means the Chief Counsel (Foreign Assets Control), Of-

fice of the General Counsel, Department of the Treasury.

(b) *Day* means calendar day. In computing any period of time prescribed in or allowed by this subpart, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday. Intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail. If on the day a filing is to be made, weather or other conditions have caused the designated filing location to close, the filing deadline shall be extended to the end of the next day that the filing location is not closed and that is not a Saturday, a Sunday, or a Federal legal holiday. If service is made by mail, three days shall be added to the prescribed period for response.

(c) *Department* means the Department of the Treasury.

(d) *Director* means the Director of the Office of Foreign Assets Control, Department of the Treasury.

(e) *Ex Parte Communication* means any material oral or written communication not on the public record concerning the merits of a proceeding with respect to which reasonable prior notice to all parties is not given, on any material matter or proceeding covered by these rules, that takes place between: A party to the proceeding, a party's counsel, or any other interested individual; and the Administrative Law Judge or Secretary's designee handling that proceeding. A request to learn the status of a proceeding does not constitute an ex parte communication; and settlement inquiries and discussions do not constitute ex parte communications.

(f) *General Counsel* means the General Counsel of the U.S. Department of the Treasury.

(g) *Order of Settlement* means a written order issued by the Director terminating a civil penalty action. An Order of Settlement does not constitute an agency decision that any violation took place.

(h) *Order Instituting Proceedings* means a written order issued by the Director to initiate a civil penalty hearing.

(i) *Prepenalty Notice* means a written notification from the Director informing a respondent of the alleged violation(s) and the respondent's right to respond.

(j) *Penalty Notice* means a written notification from the Director informing a respondent that the Director has made a finding of violation and, absent a request for a hearing, will impose a civil monetary penalty.

(k) *Proceeding* means any agency process initiated by an "Order Instituting Proceedings," or by the filing of a petition for review of an Administrative Law Judge's decision or ruling.

(l) *Respondent* means any individual alleged by the Director to have violated a TWEA-based sanctions regulation.

(m) *Secretary's designee* means a U.S. Treasury Department official delegated responsibility by the Secretary of the Treasury to consider petitions for review of Administrative Law Judge decisions made in civil penalty hearings conducted pursuant to this subpart.

(n) *Secretary* means the Secretary of the Treasury.

§ 501.703 Overview of civil penalty process and construction of rules.

(a) The administrative process for enforcing TWEA sanctions programs proceeds as follows:

(1) The Director of the Office of Foreign Assets Control will notify a suspected violator (hereinafter "respondent") of an alleged violation by issuing a "Prepenalty Notice." The Prepenalty Notice shall describe the alleged violation(s) and include a proposed civil penalty amount.

(2) The respondent will have 60 days from the date the Prepenalty Notice is served to make a written presentation either defending against the alleged violation or admitting the violation. A respondent who admits a violation may

offer information 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.

(3) Absent a settlement agreement or a finding that no violation occurred, the Director of the Office of Foreign Assets Control will issue a "Penalty Notice." The respondent will have 30 days from the date of service to either pay the penalty or request a hearing.

(4) If the respondent requests a hearing, the Director of the Office of Foreign Assets Control will have two options:

(i) The Director may issue an "Order Instituting Proceedings" and refer the matter to an Administrative Law Judge for a hearing and decision; or

(ii) The Director may determine to discontinue the penalty action based on information presented by the respondent.

(5) Absent review by a Secretary's designee, the decision of the Administrative Law Judge will become the final decision of the Department without further proceedings.

(6) If review is taken by a Secretary's designee, the Secretary's designee reaches the final decision of the Department.

(7) A respondent may seek judicial review of the final decision of the Department.

(b) *Construction of rules.* The rules contained in this subpart shall be construed and administered to promote the just, speedy, and inexpensive determination of every action. To the extent there is a conflict between the rules contained in this subpart and a procedural requirement contained in any statute, the requirement in the statute shall control.

§ 501.704 Appearance and practice.

No person shall be represented before the Director in any civil penalty matter, or an Administrative Law Judge or the Secretary's designee in a civil penalty hearing, under this subpart except as provided in this section.

(a) *Representing oneself.* In any proceeding, an individual may appear on his or her own behalf.

(b) *Representative.* Upon written notice to the Director,

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(1) A respondent may be represented by a personal representative. If a respondent wishes to be represented by counsel, such counsel must be an attorney at law admitted to practice before the Supreme Court of the United States, the highest court of any State, commonwealth, possession, or territory of the United States, or the District of Columbia;

(2) A duly authorized member of a partnership may represent the partnership; and

(3) A bona fide officer, director, or employee of a corporation, trust or association may represent the corporation, trust or association.

(c) *Director representation.* The Director shall be represented by members of the Office of Chief Counsel or any other counsel specifically assigned by the General Counsel.

(d) *Conflicts of interest—(1) Conflict of interest in representation.* No individual shall appear as representative for a respondent in a proceeding conducted pursuant to this subpart if it reasonably appears that such representation may be materially limited by that representative's responsibilities to a third person, or by that representative's own interests.

(2) *Corrective measures.* An Administrative Law Judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

§ 501.705 Service and filing.

(a) *Service of Prepenalty Notice, Penalty Notice, Acknowledgment of Hearing Request and Order Instituting Proceedings.* The Director shall cause any Prepenalty Notice, Penalty Notice, Acknowledgment of Hearing Request, Order Instituting Proceedings, and other related orders and decisions, or any amendments or supplements thereto, to be served upon the respondent.

(1) *Service on individuals.* Service shall be complete:

(i) Upon the date of mailing by first class (regular) mail to the respondent at the respondent's last known address,

or to a representative authorized to receive service, including qualified representatives noticed to the Director pursuant to § 501.704. Absent satisfactory evidence in the administrative record to the contrary, the Director may presume that the date of mailing is the date stamped on the first page of the notice or order. The respondent may rebut the presumption that a notice or order was mailed on the stamped mailing date only by presenting evidence of the postmark date on the envelope in which the notice or order was mailed;

(ii) Upon personal service on the respondent; or leaving a copy at the respondent's place of business with a clerk or other person in charge thereof; or leaving a copy at the respondent's dwelling house or usual place of abode with a person at least 18 years of age then residing therein; or with any other representative authorized by appointment or by law to accept or receive service for the respondent, including representatives noticed to the Director pursuant to § 501.704; and evidenced by a certificate of service signed and dated by the individual making such service, stating the method of service and the identity of the individual with whom the notice or order was left; or

(iii) Upon proof of service on a respondent who is not resident in the United States by any method of service permitted by the law of the jurisdiction in which the respondent resides or is located, provided the requirements of such foreign law satisfy due process requirements under United States law with respect to notice of administrative proceedings, and where applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraphs (a)(1)(i) and (ii) of this section inappropriate or ineffective for service upon the non-resident respondent.

(2) *Service on corporations and other entities.* Service is complete upon delivering a copy of the notice or order to a partner, bona fide officer, director, managing or general agent, or any other agent authorized by appointment or by law to receive such notice, by any method specified in paragraph (a)(1) of this section.

(b) *Service of responses to Prepenalty Notice, Penalty Notice, and requests for a hearing.* A respondent shall serve a response to a Prepenalty Notice and any request for a hearing on the Director through the Chief of Civil Penalties, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington DC 20220, with the envelope prominently marked "Urgent: Part 501 Action." Service shall be complete upon the date of mailing, as evidenced by the post-mark date on the envelope, by first class (regular) mail.

(c) *Service or filing of papers in connection with any hearing by an Administrative Law Judge or review by the Secretary's designee—*(1) *Service on the Director and/or each respondent.* (i) Each paper, including each notice of appearance, written motion, brief, petition for review, statement in opposition to petition for review, or other written communication, shall be served upon the Director and/or each respondent in the proceeding in accordance with paragraph (a) of this section; provided, however, that no service shall be required in the case of documents that are the subject of a motion seeking a protective order to limit or prevent disclosure to another party.

(ii) Service upon the Director shall be made through the Chief Counsel (Foreign Assets Control), U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, with the envelope prominently marked "Urgent: Part 501 Proceeding."

(iii) Service may be made:

(A) As provided in paragraph (a) of this section;

(B) By mailing the papers through the U.S. Postal Service by Express Mail; or

(C) By transmitting the papers by facsimile machine where the following conditions are met:

(1) The persons serving each other by facsimile transmission have agreed to do so in a writing, signed by each party, which specifies such terms as they deem necessary with respect to facsimile machine telephone numbers to be used, hours of facsimile machine operation, the provision of non-facsimile original or copy, and any other such matters; and

(2) Receipt of each document served by facsimile is confirmed by a manually signed receipt delivered by facsimile machine or other means agreed to by the parties.

(iv) Service by U.S. Postal Service Express Mail is complete upon delivery as evidenced by the sender's receipt. Service by facsimile is complete upon confirmation of transmission by delivery of a manually signed receipt.

(2) *Filing with the Administrative Law Judge.* Unless otherwise provided, all briefs, motions, objections, applications or other filings made during a proceeding before an Administrative Law Judge, and all requests for review by the Secretary's designee, shall be filed with the Administrative Law Judge.

(3) *Filing with the Secretary's designee.* And all briefs, motions, objections, applications or other filings made during a proceeding before the Secretary's designee shall be filed with the Secretary's designee.

(4) *Certificate of service.* Papers filed with an Administrative Law Judge or Secretary's designee shall be accompanied by a certificate stating the name of each person served, the date of service, the method of service and the mailing address or facsimile telephone number to which service was made, if not made in person. If the method of service to any person is different from the method of service to any other person, the certificate shall state why a different means of service was used.

(5) *Form of briefs.* All briefs containing more than 10 pages shall, to the extent applicable, include a table of contents, an alphabetized table of cases, a table of statutes, and a table of other authorities cited, with references to the pages of the brief wherein they are cited.

(6) *Specifications.* All original documents shall be filed with the Administrative Law Judge or Secretary's designee, as appropriate. Papers filed in connection with any proceeding shall:

(i) Be on one grade of unglazed white paper measuring 8.5 × 11 inches, except that, to the extent that the reduction of larger documents would render them illegible, such documents may be filed on larger paper;

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(ii) Be typewritten or printed in either 10- or 12-point typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;

(iii) Include at the head of the paper, or on a title page, the title of the proceeding, the name(s) of each respondent, the subject of the particular paper or pleading, and the file number assigned to the proceeding;

(iv) Be formatted with all margins at least 1 inch wide;

(v) Be double-spaced, with single-spaced footnotes and single-spaced indented quotations; and

(vi) Be stapled, clipped or otherwise fastened in the upper left corner.

(7) *Signature requirement and effect.* All papers must be dated and signed by a member of the Office of Chief Counsel, or other counsel assigned by the General Counsel to represent the Director, or a respondent or respondent's representative, as appropriate. If a filing is signed by a respondent's representative it shall state that representative's mailing address and telephone number. A respondent who represents himself or herself shall sign his or her individual name and state his or her address and telephone number on every filing. A witness deposition shall be signed by the witness.

(i) *Effect of signature.* The signature shall constitute a certification that:

(A) The person signing the filing has read the filing;

(B) To the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(C) The filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.

(ii) If a filing is not signed, the Administrative Law Judge (or the Secretary's designee) shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

(d) Service of written orders or decisions issued by the Administrative Law Judge or Secretary's designee. Written orders or decisions issued by the Ad-

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ministrative Law Judge or the Secretary's designee shall be served promptly on each respondent and the Director pursuant to any method of service authorized under paragraph (a) of this section. Service of such orders or decisions shall be made by the Administrative Law Judge or the Secretary's designee, as appropriate.

§ 501.706 Prepenalty Notice; issuance by Director.

(a) *When required.* If the Director has reason to believe there has occurred a violation of any provision of parts 500 or 515 of this chapter 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 pursuant to parts 500 or 515 of this chapter or otherwise under the Trading With the Enemy Act, and the Director determines that further civil proceedings are warranted, the Director shall issue a Prepenalty Notice. 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 alleged violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The Prepenalty Notice shall inform the respondent of respondent's right to make a written presentation within the time prescribed in § 501.707 as to why the respondent believes there should be no finding of a violation or why, if the respondent admits the violation, a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed. The Prepenalty Notice shall also inform the respondent that:

(i) The act of submitting a written response by the respondent is a factor that may result in a lower penalty absent any aggravating factors; and

(ii) If the respondent fails to respond to the Prepenalty Notice within the applicable 60-day period set forth in § 501.707, the Director may proceed with the issuance of a Penalty Notice.

(3) *Right to request a hearing.* The Prepenalty Notice shall inform the respondent of respondent's right, if a subsequent Penalty Notice is issued, to request an administrative hearing. The Director will not consider any request for an administrative hearing until a Penalty Notice has been issued.

§ 501.707 Response to Prepenalty Notice.

(a) *Deadline for response.* (1) The respondent shall have 60 days after the date of service of the Prepenalty Notice pursuant to § 501.705(a) to respond thereto. The response, signed and dated, shall be served as provided in § 501.705(b).

(2) In response to a written request by the respondent, the Director may, at his or her discretion for the purpose of conducting settlement negotiations or for other valid reasons, grant additional time for a respondent to submit a response to the Prepenalty Notice.

(3) The failure to submit a response within the time period set forth in this paragraph (a), including any additional time granted by the Director, shall be deemed to be a waiver of the right to respond to the Prepenalty Notice.

(b) *Form and contents of response—(1) In general.* The response need not be in any particular form, but must be typewritten and contain the heading "Response to Prepenalty Notice" and the Office of Foreign Assets Control identification number shown near the top of the Prepenalty Notice. It should be responsive to the allegations contained therein and set forth the nature of the respondent's admission of the violation, or defenses and claims for mitigation, if any.

(i) The response must admit or deny specifically each separate allegation of violation made in the Prepenalty Notice. If the respondent is without knowledge as to an allegation, the response shall so state, and such statement shall constitute a denial. Any allegation not specifically addressed in the response shall be deemed admitted.

(ii) The response must set forth any additional or new matter or arguments the respondent seeks, or shall seek, to use in support of all defenses or claims for mitigation. Any defense the re-

spondent wishes to assert must be included in the response.

(iii) The response must accurately state (for each respondent, if applicable) the respondent's full name and address for future service, together with a current telephone and, if applicable, facsimile machine number. If respondent is represented, the representative's full name and address, together with telephone and facsimile numbers, may be provided instead of service information for the respondent. The respondent or respondent's representative of record is responsible for providing timely written notice to the Director of any subsequent changes in the information provided.

(iv) *Financial disclosure statement requirement.* Any respondent who asserts financial hardship or an inability to pay a penalty shall include with the response a financial disclosure statement setting forth in detail the basis for asserting the financial hardship or inability to pay a penalty, subject to 18 U.S.C. 1001.

(2) *Settlement.* In addition, or as an alternative, to a written response to a Prepenalty Notice, the respondent or respondent's representative may seek settlement of the alleged violation(s). See § 501.710. In the event of settlement prior to the issuance of a Penalty Notice, the claim proposed in the Prepenalty Notice will be withdrawn and the respondent will not be required to make a written response to the Prepenalty Notice. In the event no settlement is reached, a written response to the Prepenalty Notice is required pursuant to paragraph (c) of this section.

§ 501.708 Director's finding of no penalty warranted.

If after considering any written response to the Prepenalty Notice submitted pursuant to § 501.707 and any other relevant facts, the Director determines that there was no violation or that the violation does not warrant the imposition of a civil monetary penalty, the Director promptly shall notify the respondent in writing of that determination and that no civil monetary penalty pursuant to this subpart will be imposed.

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§ 501.709 Penalty notice.

(a) If, after considering any written response to the Prepenalty Notice, and any other relevant facts, the Director determines that there was a violation by the respondent and that a monetary penalty is warranted, the Director promptly shall issue a Penalty Notice informing the respondent that, absent a timely request for an administrative hearing, the Director will impose the civil monetary penalty described in the Penalty Notice. The Penalty Notice shall inform the respondent:

(1) Of the respondent's right to submit a written request for an administrative hearing not later than 30 days after the date of service of the Penalty Notice;

(2) That in the absence of a timely request for a hearing, the issuance of the Penalty Notice constitutes final agency action;

(3) That, absent a timely request for a hearing, payment (or arrangement with the Financial Management Service of the Department for installment payment) of the assessed penalty must be made not later than 30 days after the date of service of the Penalty Notice; and

(4) That absent a timely request for a hearing, the respondent must furnish respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that the Director intends to use such information for the purposes of collecting and reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

§ 501.710 Settlement.

(a) *Availability.* Either the Director or any respondent may, at any time during the administrative civil penalty process described in this subpart, propose an offer of settlement. The amount accepted in settlement may be less than the civil penalty that might be imposed in the event of a formal determination of violation. Upon mutual agreement by the Director and a respondent on the terms of a settlement, the Director shall issue an Order of Settlement.

(b) *Procedure*—(1) *Prior to issuance of Penalty Notice.* Any offer of settlement made by a respondent prior to the issuance of a Penalty Notice shall be

submitted, in writing, to the Chief of Civil Penalties, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

(2) *After issuance of Penalty Notice.* Any offer of settlement made by a respondent after issuance of a Penalty Notice shall state that it is made pursuant to this section; shall recite or incorporate as a part of the offer the provisions of paragraphs (b)(5)(ii) and (b)(6) of this section; shall be signed by the respondent making the offer, and not only by his or her representative; and shall be submitted to the Chief Counsel.

(3) *Extensions of time.* The submission of any settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of the administrative civil penalty process.

(i) *Prior to issuance of Order Instituting Proceedings.* Any respondent (or potential respondent in the case of a pending Prepenalty Notice) may request, in writing, that the Director withhold issuance of any such notice, or grant an extension of time to respond to any such Notice, for a period not to exceed 60 days for the exclusive purpose of effecting settlement. The Director may grant any such request, in writing, under terms and conditions within his or her discretion.

(ii) *After issuance of Order Instituting Proceedings.* Upon mutual agreement of the Director and a respondent, the Administrative Law Judge may grant an extension of time, for a period not to exceed 60 days, for the exclusive purpose of effecting settlement.

(4) *Views of Administrative Law Judge.* Where an Administrative Law Judge is assigned to a proceeding, the Director or the respondent may request that the Administrative Law Judge express his or her views regarding the appropriateness of the offer of settlement. A request for the Administrative Law Judge to express his or her views on an offer of settlement or otherwise to participate in a settlement conference constitutes a waiver by the party making the request of any right to claim bias or prejudice by the Administrative Law Judge based on the views expressed.

(5) *Waivers.* (i) By submitting an offer of settlement, a respondent making the offer waives, subject to acceptance of the offer:

(A) All hearings pursuant to section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16);

(B) The filing of proposed findings of fact and conclusions of law;

(C) Proceedings before, and a decision by, an Administrative Law Judge;

(D) All post-hearing procedures; and

(E) Judicial review by any court.

(ii) By submitting an offer of settlement the respondent further waives:

(A) Such provisions of this subpart or other requirements of law as may be construed to prevent any member of the Director's staff, or members of the Office of Chief Counsel or other counsel assigned by the General Counsel, from participating in or advising the Director as to any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

(B) Any right to claim bias or pre-judgment by the Director based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

(6) If the Director rejects the offer of settlement, the respondent shall be so notified in writing and the offer of settlement shall be deemed withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the respondent making the offer, provided, however, that rejection of an offer of settlement does not affect the continued validity of waivers pursuant to paragraph (b)(5) of this section with respect to any discussions concerning the rejected offer of settlement.

(7) No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any administrative proceeding initiated by the Director.

§ 501.711 Hearing request.

(a) *Deadline for request.* A request for an agency hearing shall be served on the Director not later than 30 days after the date of service of the Penalty Notice. See § 501.705(b). A respondent may not reserve the right to request a hearing after expiration of the 30 calendar day period. A request for a hear-

ing that is not made as required by this paragraph shall constitute a waiver of the respondent's right to a hearing.

(b) *Form and contents of request.* The request need not be in any particular form, but must be typewritten and contain the heading "Request for Agency Hearing". The request must include the Office of Foreign Assets Control identification number shown near the top of the Penalty Notice. It should be responsive to the determination contained in the Penalty Notice and set forth the nature of the respondent's defenses or claims for mitigation, if any.

(1) The request must admit or deny specifically each separate determination of violation made in the Penalty Notice. If the respondent is without knowledge as to a determination, the request shall so state, and such statement shall constitute a denial. Any determination not specifically addressed in the response shall be deemed admitted.

(2) The request must set forth any additional or new matter or arguments the respondent seeks, or shall seek, to use in support of all defenses or claims for mitigation. Any defense the respondent wishes to assert must be included in the request.

(3) The request must accurately state, for each respondent (if applicable), the respondent's full name and address for future service, together with current telephone and, if applicable, a facsimile machine number. If respondent is represented, the representative's full name and address, together with telephone and facsimile numbers, may be provided in lieu of service information for the respondent. The respondent or respondent's representative is responsible for providing timely written notice to the Director of any subsequent changes in the information provided.

(c) *Signature requirement.* The respondent or, if represented, the respondent's representative, must sign the hearing request.

§ 501.712 Acknowledgment of hearing request.

No later than 60 days after service of any hearing request, the Director shall

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acknowledge receipt and inform a respondent, in writing, whether an Order Instituting Proceedings shall be issued.

§501.713 Order Instituting Proceedings.

If a respondent makes a timely request for a hearing, the Director shall determine, at his or her option, whether to dismiss the violation(s) set forth in the Penalty Notice or to issue an Order Instituting Proceedings to initiate the hearing process. The Order shall be served on the respondent(s) as provided in §501.705(c)(1). The Director may, in his or her discretion, withdraw an Order Instituting Proceedings at any time prior to the issuance of a decision by the Administrative Law Judge.

(a) *Content of Order.* The Order Instituting Proceedings shall:

(1) Be prepared by the Office of the Chief Counsel or other counsel assigned by the General Counsel and based on information provided by the Director;

(2) State the legal authority under which the hearing is to be held;

(3) Contain a short and plain statement of the alleged violation(s) to be considered and determined (including the matters of fact and law asserted) in such detail as will permit a specific response thereto;

(4) State the amount of the penalty sought in the proceeding; and

(5) Be signed by the Director.

(b) *Combining penalty actions.* The Director may combine claims contained in two or more Penalty Notices involving the same respondent, and for which hearings have been requested, into a single Order Instituting Proceedings.

(c) *Amendment to Order Instituting Proceedings.* Upon motion by the Director, the Administrative Law Judge may, at any time prior to issuance of a decision, permit the Director to amend an Order Instituting Proceedings to include new matters of fact or law that are within the scope of the original Order Instituting Proceedings.

§501.714 Answer to Order Instituting Proceedings.

(a) *When required.* Not later than 45 days after service of the Order Instituting Proceedings, the respondent shall file, with the Administrative Law

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Judge and the Office of Chief Counsel, an answer to each of the allegations contained therein. If the Order Instituting Proceedings is amended, the Administrative Law Judge may require that an amended answer be filed and, if such an answer is required, shall specify a date for the filing thereof.

(b) *Contents; effect of failure to deny.* Unless otherwise directed by the Administrative Law Judge, an answer shall specifically admit, deny, or state that the respondent does not have, and is unable to obtain, sufficient information to admit or deny each allegation in the Order Instituting Proceedings. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. A statement of lack of information shall have the effect of a denial. A defense of res judicata, statute of limitations or any other matter constituting an affirmative defense shall be asserted in the answer. Any allegation not specifically addressed in the answer shall be deemed admitted.

(c) *Motion for more definite statement.* A respondent may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

(d) *Amendments.* A respondent may amend its answer at any time by written consent of the Director or with permission of the Administrative Law Judge. Permission shall be freely granted when justice so requires.

(e) *Failure to file answer: default.* If a respondent fails to file an answer required by this subpart within the time prescribed, such respondent may be deemed in default pursuant to §501.716(a). A party may make a motion to set aside a default pursuant to §501.726(e).

§501.715 Notice of Hearing.

(a) If the Director issues an Order Instituting Proceedings, the respondent

shall receive not less than 45 days notice of the time and place of the hearing.

(b) *Time and place of hearing.* All hearings shall be held in the Washington, DC metropolitan area unless, based on extraordinary reasons, otherwise mutually agreed by the respondent and the Director. The time for any hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives. Requests to change the time of a hearing may be submitted to the Administrative Law Judge, who may modify the hearing date(s) and/or time(s) and place. All requests for a change in the date and time and/or place of a hearing must be received by the Administrative Law Judge and served upon the parties no later than 15 days before the scheduled hearing date.

(c) *Failure to appear at hearings: default.* Any respondent named in an order instituting proceedings as a person against whom findings may be made or penalties imposed who fails to appear (in person or through a representative) at a hearing of which he or she has been duly notified may be deemed to be in default pursuant to § 501.716(a). Without further proceedings or notice to the respondent, the Administrative Law Judge may enter a finding that the right to a hearing was waived, and the Penalty Notice shall constitute final agency action as provided in § 501.709(a)(2). A respondent may make a motion to set aside a default pursuant to § 501.726(e).

§ 501.716 Default.

(a) A party to a proceeding may be deemed to be in default and the Administrative Law Judge (or the Secretary's designee during review proceedings) may determine the proceeding against that party upon consideration of the record if that party fails:

(1) To appear, in person or through a representative, at any hearing or conference of which the party has been notified;

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to prosecute or defend the proceeding; or

(3) To cure a deficient filing within the time specified by the Administrative Law Judge (or the Secretary's designee) pursuant to § 501.729(b).

(b) In deciding whether to determine the proceedings against a party deemed to be in default, the Administrative Law Judge shall consider the record of the proceedings (including the Order Instituting Proceedings) and shall construe contested matters of fact and law against the party deemed to be in default.

(c) For information and procedures pertaining to a motion to set aside a default, see § 501.726(e).

§ 501.717 Consolidation of proceedings.

By order of the Administrative Law Judge, proceedings involving common questions of law and fact may be consolidated for hearing of any or all the matters at issue in such proceedings. The Administrative Law Judge may make such orders concerning the conduct of such proceedings as he or she deems appropriate to avoid unnecessary cost or delay. Consolidation shall not prejudice any rights under this subpart and shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

§ 501.718 Conduct and order of hearings.

All hearings shall be conducted in a fair, impartial, expeditious and orderly manner. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the relevant facts. The Director shall present his or her case-in-chief first. The Director shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement.

§ 501.719 Ex parte communications.

(a) *Prohibition.* (1) From the time the Director issues an Order Instituting Proceedings until the date of final decision, no party, interested person, or representative thereof shall knowingly make or cause to be made an ex parte communication.

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(2) Except to the extent required for the disposition of ex parte communication matters as authorized by law, the Secretary's designee and the Administrative Law Judge presiding over any proceeding may not:

(i) Consult a person or party on an issue, unless on notice and opportunity for all parties to participate; or

(ii) Be responsible to or subject to the supervision, direction of, or evaluation by, an employee engaged in the performance of investigative or prosecutorial functions for the Department.

(b) Procedure upon occurrence of ex parte communication. If an ex parte communication is received by the Administrative Law Judge or the Secretary's designee, the Administrative Law Judge or the Secretary's designee, as appropriate, shall cause all of such written communication (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. A party may, not later than 10 days after the date of service, file a response thereto and may recommend that the person making the prohibited communication be sanctioned pursuant to paragraph (c) of this section.

(c) *Sanctions.* Any party to the proceeding, a party's representative, or any other interested individual, who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Administrative Law Judge or the Secretary's designee, as appropriate, for good cause shown, including, but not limited to, exclusion from the hearing and an adverse ruling on the issue that is the subject of the prohibited communication.

§ 501.720 Separation of functions.

Any officer or employee engaged in the performance of investigative or prosecutorial functions for the Department in a proceeding as defined in § 501.702 may not, in that proceeding or one that is factually related, participate or advise in the decision pursuant to Section 557 of the Administrative

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Procedure Act, 5 U.S.C. 557, except as a witness or counsel in the proceeding.

§ 501.721 Hearings to be public.

All hearings, except hearings on applications for confidential treatment filed pursuant to § 501.725(b), shall be public unless otherwise ordered by the Administrative Law Judge or the Secretary's designee, as appropriate, on his or her own motion or the motion of a party.

§ 501.722 Prehearing conferences.

(a) *Purposes of conferences.* The purposes of prehearing conferences include, but are not limited to:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control of the proceeding by the Administrative Law Judge; and

(3) Improving the quality of the hearing through more thorough preparation.

(b) *Procedure.* On his or her own motion or at the request of a party, the Administrative Law Judge may direct a representative or any party to attend one or more prehearing conferences. Such conferences may be held with or without the Administrative Law Judge present as the Administrative Law Judge deems appropriate. Where such a conference is held outside the presence of the Administrative Law Judge, the Administrative Law Judge shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) *Subjects to be discussed.* At a prehearing conference consideration may be given and action taken with respect to the following:

(1) Simplification and clarification of the issues;

(2) Exchange of witness and exhibit lists and copies of exhibits;

(3) Admissions of fact and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;

(4) Matters of which official notice may be taken;

(5) The schedule for exchanging prehearing motions or briefs, if any;

(6) The method of service for papers;

(7) Summary disposition of any or all issues;

(8) Settlement of any or all issues;

(9) Determination of hearing dates (when the Administrative Law Judge is present);

(10) Amendments to the Order Instituting Proceedings or answers thereto;

(11) Production of documents as set forth in § 501.723, and prehearing production of documents in response to subpoenas duces tecum as set forth in § 501.728; and

(12) Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) *Timing of conferences.* Unless the Administrative Law Judge orders otherwise, an initial prehearing conference shall be held not later than 14 days after service of an answer. A final conference, if any, should be held as close to the start of the hearing as reasonable under the circumstances.

(e) *Prehearing orders.* At or following the conclusion of any conference held pursuant to this rule, the Administrative Law Judge shall enter written rulings or orders that recite the agreement(s) reached and any procedural determinations made by the Administrative Law Judge.

(f) *Failure to appear: default.* A respondent who fails to appear, in person or through a representative, at a prehearing conference of which he or she has been duly notified may be deemed in default pursuant to § 501.716(a). A respondent may make a motion to set aside a default pursuant to § 501.726(e).

§ 501.723 Prehearing disclosures; methods to discover additional matter.

(a) *Initial disclosures.* (1) Except to the extent otherwise stipulated or directed by order of the Administrative Law Judge, a party shall, without awaiting a discovery request, provide to the opposing party:

(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment of a witness appearing in person or by deposition, identifying the subjects of the information; and

(ii) A copy, or a description by category and location, of all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment of a witness appearing in person or by deposition;

(2) The disclosures described in paragraph (a)(1)(i) of this section shall be made not later than 30 days after the issuance of an Order Instituting Proceedings, unless a different time is set by stipulation or by order of the Administrative Law Judge.

(b) *Prehearing disclosures.* (1) In addition to the disclosures required by paragraph (a) of this section, a party must provide to the opposing party, and promptly file with the Administrative Law Judge, the following information regarding the evidence that it may present at hearing for any purpose other than solely for impeachment of a witness appearing in person or by deposition:

(i) An outline or narrative summary of its case or defense (the Order Instituting Proceedings will usually satisfy this requirement for the Director and the answer thereto will usually satisfy this requirement for the respondent);

(ii) The legal theories upon which it will rely;

(iii) Copies and a list of documents or exhibits that it intends to introduce at the hearing; and

(iv) A list identifying each witness who will testify on its behalf, including the witness's name, occupation, address, phone number, and a brief summary of the expected testimony.

(2) Unless otherwise directed by the Administrative Law Judge, the disclosures required by paragraph (b)(1) of this section shall be made not later than 30 days before the date of the hearing.

(c) *Disclosure of expert testimony.* A party who intends to call an expert witness shall submit, in addition to the information required by paragraph (b)(1)(iv) of this section, a statement of the expert's qualifications, a list of other proceedings in which the expert has given expert testimony, and a list of publications authored or co-authored by the expert.

(d) *Form of disclosures.* Unless the Administrative Law Judge orders otherwise, all disclosures under paragraphs (a) through (c) of this section shall be made in writing, signed, and served as provided in § 501.705.

(e) *Methods to discover additional matter.* Parties may obtain discovery by one or more of the following methods: Depositions of witnesses upon oral examination or written questions; written interrogatories to another party; production of documents or other evidence for inspection; and requests for admission. All depositions of Federal employees must take place in Washington, DC, at the Department of the Treasury or at the location where the Federal employee to be deposed performs his or her duties, whichever the Federal employee's supervisor or the Office of Chief Counsel shall deem appropriate. All depositions shall be held at a date and time agreed by the Office of Chief Counsel and the respondent or respondent's representative, and for an agreed length of time.

(f) *Discovery scope and limits.* Unless otherwise limited by order of the Administrative Law Judge in accordance with paragraph (f)(2) of this section, the scope of discovery is as follows:

(1) *In general.* The availability of information and documents through discovery is subject to the assertion of privileges available to the parties and witnesses. Privileges available to the Director and the Department include exemptions afforded pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)) and the Privacy Act (5 U.S.C. 552a). Parties may obtain discovery regarding any matter, not privileged, that is relevant to the merits of the pending action, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of any persons having knowledge of any discoverable matter. For good cause, the Administrative Law Judge may order discovery of any matter relevant to the subject matter involved in the proceeding. Relevant information need not be admissible at the hearing if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Limitations.* The Administrative Law Judge may issue any order that justice requires to ensure that discovery requests are not unreasonable, oppressive, excessive in scope or unduly burdensome, including an order to show cause why a particular discovery request is justified upon motion of the objecting party. The frequency or extent of use of the discovery methods otherwise permitted under this section may be limited by the Administrative Law Judge if he or she determines that:

(i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) The burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the hearing, the importance of the issues at stake, and the importance of the proposed discovery in resolving the issues.

(3) *Interrogatories.* Respondent's interrogatories shall be served upon the Office of the Chief Counsel not later than 30 days after issuance of the Order Instituting Proceedings. The Director's interrogatories shall be served by the later of 30 days after the receipt of service of respondent's interrogatories or 40 days after issuance of the Order Instituting Proceedings if no interrogatories are filed by respondent. Parties shall respond to interrogatories not later than 30 days after the date interrogatories are received. Interrogatories shall be limited to 20 questions only. Each subpart, section, or other designation of a part of a question shall be counted as one complete question in computing the permitted 20 question total. Where more than 20 questions are served upon a party, the receiving party may determine which of the 20 questions the receiving party shall answer. The limitation on the number of questions in an interrogatory may be waived by the Administrative Law Judge.

(4) *Privileged matter.* Privileged documents are not discoverable. Privileges

include, but are not limited to, the attorney-client privilege, attorney work-product privilege, any government's or government agency's deliberative-process or classified information privilege, including materials classified pursuant to Executive Order 12958 (3 CFR, 1995 Comp., p. 333) and any future Executive orders that may be issued relating to the treatment of national security information, and all materials and information exempted from release to the public pursuant to the Privacy Act (5 U.S.C. 552a) or the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)).

(g) *Updating discovery.* A party who has made an initial disclosure under paragraph (a) of this section or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired whenever:

(1) The party learns that in some material respect the information disclosed is incomplete or incorrect, if the additional or corrective information has not otherwise been made known to the other party during the discovery process or in writing; or

(2) Ordered by the Administrative Law Judge. The Administrative Law Judge may impose sanctions for failure to supplement or correct discovery.

(h) *Time limits.* All discovery, including all responses to discovery requests, shall be completed not later than 20 days prior to the date scheduled for the commencement of the hearing, unless the Administrative Law Judge finds on the record that good cause exists to grant additional time to complete discovery.

(i) *Effect of failure to comply.* No witness may testify and no document or exhibit may be introduced at the hearing if such witness, document, or exhibit is not listed in the prehearing submissions pursuant to paragraphs (b) and (c) of this section, except for good cause shown.

§ 501.724 Documents that may be withheld.

(a) Notwithstanding § 501.723(f), the Director or respondent may withhold a document if:

(1) The document is privileged;

(2) The document would disclose the identity of a confidential source; or

(3) The Administrative Law Judge grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding or otherwise, for good cause shown.

(b) Nothing in paragraph (a) of this section authorizes the Director to withhold documents that contain material exculpatory evidence.

(c) *Withheld document list.* The Director and respondent shall provide the Administrative Law Judge, for review, a list of documents withheld pursuant to paragraphs (a)(1)–(3) of this section. The Administrative Law Judge shall determine whether any such document should be made available for inspection and copying.

§ 501.725 Confidential treatment of information in certain filings.

(a) *Filing document under seal.* (1) The Director may file any document or any part of a document under seal and/or seek a protective order concerning any document if disclosure of the document would be inconsistent with the protection of the public interest or if justice requires protection of any person, including a source or a party, from annoyance, threat, oppression, or undue burden or expense, or the disclosure of the information would be, or might reasonably lead to a disclosure, contrary to Executive Order 12958, as amended by Executive Order 13292, or other Executive orders concerning disclosure of information, Department regulations, or the Privacy Act, or information exempt from release under the Freedom of Information Act. The Administrative Law Judge shall allow placement of any such document under seal and/or grant a protective order upon a showing that the disclosure would be inconsistent with any such statute or Executive order, or that the harm resulting from disclosure would outweigh the benefits of disclosure.

(2) A respondent may file any document or any part of a document under seal and/or seek a protective order to limit such document from disclosure to other parties or to the public. The Administrative Law Judge shall allow placement of any document under seal and/or grant a protective order upon a

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showing that the harm resulting from disclosure would outweigh the benefits of disclosure.

(3) The Administrative Law Judge shall safeguard the security and integrity of any documents under seal or protective order and shall take all appropriate steps to preserve the confidentiality of such documents or any parts thereof, including closing a hearing or portions of a hearing to the public. Release of any information under seal or to the extent inconsistent with a protective order, in any form or manner, is subject to the sanctions and the exercise of the authorities as are provided with respect to *ex parte* communications under § 501.719.

(4) If the Administrative Law Judge denies placement of any document under seal or under protective order, any party, and any person whose document or material is at issue, may obtain interlocutory review by the Secretary's designee. In such cases the Administrative Law Judge shall not release or expose any of the records or documents in question to the public or to any person for a period of 20 days from the date of the Administrative Law Judge's ruling, in order to permit a party the opportunity either to withdraw the records and documents or obtain interlocutory review by the Secretary's designee and an order that the records be placed under seal or a protective order.

(5) Upon settlement, final decision, or motion to the Administrative Law Judge for good cause shown, all materials (including all copies) under seal or protective order shall be returned to the submitting parties, except when it may be necessary to retain a record until any judicial process is completed.

(6)(i) Written notice of each request for release of documents or materials under seal or subject to a protective order shall be given to the parties at least 20 days prior to any permitted release or prior to any access not specifically authorized under a protective order. A copy of each request for information, including the name, address, and telephone number of the requester, shall be provided to the parties.

(ii) Each request for access to protected material shall include the names, addresses, and telephone num-

bers of all persons on whose behalf the requester seeks access to protected information. The Administrative Law Judge may impose sanctions as provided under § 501.729 for failure to provide this information.

(b) *Application.* An application for a protective order or to place under seal shall be filed with the Administrative Law Judge. The application shall be accompanied by a sealed copy of the materials as to which confidential treatment is sought.

(1) *Procedure for supplying additional information.* The person making the application may be required to furnish in writing additional information with respect to the grounds for objection to public disclosure. Failure to supply the information so requested within 14 days from the date of receipt of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the information to which the additional information relates, unless the Administrative Law Judge shall otherwise order for good cause shown at or before the expiration of such 14-day period.

(2) *Confidentiality of materials pending final decision.* Pending the determination of the application for confidential treatment, transcripts, non-final orders including an initial decision, if any, and other materials in connection with the application shall be placed under seal; shall be for the confidential use only of the Administrative Law Judge, the Secretary's designee, the applicant, the Director, and any other respondent and representative; and shall be made available to the public only in accordance with orders of the Administrative Law Judge or the Secretary's designee.

(3) *Public availability of orders.* Any final order of the Administrative Law Judge or the Secretary's designee denying or sustaining an application for confidential treatment shall be made public. Any prior findings or opinions relating to an application for confidential treatment under this section shall be made public at such time as the material as to which confidentiality was requested is made public.

§ 501.726 Motions.

(a) *Generally.* Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. Motions by a respondent must be filed with the Administrative Law Judge and served upon the Director through the Office of Chief Counsel and with any other party respondent or respondent's representative, unless otherwise directed by the Administrative Law Judge. Motions by the Director must be filed with the Administrative Law Judge and served upon each party respondent or respondent's representative. All written motions must be served in accordance with, and otherwise meet the requirements of, § 501.705. The Administrative Law Judge may order that an oral motion be submitted in writing. No oral argument shall be heard on any motion unless the Administrative Law Judge otherwise directs.

(b) *Opposing and reply briefs.* Except as provided in § 501.741(e), briefs in opposition to a motion shall be filed not later than 15 days after service of the motion. Reply briefs shall be filed not later than 3 days after service of the opposition. The failure of a party to oppose a written motion or an oral motion made on the record shall be deemed a waiver of objection by that party to the entry of an order substantially in the form of any proposed order accompanying the motion.

(c) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(d) *Length limitation.* Except as otherwise ordered by the Administrative Law Judge, a brief in support of, or in opposition to, a motion shall not exceed 15 pages, exclusive of pages containing any table of contents, table of authorities, or addendum.

(e) A motion to set aside a default shall be made within a reasonable time as determined by the Administrative Law Judge, state the reasons for the failure to appear or defend, and, if applicable, specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such

conditions as may be appropriate, the Administrative Law Judge, at any time prior to the filing of his or her decision, or the Secretary's designee, at any time during the review process, may for good cause shown set aside a default.

§ 501.727 Motion for summary disposition.

(a) At any time after a respondent's answer has been filed, the respondent or the Director may make a motion for summary disposition of any or all allegations contained in the Order Instituting Proceedings. If the Director has not completed presentation of his or her case-in-chief, a motion for summary disposition shall be made only with permission of the Administrative Law Judge. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noticed pursuant to § 501.732(b).

(b) *Decision on motion.* The Administrative Law Judge may promptly decide the motion for summary disposition or may defer decision on the motion. The Administrative Law Judge shall issue an order granting a motion for summary disposition if the record shows there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law.

(c) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, transcripts, affidavits, and any other evidentiary materials that the moving party contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the moving party's arguments. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. The

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opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

§ 501.728 Subpoenas.

(a) *Availability; procedure.* In connection with any hearing before an Administrative Law Judge, either the respondent or the Director may request the issuance of subpoenas requiring the attendance and testimony of witnesses at the designated time and place of hearing, and subpoenas requiring the production of documentary or other tangible evidence returnable at a designated time and place. Unless made on the record at a hearing, requests for issuance of a subpoena shall be made in writing and served on each party pursuant to § 501.705.

(b) *Standards for issuance.* If it appears to the Administrative Law Judge that a subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the Administrative Law Judge determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue a modified subpoena as fairness requires. In making the foregoing determination, the Administrative Law Judge may inquire of the other participants whether they will stipulate to the facts sought to be proved.

(c) *Service.* Service of a subpoena shall be made pursuant to the provisions of § 501.705.

(d) *Application to quash or modify—(1) Procedure.* Any person to whom a subpoena is directed or who is an owner, creator or the subject of the documents or materials that are to be produced pursuant to a subpoena may, prior to the time specified therein for compliance, but not later than 15 days after the date of service of such subpoena,

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request that the subpoena be quashed or modified. Such request shall be made by application filed with the Administrative Law Judge and served on all parties pursuant to § 501.705. The party on whose behalf the subpoena was issued may, not later than 5 days after service of the application, file an opposition to the application.

(2) *Standards governing application to quash or modify.* If the Administrative Law Judge determines that compliance with the subpoena would be unreasonable, oppressive or unduly burdensome, the Administrative Law Judge may quash or modify the subpoena, or may order return of the subpoena only upon specified conditions. These conditions may include, but are not limited to, a requirement that the party on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the cost of copying or transporting evidence to the place for return of the subpoena.

(e) *Witness fees and mileage.* Witnesses summoned to appear at a proceeding shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 501.729 Sanctions.

(a) *Contemptuous conduct—(1) Subject to exclusion or suspension.* Contemptuous conduct by any person before an Administrative Law Judge or the Secretary's designee during any proceeding, including any conference, shall be grounds for the Administrative Law Judge or the Secretary's designee to:

(i) Exclude that person from such hearing or conference, or any portion thereof; and/or

(ii) If a representative, summarily suspend that person from representing others in the proceeding in which such conduct occurred for the duration, or any portion, of the proceeding.

(2) *Adjournment.* Upon motion by a party represented by a representative

subject to an order of exclusion or suspension, an adjournment shall be granted to allow the retention of a new representative. In determining the length of an adjournment, the Administrative Law Judge or the Secretary's designee shall consider, in addition to the factors set forth in § 501.737, the availability of another representative for the party or, if the representative was a counsel, of other members of a suspended counsel's firm.

(b) *Deficient filings; leave to cure deficiencies.* The Administrative Law Judge, or the Secretary's designee in the case of a request for review, may in his or her discretion, reject, in whole or in part, any filing that fails to comply with any requirements of this subpart or of any order issued in the proceeding in which the filing was made. Any such filings shall not be part of the record. The Administrative Law Judge or the Secretary's designee may direct a party to cure any deficiencies and to resubmit the filing within a fixed time period.

(c) *Failure to make required filing or to cure deficient filing.* The Administrative Law Judge (or the Secretary's designee during review proceedings) may enter a default pursuant to § 501.716, dismiss the case, decide the particular matter at issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that matter if a person fails:

- (1) To make a filing required under this subpart; or
- (2) To cure a deficient filing within the time specified by the Administrative Law Judge or the Secretary's designee pursuant to paragraph (b) of this section.

(d) *Failure to make required filing or to cure deficient filing in the case of a request for review.* The Secretary's designee, in any case of a request for review, may decide the issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that matter if a person fails:

- (1) To make a filing required under this subpart; or
- (2) To cure a deficient filing within the time specified by the Secretary's designee pursuant to paragraph (b) of this section.

§ 501.730 Depositions upon oral examination.

(a) *Procedure.* Any party desiring to take the testimony of a witness by deposition shall make a written motion setting forth the reasons why such deposition should be taken including the specific reasons why the party believes the witness may be unable to attend or testify at the hearing; the name and address of the prospective witness; the matters concerning which the prospective witness is expected to be questioned; and the proposed time and place for the taking of the deposition.

(b) *Required finding when ordering a deposition.* In the discretion of the Administrative Law Judge, an order for deposition may be issued upon a finding that the prospective witness will likely give testimony material to the proceeding, that it is likely the prospective witness will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment or other disability, and that the taking of a deposition will serve the interests of justice.

(c) *Contents of order.* An order for deposition shall designate by name a deposition officer. The designated officer may be the Administrative Law Judge or any other person authorized to administer oaths by the laws of the United States or of the place where the deposition is to be held. An order for deposition also shall state:

- (1) The name of the witness whose deposition is to be taken;
- (2) The scope of the testimony to be taken;
- (3) The time and place of the deposition;
- (4) The manner of recording, preserving and filing the deposition; and
- (5) The number of copies, if any, of the deposition and exhibits to be filed upon completion of the deposition.

(d) *Procedure at depositions.* A witness whose testimony is taken by deposition shall swear or affirm before any questions are put to him or her. Examination and cross-examination of witnesses may proceed as permitted at a hearing. A witness being deposed may have counsel or a representative present during the deposition.

(e) *Objections to questions or evidence.* Objections to questions or evidence

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shall be in short form, stating the grounds of objection relied upon. Objections to questions or evidence shall be noted by the deposition officer upon the deposition, but a deposition officer (other than an Administrative Law Judge) shall not have the power to decide on the competency, materiality or relevance of evidence. Failure to object to questions or evidence before the deposition officer shall not be deemed a waiver unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(f) *Filing of depositions.* The questions asked and all answers or objections shall be recorded or transcribed verbatim, and a transcript shall be prepared by the deposition officer, or under his or her direction. The transcript shall be subscribed by the witness and certified by the deposition officer. The original deposition transcript and exhibits shall be filed with the Administrative Law Judge. A copy of the deposition transcript and exhibits shall be served on the opposing party or parties. The cost of the transcript (including copies) shall be paid by the party requesting the deposition.

§501.731 Depositions upon written questions.

(a) *Availability.* Depositions may be taken and submitted on written questions upon motion of any party. The motion shall include the information specified in §501.730(a). A decision on the motion shall be governed by §501.730(b).

(b) *Procedure.* Written questions shall be filed with the motion. Not later than 10 days after service of the motion and written questions, any party may file objections to such written questions and any party may file cross-questions. When a deposition is taken pursuant to this section no persons other than the witness, representative or counsel to the witness, the deposition officer, and, if the deposition officer does not act as reporter, a reporter, shall be present at the examination of the witness. No party shall be present or represented unless otherwise permitted by order. The deposition officer shall propound the questions and cross-

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questions to the witness in the order submitted.

(c) *Additional requirements.* The order for deposition, filing of the deposition, form of the deposition and use of the deposition in the record shall be governed by paragraphs (b) through (g) of §501.730, except that no cross-examination shall be made.

§501.732 Evidence.

The applicable evidentiary standard for proceedings under this subpart is proof by a preponderance of reliable, probative, and substantial evidence. The Administrative Law Judge shall admit any relevant and material oral, documentary, or demonstrative evidence. The Federal Rules of Evidence do not apply, by their own force, to proceedings under this subpart, but shall be employed as general guidelines. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

(a) *Objections and offers of proof—(1) Objections.* Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the Administrative Law Judge need not be noted at the time of the ruling. Such exceptions will be deemed waived on review by the Secretary's designee, however, unless raised:

(i) Pursuant to interlocutory review in accordance with §501.741;

(ii) In a proposed finding or conclusion filed pursuant to §501.738; or

(iii) In a petition for the Secretary's designee's review of an Administrative Law Judge's decision filed in accordance with §501.741.

(2) *Offers of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record. Excluded material shall be retained pursuant to §501.739(b).

(b) *Official notice.* An Administrative Law Judge or Secretary's designee may take official notice of any material fact that might be judicially noticed by a district court of the United States, any matter in the public official records of the Secretary, or any matter

that is particularly within the knowledge of the Department as an expert body. If official notice is requested or taken of a material fact not appearing in the evidence in the record, a party, upon timely request to the Administrative Law Judge, shall be afforded an opportunity to establish the contrary.

(c) *Stipulations.* The parties may, by stipulation, at any stage of the proceeding agree upon any pertinent fact in the proceeding. A stipulation may be received in evidence and, when accepted by the Administrative Law Judge, shall be binding on the parties to the stipulation.

(d) *Presentation under oath or affirmation.* A witness at a hearing for the purpose of taking evidence shall testify under oath or affirmation.

(e) *Presentation, rebuttal and cross-examination.* A party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Administrative Law Judge, may be required for a full and true disclosure of the facts.

§ 501.733 Evidence: confidential information, protective orders.

(a) *Procedure.* In any proceeding as defined in § 501.702, a respondent; the Director; any person who is the owner, subject or creator of a document subject to subpoena or which may be introduced as evidence; or any witness who testifies at a hearing may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony containing confidential information. The motion should include a general summary or extract of the documents without revealing confidential details. If a person seeks a protective order against disclosure to other parties as well as the public, copies of the documents shall not be served on other parties. Unless the documents are unavailable, the person shall file for inspection by the Administrative Law Judge a sealed copy of the documents as to which the order is sought.

(b) *Basis for issuance.* Documents and testimony introduced in a public hearing are presumed to be public. A motion for a protective order shall be

granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.

(c) *Requests for additional information supporting confidentiality.* A person seeking a protective order under paragraph (a) of this section may be required to furnish in writing additional information with respect to the grounds for confidentiality. Failure to supply the information so requested not later than 5 days from the date of receipt by the person of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the documents to which the additional information relates, unless the Administrative Law Judge shall otherwise order for good cause shown at or before the expiration of such 5-day period.

(d) *Confidentiality of documents pending decision.* Pending a determination of a motion under this section, the documents as to which confidential treatment is sought and any other documents that would reveal the confidential information in those documents shall be maintained under seal and shall be disclosed only in accordance with orders of the Administrative Law Judge. Any order issued in connection with a motion under this section shall be made public unless the order would disclose information as to which a protective order has been granted, in which case that portion of the order that would reveal the protected information shall not be made public.

§ 501.734 Introducing prior sworn statements of witnesses into the record.

(a) At a hearing, any person wishing to introduce a prior, sworn statement of a witness who is not a party to the proceeding, that is otherwise admissible in the proceeding, may make a motion setting forth the reasons therefor. If only part of a statement is offered in evidence, the Administrative Law Judge may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the Administrative Law Judge may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement may be granted if:

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- (1) The witness is dead;
- (2) The witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement;
- (3) The witness is unable to attend or testify because of age, sickness, infirmity, imprisonment or other disability;
- (4) The party offering the prior sworn statement has been unable to procure the attendance of the witness by subpoena; or,
- (5) In the discretion of the Administrative Law Judge, it would be desirable, in the interests of justice, to allow the prior sworn statement to be used. In making this determination, due regard shall be given to the presumption that witnesses will testify orally in an open hearing. If the parties have stipulated to accept a prior sworn statement in lieu of live testimony, consideration shall also be given to the convenience of the parties in avoiding unnecessary expense.

§ 501.735 Proposed findings, conclusions and supporting briefs.

- (a) *Opportunity to file.* Before a decision is issued by the Administrative Law Judge, each party shall have an opportunity, reasonable in light of all the circumstances, to file in writing proposed findings and conclusions.
- (b) *Procedure.* Proposed findings of fact must be supported by citations to specific portions of the record. If successive filings are directed, the proposed findings and conclusions of the party assigned to file first shall be set forth in serially numbered paragraphs, and any counter statement of proposed findings and conclusions shall, in addition to any other matter presented, indicate those paragraphs of the proposals already filed as to which there is no dispute. A reply brief may be filed by the party assigned to file first, or, where simultaneous filings are directed, reply briefs may be filed by each party, within the period prescribed therefor by the Administrative Law Judge. No further briefs may be filed except with permission of the Administrative Law Judge.
- (c) *Time for filing.* In any proceeding in which a decision is to be issued:

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- (1) At the close of each hearing, the Administrative Law Judge shall, by order, after consultation with the parties, prescribe the period within which proposed findings and conclusions and supporting briefs are to be filed. The party directed to file first shall make its initial filing not later than 30 days after the end of the hearing unless the Administrative Law Judge, for good cause shown, permits a different period and sets forth in the order the reasons why the different period is necessary.
- (2) The total period within which all such proposed findings and conclusions and supporting briefs and any counter statements of proposed findings and conclusions and reply briefs are to be filed shall be no longer than 90 days after the close of the hearing unless the Administrative Law Judge, for good cause shown, permits a different period and sets forth in an order the reasons why the different period is necessary.

§ 501.736 Authority of Administrative Law Judge.

The Administrative Law Judge shall have authority to do all things necessary and appropriate to discharge his or her duties. No provision of these rules shall be construed to limit the powers of the Administrative Law Judge provided by the Administrative Procedure Act, 5 U.S.C. 556, 557. The powers of the Administrative Law Judge include, but are not limited to:

- (a) Administering oaths and affirmations;
- (b) Issuing subpoenas authorized by law and revoking, quashing, or modifying any such subpoena;
- (c) Receiving relevant evidence and ruling upon the admission of evidence and offers of proof;
- (d) Regulating the course of a proceeding and the conduct of the parties and their representatives;
- (e) Holding prehearing and other conferences as set forth in § 501.726 and requiring the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning the resolution of issues in controversy;

(f) Subject to any limitations set forth elsewhere in this subpart, considering and ruling on all procedural and other motions;

(g) Upon notice to all parties, reopening any hearing prior to the issuance of a decision;

(h) Requiring production of records or any information relevant to any act or transaction subject to a hearing under this subpart, and imposing sanctions available under Federal Rule of Civil Procedure 37(b)(2) (Fed. R. Civ. P. 37(b)(2), 28 U.S.C.) for a party's failure to comply with discovery requests;

(i) Establishing time, place, and manner limitations on the attendance of the public and the media for any hearing; and

(j) Setting fees and expenses for witnesses, including expert witnesses.

§ 501.737 Adjustments of time, postponements and adjournments.

(a) *Availability.* Except as otherwise provided by law, the Administrative Law Judge or the Secretary's designee, as appropriate, at any time prior to the filing of his or her decision, may, for good cause and in the interest of justice, modify any time limit prescribed by this subpart and may, consistent with paragraph (b) of this section, postpone or adjourn any hearing.

(b) *Limitations on postponements, adjournments and adjustments.* A hearing shall begin at the time and place ordered, provided that, within the limits provided, the Administrative Law Judge or the Secretary's designee, as appropriate, may for good cause shown postpone the commencement of the hearing or adjourn a convened hearing for a reasonable period of time.

(1) *Additional considerations.* In considering a motion for postponement of the start of a hearing, adjournment once a hearing has begun, or extensions of time for filing papers, the Administrative Law Judge or the Secretary's designee, as appropriate, shall consider, in addition to any other factors:

(i) The length of the proceeding to date;

(ii) The number of postponements, adjournments or extensions already granted;

(iii) The stage of the proceedings at the time of the request; and

(iv) Any other matter as justice may require.

(2) *Time limit.* Postponements, adjournments or extensions of time for filing papers shall not exceed 21 days unless the Administrative Law Judge or the Secretary's designee, as appropriate, states on the record or sets forth in a written order the reasons why a longer period of time is necessary.

§ 501.738 Disqualification and withdrawal of Administrative Law Judge.

(a) *Notice of disqualification.* If at any time an Administrative Law Judge or Secretary's designee believes himself or herself to be disqualified from considering a matter, the Administrative Law Judge or Secretary's designee, as appropriate, shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.

(b) *Motion for Withdrawal.* Any party who has a reasonable, good faith basis to believe an Administrative Law Judge or Secretary's designee has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the Administrative Law Judge or Secretary's designee, as appropriate, that the Administrative Law Judge or Secretary's designee withdraw. The motion shall be accompanied by a statement subject to 18 U.S.C. 1001 setting forth in detail the facts alleged to constitute grounds for disqualification. If the Administrative Law Judge or Secretary's designee finds himself or herself qualified, he or she shall so rule and shall continue to preside over the proceeding.

§ 501.739 Record in proceedings before Administrative Law Judge; retention of documents; copies.

(a) *Recordation.* Unless otherwise ordered by the Administrative Law Judge, all hearings shall be recorded and a written transcript thereof shall be prepared.

(1) *Availability of a transcript.* Transcripts of hearings shall be available for purchase.

(2) *Transcript correction.* Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within

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such earlier time as directed by the Administrative Law Judge, a party or witness may make a motion to correct the transcript. Proposed corrections of the transcript may be submitted to the Administrative Law Judge by stipulation pursuant to § 501.732(c), or by motion. Upon notice to all parties to the proceeding, the Administrative Law Judge may, by order, specify corrections to the transcript.

(b) *Contents of the record.* The record of each hearing shall consist of:

(1) The Order Instituting Proceedings, Answer to Order Instituting Proceedings, Notice of Hearing and any amendments thereto;

(2) Each application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(3) Each stipulation, transcript of testimony, interrogatory, deposition, and document or other item admitted into evidence;

(4) With respect to a request to disqualify an Administrative Law Judge or to allow the Administrative Law Judge's withdrawal under § 501.738, each affidavit or transcript of testimony taken and the decision made in connection with the request;

(5) All proposed findings and conclusions;

(6) Each written order issued by the Administrative Law Judge; and

(7) Any other document or item accepted into the record by the Administrative Law Judge.

(c) Retention of documents not admitted. Any document offered as evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be part of the record. The Administrative Law Judge shall retain any such document until the later of the date the proceeding becomes final, or the date any judicial review of the final proceeding is no longer available.

(d) *Substitution of copies.* A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (c) of this section.

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§ 501.740 Decision of Administrative Law Judge.

The Administrative Law Judge shall prepare a decision that constitutes his or her final disposition of the proceedings.

(a) *Content.* (1) The Administrative Law Judge shall determine whether or not the respondent has violated any provision of parts 500 and 515 of this chapter or the provisions of any license, ruling, regulation, order, direction or instruction issued by or under the authority of the Secretary pursuant to part 500 or 515 of this chapter or otherwise under the Trading with the Enemy Act.

(2) The Administrative Law Judge's decision shall include findings and conclusions, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record.

(3) (i) Upon a finding of violation, the Administrative Law Judge shall award an appropriate monetary civil penalty in an amount consistent with the Penalty Guidelines published by the Director.

(ii) Notwithstanding paragraph (a)(3)(i) of this section, the Administrative Law Judge:

(A) Shall provide an opportunity for a respondent to assert his or her inability to pay a penalty, or financial hardship, by filing with the Administrative Law Judge a financial disclosure statement subject to 18 U.S.C. 1001 that sets forth in detail the basis for the financial hardship or the inability to pay; and

(B) Shall consider any such filing in determining the appropriate monetary civil penalty.

(b) *Administrative Law Judge's decision*—(1) *Service.* The Administrative Law Judge shall serve his or her decision on the respondent and on the Director through the Office of Chief Counsel, and shall file a copy of the decision with the Secretary's designee.

(2) *Filing of report with the Secretary's designee.* If the respondent or Director files a petition for review pursuant to § 501.741, or upon a request from the Secretary's designee, the Administrative Law Judge shall file his or her report with the Secretary's designee not later than 20 days after service of his

or her decision on the parties. The report shall consist of the record, including the Administrative Law Judge's decision, and any petition from the respondent or the Director seeking review.

(3) *Correction of errors.* Until the Administrative Law Judge's report has been directed for review by the Secretary's designee or, in the absence of a direction for review, until the decision has become a final order, the Administrative Law Judge may correct clerical errors and errors arising through oversight or inadvertence in decisions, orders, or other parts of the record.

(c) *Administrative Law Judge's decision final unless review directed.* Unless the Secretary's designee determines to review a decision in accordance with § 501.741(a)(1), the decision of the Administrative Law Judge shall become the final decision of the Department.

(d) *Penalty awarded.* The Director is charged with implementing all final decisions of the Department and, upon a finding of violation and/or award of a civil monetary penalty, shall carry out the necessary steps to close the action.

§ 501.741 Review of decision or ruling.

(a) *Availability.* (1)(i) Review of the decision of the Administrative Law Judge by the Secretary's designee is not a right. The Secretary's designee may, in his or her discretion, review the decision of the Administrative Law Judge on the petition of either the respondent or the Director, or upon his or her own motion. The Secretary's designee shall determine whether to review a decision:

(A) If a petition for review has been filed by the respondent or the Director, not later than 30 days after that date the Administrative Law Judge filed his or her report with the Secretary's designee pursuant to paragraph (b)(2) of this section; or

(B) If no petition for review has been filed by the respondent or the Director, not later than 40 days after the date the Administrative Law Judge filed his or her decision with the Secretary's designee pursuant to paragraph (b)(1) of this section.

(ii) In determining whether to review a decision upon petition of the respondent or the Director, the Secretary's

designee shall consider whether the petition for review makes a reasonable showing that:

(A) A prejudicial error was committed in the conduct of the proceeding; or

(B) The decision embodies:

(1) A finding or conclusion of material fact that is clearly erroneous;

(2) A conclusion of law that is erroneous; or

(3) An exercise of discretion or decision of law or policy that is important and that the Secretary's designee should review.

(2) *Interlocutory review of ruling.* The Secretary's designee shall review any ruling of an Administrative Law Judge involving privileged or confidential material that is the subject of a petition for review. See § 501.725.

(b) *Filing.* Either the respondent or the Director, when adversely affected or aggrieved by the decision or ruling of the Administrative Law Judge, may seek review by the Secretary's designee by filing a petition for review. Any petition for review shall be filed with the Administrative Law Judge within 10 days after service of the Administrative Law Judge's decision or the issuance of a ruling involving privileged or confidential material.

(c) *Contents.* The petition shall state why the Secretary's designee should review the Administrative Law Judge's decision or ruling, including: Whether the Administrative Law Judge's decision or ruling raises an important question of law, policy or discretion; whether review by the Secretary's designee will resolve a question about which the Department's Administrative Law Judges have rendered differing opinions; whether the Administrative Law Judge's decision or ruling is contrary to law or Department precedent; whether a finding of material fact is not supported by a preponderance of the evidence; or whether a prejudicial error of procedure or an abuse of discretion was committed. A petition should concisely state the portions of the decision or ruling for which review is sought. A petition shall not incorporate by reference a brief or legal memorandum.

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(d) *When filing effective.* A petition for review is filed when received by the Administrative Law Judge.

(e) *Statements in opposition to petition.* Not later than 8 days after the filing of a petition for review, either the respondent or the Director may file a statement in opposition to a petition. A statement in opposition to a petition for review shall be filed in the manner specified in this section for filing of petitions for review. Statements in opposition shall concisely state why the Administrative Law Judge's decision or ruling should not be reviewed with respect to each portion of the petition to which it is addressed.

(f) *Number of copies.* An original and three copies of a petition or a statement in opposition to a petition shall be filed with the Administrative Law Judge.

(g) *Prerequisite to judicial review.* Pursuant to section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition for review by the Secretary's designee of an Administrative Law Judge decision or ruling is a prerequisite to the seeking of judicial review of a final order entered pursuant to such decision or ruling.

§ 501.742 Secretary's designee's consideration of decisions by Administrative Law Judges.

(a) *Scope of review.* The Secretary's designee may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, a decision or ruling by an Administrative Law Judge and may make any findings or conclusions that in his or her judgment are proper and on the basis of the record and such additional evidence as the Secretary's designee may receive in his or her discretion.

(b) *Summary affirmance.* The Secretary's designee may summarily affirm an Administrative Law Judge's decision or ruling based upon the petition for review and any response thereto, without further briefing, if he or she finds that no issue raised in the petition for review warrants further consideration.

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§ 501.743 Briefs filed with the Secretary's designee.

(a) *Briefing schedule order.* If review of a determination is mandated by judicial order or whenever the Secretary's designee reviews a decision or ruling, the Secretary's designee shall, unless such review results in summary affirmance pursuant to § 501.742(b), issue a briefing schedule order directing the parties to file opening briefs and specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed not later than 40 days after the date of the briefing schedule order. Opposition briefs shall be filed not later than 30 days after the date opening briefs are due. Reply briefs shall be filed not later than 14 days after the date opposition briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed without permission of the Secretary's designee. The briefing schedule order shall be issued not later than 21 days after the later of:

(1) The last day permitted for filing a brief in opposition to a petition for review pursuant to § 501.741(e); or

(2) Receipt by the Secretary's designee of the mandate of a court with respect to a judicial remand.

(b) *Contents of briefs.* Briefs shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the record. If the exception relates to interlocutory review, there is no requirement to reference pages of the transcript. Reply briefs shall be confined to matters in opposition briefs of other parties.

(c) *Length limitation.* Opening and opposition briefs shall not exceed 30 pages and reply briefs shall not exceed 20 pages, exclusive of pages containing

the table of contents, table of authorities, and any addendum, except with permission of the Secretary's designee.

§ 501.744 Record before the Secretary's designee.

The Secretary's designee shall determine each matter on the basis of the record and such additional evidence as the Secretary's designee may receive in his or her discretion. In any case of interlocutory review, the Administrative Law Judge shall direct that a transcript of the relevant proceedings be prepared and forwarded to the Secretary's designee.

(a) *Contents of the record.* In proceedings for final decision before the Secretary's designee the record shall consist of:

(1) All items that are part of the record in accordance with § 501.739;

(2) Any petitions for review, cross-petitions or oppositions;

(3) All briefs, motions, submissions and other papers filed on appeal or review; and

(4) Any other material of which the Secretary's designee may take administrative notice.

(b) *Review of documents not admitted.* Any document offered in evidence but excluded by the Administrative Law Judge and any document marked for identification but not offered as an exhibit shall not be considered a part of the record before the Secretary's designee on review but shall be transmitted to the Secretary's designee if he or she so requests. In the event that the Secretary's designee does not request the document, the Administrative Law Judge shall retain the document not admitted into the record until the later of:

(1) The date upon which the Secretary's designee's order becomes final; or

(2) The conclusion of any judicial review of that order.

§ 501.745 Orders and decisions: signature, date and public availability.

(a) *Signature required.* All orders and decisions of the Administrative Law Judge or Secretary's designee shall be signed.

(b) *Date of entry of orders.* The date of entry of an order by the Administra-

tive Law Judge or Secretary's designee shall be the date the order is signed. Such date shall be reflected in the caption of the order, or if there is no caption, in the order itself.

(c) *Public availability of orders.* (1) In general, any final order of the Department shall be made public. Any supporting findings or opinions relating to a final order shall be made public at such time as the final order is made public.

(2) *Exception.* Any final order of the Administrative Law Judge or Secretary's designee pertaining to an application for confidential treatment shall only be available to the public in accordance with § 501.725(b)(3).

§ 501.746 Referral to United States Department of Justice; administrative collection measures.

In the event that the respondent does not pay any penalty imposed pursuant to this part within 30 calendar days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

§ 501.747 Procedures on remand of decisions.

Either an Administrative Law Judge or a Secretary's designee, as appropriate, shall reconsider any Department decision on judicial remand to the Department. The rules of practice contained in this subpart shall apply to all proceedings held on judicial remand.

Subpart E—Procedures

SOURCE: 62 FR 45101, Aug. 25, 1997, unless otherwise noted. Redesignated at 68 FR 53642, Sept. 11, 2003.

§ 501.801 Licensing.

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in this chapter. General licenses are set forth in subpart E of each part contained in

this chapter, and they also may be available through the following page on OFAC's Web site: <http://www.treasury.gov/resource-center/sanctions/programs/Pages/Programs.aspx>. General licenses may also be issued authorizing under appropriate terms and conditions certain types of transactions which are subject to prohibitions contained in economic sanctions programs the implementation and administration of which have been delegated to the Director of the Office of Foreign Assets Control but which are not yet codified in this chapter. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses. Failure to file such reports or statements will nullify the authority of the general license.

(b) *Specific licenses*—(1) *General course of procedure*. Transactions subject to the prohibitions contained in this chapter, or to prohibitions the implementation and administration of which have been delegated to the Director of the Office of Foreign Assets Control, which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses*. Original signed applications for specific licenses to engage in any transactions prohibited by or pursuant to this chapter or sanctions programs that have been delegated to the Director of the Office of Foreign Assets Control for implementation and administration must be filed by mail or courier. Applications will not be accepted by fax or electronically, unless otherwise authorized. Applications may be submitted in letter form with the exception of license applications for the unblocking of funds transfers. Applications for the unblocking of funds transfers must be submitted using TD-F 90-22.54, "Application for the Release of Blocked Funds," accompanied by two complete copies of the entire submission. The form, which requires information regarding the date of the block-

ing, the financial institutions involved in the transfer, and the beneficiary and amount of the transfer, may be obtained from the OFAC Internet Home Page: <http://www.treas.gov/ofac>, the OFAC fax-on-demand service: 202/622-0077, or the Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction.

(3) *Information to be supplied*. The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the names of all parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application, except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference in such application. Applicants are required to supply their taxpayer identifying number pursuant to 31 U.S.C. 7701, which number may be used for purposes of collecting and reporting on any delinquent amounts arising out of the applicant's relationship with the United States Government. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial*. The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses*. As a condition for the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such

form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or licenses may be issued by the Secretary of the Treasury acting directly or through any specifically designated person, agency, or instrumentality.

(7) *Address.* License applications, reports, and inquiries should be addressed to the appropriate division or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220.

(c) *Registration of nongovernmental organizations—(1) Purpose of registration.* For those parts of this chapter specifically authorizing the registration of nongovernmental organizations (“NGOs”), registration numbers may be issued on a case-by-case basis to NGOs involved in humanitarian or religious activities in countries or geographic areas subject to economic sanctions pursuant to this chapter V. A registration number authorizes certain transactions by or on behalf of the registered NGO otherwise prohibited by the specific part with respect to which the registration number is issued, including the exportation of goods, services, and funds to the country or geographic area subject to such part for the purpose of relieving human suffering. The transactions authorized for registered NGOs either will be specified by the statement of licensing policy in the part under which the registration number is issued or by the Office of Foreign Assets Control letter issuing the registration number.

(2) *Application information to be supplied.* Applications for registration numbers should be submitted to the Compliance Programs Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220, or by facsimile to (202) 622-2426, and must include:

(i) The organization’s name in English, in the language of origin, and

any acronym or other names used to identify the organization;

(ii) Address and phone number of the organization’s headquarters location;

(iii) Full name in English, in the language of origin, and any acronym or other names used, as well as nationality, citizenship, current country of residence, place and date of birth for key staff at the organization’s headquarters, such as the chairman and board members, president, director, etc.;

(iv) Identification of field offices or partner offices elsewhere, including addresses, phone numbers, and organizational names used, as well as the identification of the senior officer(s) at these locations, including the person’s name, position, nationality, citizenship, and date of birth (names of individuals and organizations shall be provided in English, in the language of origin, and shall include any acronym or other names used to identify the individuals or organizations);

(v) Identification of subcontracting organizations, if any, to the extent known or contemplated at the time of the application;

(vi) Existing sources of income, such as official grants, private endowments, commercial activities;

(vii) Financial institutions that hold deposits on behalf of or extend lines of credit to the organization (names of individuals and organizations shall be provided in English, in the language of origin, and shall include any acronym or other names used to identify the individuals or organizations);

(viii) Independent accounting firms, if employed in the production of the organization’s financial statements (names of individuals and organizations shall be provided in English, in the language of origin, and shall include any acronym or other names used to identify the individuals or organizations);

(ix) A detailed description of the organization’s humanitarian or religious activities and projects in countries or geographic areas subject to economic sanctions pursuant to this chapter V;

(x) Most recent official registry documents, annual reports, and annual filings with the pertinent government, as applicable; and

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(xi) Names and addresses of organizations to which the applicant currently provides or proposes to provide funding, services or material support, to the extent known at the time of the vetting, as applicable.

(3) *Use of registration number.* Registered NGOs conducting transactions authorized by their registrations to support their humanitarian or religious activities pursuant to any part of this chapter should reference the registration number on all payments and funds transfers and on all related documentation, including all purchasing, shipping, and financing documents.

(4) *Limitations.* Registered NGOs are not authorized to make remittances from blocked accounts. Registration numbers are not transferable and may be revoked or modified at any time at the discretion of the Director, Office of Foreign Assets Control. Registration numbers do not excuse compliance with any law or regulation administered by the Office of Foreign Assets Control or any other agency (including reporting requirements) applicable to the transaction(s) herein authorized, nor does it release the Registrant or third parties from civil or criminal liability for violation of any law or regulation.

(5) *Prior numbers.* Registration numbers already issued remain in effect.

[62 FR 45101, Aug. 25, 1997, as amended at 65 FR 10708, Feb. 29, 2000; 66 FR 2728, Jan. 11, 2001; 77 FR 1864, Jan. 12, 2012]

§ 501.802 Decisions.

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 501.803 Amendment, modification, or revocation.

Except as otherwise provided by law, the provisions of each part of this chapter and any rulings, licenses (whether general or specific), authorizations, instructions, orders, or forms

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issued thereunder may be amended, modified or revoked at any time.

[63 FR 35809, July 1, 1998]

§ 501.804 Rulemaking.

(a) All rules and other public documents are issued by the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comment, and delay in effective date.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

§ 501.805 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control which are required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552 and published at 31 CFR part 1.

NOTE TO PARAGRAPH § 501.805(a): Records or information obtained or created in the implementation of part 598 of this chapter are not subject to disclosure under section 552(a)(3) of the Freedom of Information Act. See § 598.802 of this chapter.

(b) The records of the Office of Foreign Assets Control which are required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published at 31 CFR part 1.

(c) Any form issued for use in connection with this chapter may be obtained in person or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220, or by calling 202/622-2480.

(d) *Certain Civil Penalties Information.*

(1) After the conclusion of a civil penalties proceeding that results in either the imposition of a civil monetary penalty or an informal settlement, OFAC shall make available to the public certain information on a routine basis, not less frequently than monthly, as follows:

(i) In each such proceeding against an entity, OFAC shall make available to the public

(A) The name and address of the entity involved,

(B) The sanctions program involved,

(C) A brief description of the violation or alleged violation,

(D) A clear indication whether the proceeding resulted in an informal settlement or in the imposition of a penalty,

(E) An indication whether the entity voluntarily disclosed the violation or alleged violation to OFAC, and

(F) The amount of the penalty imposed or the amount of the agreed settlement.

(ii) In such proceedings against individuals, OFAC shall release on an aggregate basis

(A) The number of penalties imposed and informal settlements reached,

(B) The sanctions programs involved,

(C) A brief description of the violations or alleged violations,

(D) A clear indication whether the proceedings resulted in informal settlements, in the imposition of penalties, or in administrative hearing requests pursuant to the Trading With the Enemy Act (TWEA), 50 U.S.C. 5(b), and

(E) The amounts of the penalties imposed and the amounts of the agreed settlements.

(2) The medium through which information will be released is OFAC's website at <http://www.treas.gov/ofac>.

(3) The information made available pursuant to paragraph (d)(1) of this section shall not include the following:

(i) The name of any violator or alleged violator who is an individual.

(ii) Records or information obtained or created in the implementation of part 598 of this chapter.

(4) On a case-by-case basis, OFAC may release additional information concerning a particular civil penalties proceeding.

[62 FR 45101, Aug. 25, 1997, as amended at 65 FR 41335, July 5, 2000; 68 FR 6822, Feb. 11, 2003]

§ 501.806 Procedures for unblocking funds believed to have been blocked due to mistaken identity.

When a transaction results in the blocking of funds at a financial institution pursuant to the applicable regulations of this chapter and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the following administrative procedures:

(a) Any person who is a party to the transaction may request the release of funds which the party believes to have been blocked due to mistaken identity.

(b) Requests to release funds which a party believes to have been blocked due to mistaken identity must be made in writing and addressed to the Office of Foreign Assets Control, Compliance Programs Division, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220, or sent by facsimile transmission to the Compliance Programs Division at 202/622-1657.

(c) The written request to release funds must include the name, address, telephone number, and (where available) fax number of the party seeking the release of the funds. For individuals, the inclusion of a social security number is voluntary but will facilitate resolution of the request. For corporations or other entities, the application should include its principal place of business, the state of incorporation or organization, and the name and telephone number of the appropriate person to contact regarding the application.

(d) A request to release funds should include the following information, where known, concerning the transaction:

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- (1) The name of the financial institution in which the funds are blocked;
- (2) The amount blocked;
- (3) The date of the blocking;
- (4) The identity of the original remitter of the funds and any intermediary financial institutions;
- (5) The intended beneficiary of the blocked transfer;
- (6) A description of the underlying transaction including copies of related documents (e.g., invoices, bills of lading, promissory notes, etc.);
- (7) The nature of the applicant's interest in the funds; and
- (8) A statement of the reasons why the applicant believes the funds were blocked due to mistaken identity.

(e) Upon receipt of the materials required by paragraph (d) of this section, OFAC may request additional material from the applicant concerning the transaction pursuant to § 501.602.

(f) Following review of all applicable submissions, the Director of the Office of Foreign Assets Control will determine whether to release the funds. In the event the Director determines that the funds should be released, the Office of Foreign Assets Control will direct the financial institution to return the funds to the appropriate party.

(g) For purposes of this section, the term "financial institution" shall include a banking institution, depository institution or United States depository institution, domestic bank, financial institution or U.S. financial institution, as those terms are defined in the applicable part of this chapter.

[62 FR 45101, Aug. 25, 1997, as amended at 62 FR 52495, Oct. 8, 1997]

§ 501.807 Procedures governing delisting from the Specially Designated Nationals and Blocked Persons List.

A person may seek administrative reconsideration of his, her or its designation or that of a vessel as blocked, or assert that the circumstances resulting in the designation no longer apply, and thus seek to have the designation rescinded pursuant to the following administrative procedures:

(a) A person blocked under the provisions of any part of this chapter, including a specially designated national, specially designated terrorist,

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or specially designated narcotics trafficker (collectively, "a blocked person"), or a person owning a majority interest in a blocked vessel may submit arguments or evidence that the person believes establishes that insufficient basis exists for the designation. The blocked person also may propose remedial steps on the person's part, such as corporate reorganization, resignation of persons from positions in a blocked entity, or similar steps, which the person believes would negate the basis for designation. A person owning a majority interest in a blocked vessel may propose the sale of the vessel, with the proceeds to be placed into a blocked interest-bearing account after deducting the costs incurred while the vessel was blocked and the costs of the sale. This submission must be made in writing and addressed to the Director, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220.

(b) The information submitted by the blocked person seeking unblocking or by a person seeking the unblocking of a vessel will be reviewed by the Office of Foreign Assets Control, which may request clarifying, corroborating, or other additional information.

(c) A blocked person seeking unblocking or a person seeking the unblocking of a vessel may request a meeting with the Office of Foreign Assets Control; however, such meetings are not required, and the office may, at its discretion, decline to conduct such meetings prior to completing a review pursuant to this section.

(d) After the Office of Foreign Assets Control has conducted a review of the request for reconsideration, it will provide a written decision to the blocked person or person seeking the unblocking of a vessel.

[64 FR 5614, Feb. 4, 1999]

§ 501.808 License application and other procedures applicable to economic sanctions programs.

Upon submission to the Office of Management and Budget of an amendment to the overall burden hours for the information collections imposed under this part, the license application and other procedures set forth in this

subpart are applicable to economic sanctions programs for which implementation and administration have been delegated to the Office of Foreign Assets Control.

Subpart F—Paperwork Reduction Act

SOURCE: 62 FR 45101, Aug. 25, 1997, unless otherwise noted. Redesignated at 68 FR 53642, Sept. 11, 2003.

§ 501.901 Paperwork Reduction Act notice.

The information collection requirements in subparts C and D have been approved by the Office of Management and Budget (“OMB”) under the Paperwork Reduction Act (44 U.S.C. 3507(j)) and assigned 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 it displays a valid control number assigned by OMB.

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 as-

sessing 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:⁶

⁶For apparent violations identified in the Cuba Penalty Schedule, 68 Fed. Reg. 4429

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:

(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.

BASE PENALTY MATRIX

Egregious Case

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

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>Training is appropriate and effective based on the institution's risk profile, covers applicable personnel, and provides necessary up-to-date information and resources to ensure compliance.</p> <p>The institution employs strong quality control methods</p>	<p>Training is conducted and management provides adequate resources given the risk profile of the organization; however, some areas are not covered within the training program.</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 510—NORTH KOREA SANCTIONS REGULATIONS

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Sec.

510.101 Relation of this part to other laws and regulations.

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510.901 Paperwork Reduction Act notice.
APPENDIX A TO PART 510—EXECUTIVE ORDER 13466
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APPENDIX C TO PART 510—EXECUTIVE ORDER 13570

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SOURCE: 75 FR 67913, Nov. 4, 2010, unless otherwise noted.

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

§ 510.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

NOTE TO § 510.101: This part has been published in abbreviated form for the purpose of providing immediate guidance to the public.