That airspace extending upward from 700 feet above the surface within a 10-mile radius of Clearfield-Lawrence Airport, excluding that portion which overlies the Philipsburg, PA Class E airspace area.

* * * * *

Issued in Jamaica, New York, on February 3, 1997.

James K. Buckles,

*Acting Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 97–3752 Filed 2–13–97; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## 31 CFR Parts 500, 505 and 515

## Foreign Assets Control Regulations; Regulations Prohibiting Transactions Involving the Shipment of Certain Merchandise Between Foreign Countries; Cuban Assets Control Regulations: Civil Penalty Administrative Hearings

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Treasury Department proposes to amend the Foreign Assets Control Regulations and the Cuban Asset Control Regulations to add procedures for the conduct of administrative hearings in civil penalty cases and for settlement of civil penalty cases in lieu of administrative hearings. A conforming amendment is proposed to be made to the Transaction Control Regulations.

**DATES:** Written comments must be received by March 17, 1997.

**ADDRESSES:** Comments may be mailed to the Director, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Mrs. B.S. Scott, Chief, Civil Penalties Program (tel.: 202/622–6140), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, U.S. Treasury Department, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

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### Background

The Foreign Assets Control Regulations, 31 CFR part 500, and the Cuban Asset Control Regulations, 31 CFR part 515 (jointly, the ''Regulations''), are proposed to be amended to provide for detailed procedures governing administrative hearings, as provided in section 1710(c) of the Cuban Democracy Act of 1992 (22 U.S.C. 6001–6010 — the ''CDA''). A conforming amendment is proposed to be made to § 505.50 of the Regulations Prohibiting Transactions Involving the Shipment of Certain Merchandise Between Foreign Countries, 31 CFR part 505, which incorporates by reference the penalty provisions of part 500. Because the CDA amends section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16) to permit the imposition of civil monetary penalties and civil forfeiture with opportunity for hearing and discovery, subpart G of the Regulations is proposed to be revised to establish the procedures governing administrative hearings.

Before this proposed rule is adopted as a final rule, consideration will be given to written comments (a signed original and 2 copies) that are timely submitted to the OFAC. All comments will be available for public inspection and copying.

### Regulatory Flexibility Act

It has been determined that this notice of proposed rulemaking is not a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, so that no regulatory flexibility analysis is required. The factual basis for this certification is as follows: Since civil penalty procedures under the Regulations were adopted (June 29, 1993, for part 515; April 8, 1994, for part 500), all recipients of a prepenalty notice under the Regulations have been provided the opportunity to request an administrative hearing, with prehearing discovery, prior to imposition of a penalty. §§ 500.702(b) & 515.702(b). As of December 20, 1996, the cumulative number of hearing requests pending was 27. Of these, only 10 involved respondents that are small business entities with fewer than 500 employees. A respondent's decision to use the administrative hearing process is strictly voluntary, and any final agency action imposing a civil penalty, with or without an administrative hearing, remains appealable pursuant to section 702 of the Administrative Procedure Act (5 U.S.C. 553–596 — the ''APA'').

The collection of information in the proposed rules arises in the conduct of administrative actions or investigations by OFAC against specific individuals or entities and is, therefore, not subject to the requirements of the Paperwork Reduction Act pursuant to 44 U.S.C. 3518(c)(1)(B)(ii).

### List of Subjects

*31 CFR Part 500*

Administrative practice and procedure, Banks, banking, Blocking of assets, Cambodia, Currency, Estates, Exports, Finance, Foreign claims, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, International organizations, North Korea, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Terrorism, Travel restrictions, Trusts and trustees, Vessels, Vietnam.

*31 CFR Part 505*

Administrative practice and procedure, Arms and munitions, Banks, banking, Communist countries, Exports, Finance, Foreign trade, Nuclear materials, Penalties, Reporting and recordkeeping requirements.

*31 CFR Part 515*

Administrative practice and procedure, Air carriers, Banks, banking, Blocking of assets, Cuba, Currency,

Estates, Exports, Finance, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, Penalties, Reporting and recordkeeping requirements, Securities, Shipping, Specially designated nationals, Terrorism, Travel restrictions, Trusts and trustees, Vessels.

For the reasons set forth in the preamble, 31 CFR parts 500, 505 and 515 are proposed to be amended as set forth below:

## PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 is revised to read as follows:

Authority: 50 U.S.C. App. 1–44; Pub. L. 104–132, 110 Stat. 1214, 1254 (18 U.S.C. 2332d); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

2. Subpart G is revised to read as follows:

### Subpart G—Penalties

Secs.



## Subpart G—Penalties

### § 500.701 Penalties.

(a) Attention is directed to section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16), 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 that act 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 that act 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.

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

(3) The Secretary of the Treasury may impose a civil penalty of not more than $55,000 per violation on any person who violates any license, order, or regulation issued under that act.

(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 the act shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

(b) The criminal penalties provided in the Trading with the Enemy Act are subject to increase pursuant to 18 U.S.C. 3571.

(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 representation 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 five years, or both.

### § 500.702 Prepenalty notice; contents; service.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Trading with the Enemy Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty and/or forfeiture. The prepenalty notice may be issued whether or not another agency has taken any action with respect to this matter.

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

(2) *Respondent's rights*—(i) *Right to respond.* The prepenalty notice shall also inform the respondent of respondent's right to respond to the notice within 30 days of the mailing or other service of the notice pursuant to paragraph (c) of this section, as to why a monetary penalty and/or forfeiture should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

(ii) *Right to request a hearing.* The prepenalty notice shall also inform the respondent that, in the response provided for in paragraph (b)(2)(i) of this section, the respondent may also request a hearing conducted pursuant to 5 U.S.C. 554–557 to present the respondent's defenses to the imposition of a penalty and/or forfeiture and to offer any other information that the respondent believes should be included in the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture. Untimely response constitutes a waiver of a hearing.

(iii) *Right to request discovery prior to hearing.* The prepenalty notice shall also inform the respondent of the right to discovery prior to a requested hearing. Discovery must be requested in writing in the response provided for in paragraph (b)(2)(i) of this section, jointly with respondent's request for a hearing. Untimely response constitutes a waiver of prehearing discovery.

(c) *Service.* The prepenalty notice, or any amendment or supplement thereto, shall be served upon the respondent. Service shall be presumed completed:

(1) Upon mailing a copy by registered or certified mail, return receipt requested, addressed to the respondent at the respondent's last known address; or

(2) Upon presentment of a date–stamped postal receipt by the Office of Foreign Assets Control with respect to any respondent who has refused, avoided, or in any way attempted to decline delivery, tender, or acceptance of the registered or certified letter or has refused to recover a registered or certified letter served; or

(3) Upon leaving a copy with the respondent or an officer, a managing or general agent, or any other agent authorized by appointment or by law to accept or receive service for the respondent, evidenced by a certificate of service signed by the individual making such service, stating the method of service and the identity of the individual with whom the prepenalty notice was left; or

(4) 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 (c)(1) through (3) of this section inappropriate or ineffective for service upon the nonresident respondent.

**§ 500.703 Response to prepenalty notice; right to hearing and prehearing discovery; informal settlement.**

(a) *Deadline for response.* The respondent shall have 30 days from the date of mailing or other service of the prepenalty notice pursuant to § 500.702(c) to respond thereto.

(b) *Form and contents of response*—(1) *In general.* The written response need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should be responsive to the allegations contained therein and set forth the nature of the respondent's defenses.

(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 operate as a denial. Failure to deny, controvert, or object to any allegation will be deemed an admission of that allegation.

(ii) The response must also 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 or partial defense not specifically set forth in the response shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(iii) The response must also accurately state, for each respondent, the respondent's full name and address for future service, including current telephone number and area code. Respondents are responsible for providing timely written notice to all interested parties of any subsequent changes in the information provided.

(2) *Request for hearing.* Any request for an administrative hearing and prehearing discovery shall be made in the written response made pursuant to this section and within the 30–day time period specified in § 500.705(a).

(3) *Informal settlement.* In addition or as an alternative to a written response to a prepenalty notice pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30–day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control. Untimely response constitutes a waiver of a hearing and prehearing discovery.

**§ 500.704 Penalty imposition or withdrawal absent a hearing request.**

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, the Director determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no civil monetary penalty or civil forfeiture pursuant to this subpart will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, the Director determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition by the Office of Foreign Assets Control of the civil monetary penalty and/or civil forfeiture and/or other available disposition on that respondent.

(1) The penalty/forfeiture notice shall inform the respondent that payment of the assessed penalty must be made within 30 days of the mailing of the penalty notice.

(2) The penalty/forfeiture notice shall inform the respondent of the requirement to furnish respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that the Department intends to use such number for the purposes of collecting and reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

**§ 500.705 Time and opportunity to request a hearing.**

(a) *Deadline for hearing request.* Within 30 days of the date of mailing or other service of the prepenalty notice pursuant to § 500.702(c), the respondent may file a written request for an agency hearing conducted pursuant to this section, to present the respondent's defenses to the imposition of a penalty and/or forfeiture, and to offer any other information found to be admissible into the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture.

(b) *Content of written response.* If an agency hearing is requested by the respondent or by the respondent's counsel, the written hearing request must be accompanied by a written response to the prepenalty notice containing the information required by § 500.703(b)(1)(i) through (iii). An untimely hearing request or written response to the prepenalty notice constitutes a waiver of a hearing.

(c) *Signature of filings.* All hearing requests, motions, responses, interrogatories, requests for deposition transcripts, requests for protective orders, and all other filings relating to requests for and responses to discovery or pertaining to the hearing process, must be signed by each requesting party and, if represented, by each party's counsel.

**§ 500.706 Hearing, discovery, and decision on the record.**

(a) *Notice of hearing.* (1) Any respondent requesting a hearing shall receive notice of the time and place of the hearing at the service address provided pursuant to § 500.703(b)(1)(iii). Requests to change the time and place of a hearing may be submitted to the Administrative Law Judge, who may modify the original notice or subsequently set hearing dates. All requests for any change in time and place of a hearing must be received in the Administrative Law Judge's chambers and served upon all interested parties no later than 10 working days before the scheduled hearing date.

(2) The hearing shall be conducted in a manner consistent with 5 U.S.C. 554–557, pursuant to section 1710(c) of the Cuban Democracy Act of 1992 (22 U.S.C. 6001–6010), and section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16).

(b) *Powers.* The Administrative Law Judge shall have all powers necessary to conduct the hearing, consistent with 5

U.S.C. 554–557, including the following powers:

(1) To administer oaths and affirmations;

(2) To require production of records or any information relative to any act or transaction subject to this part, including the imposition of 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;

(3) To receive relevant and material evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this part;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling or prehearing conferences as deemed necessary;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Secretary or the Secretary's designee shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Secretary or to the Secretary's designee a recommended decision as provided in paragraph (s) of this section;

(9) To recuse himself on motion made by a party or on the Administrative Law Judge's own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing;

(11) To perform all necessary or appropriate measures to discharge the duties of an Administrative Law Judge; and

(12) To set fees and expenses for witnesses, including expert witnesses.

(c) *Appearance and practice in a civil penalty hearing*—(1) *Appearance before an Administrative Law Judge by counsel.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, or territory of the United States, or the District of Columbia may represent respondents upon written request in a civil penalty hearing. A copy of the document appointing the counsel shall be presented to the Administrative Law Judge upon the first appearance of counsel.

(2) *Appearance before an Administrative Law Judge by a non–lawyer.* A respondent may appear on his own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any corporation may represent that corporation in a civil penalty hearing.

(3) *Office of Foreign Assets Control representation.* The Office of Foreign Assets Control shall be represented by the Chief Counsel of the Office of Foreign Assets Control or by the Chief Counsel's designee.

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

(2) *Corrective Measures.* The 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.

(e) *Ex parte communications*—(1) *Definition.* The term *ex parte communication* means any material oral or written communication not on the public record concerning the merits of an adjudicatory proceeding with respect to which reasonable prior notice to all parties is not given, on any material matter or proceeding covered by these regulations that takes place between:

(i) A party to the proceeding, a party's counsel, or any other individual; and

(ii) The Administrative Law Judge handling that proceeding, or the Secretary, or the Secretary's designee.

(2) *Exceptions.* (i) A request for the status of the proceeding does not constitute an ex parte communication; and

(ii) Settlement inquiries and discussions do not constitute ex parte communications.

(3) *Prohibition on ex parte communications.* From the time a respondent requests a hearing until the date that the Secretary or the Secretary's designee issues a final decision, no party, interested person, or counsel therefor shall knowingly make or cause to be made an ex parte communication. The Administrative Law Judge, the Secretary, and the Secretary's designee shall not knowingly make or cause to be made to a party, or to any interested person or counsel therefor, any ex parte communication.

(4) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the Administrative Law Judge, the Administrative Law Judge shall cause all 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. All parties to the proceeding shall have an opportunity, within 10 days of the receipt of service of the notice or of receipt of a memorandum of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (e)(5) of this section, appropriate under the circumstances, or may file an interlocutory appeal with the Secretary or the Secretary's designee.

(5) *Sanctions.* Any respondent, respondent's counsel, or other party 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 for good cause shown, or that may be imposed upon interlocutory appeal taken to the Secretary or the Secretary's designee, including, but not limited to, exclusion from the hearing and an adverse ruling on the issue which is the subject of the prohibited communication.

(f) *Time limits.* Except as provided elsewhere in this subpart, the Administrative Law Judge shall establish all time limits for filings with regard to hearings conducted pursuant to this subpart, except for decisions on interlocutory appeals filed with the Secretary or the Secretary's designee.

(g) *Interlocutory Appeal.* When exceptions, requests for extensions, or motions, including motions for summary disposition, are denied by the Administrative Law Judge, interlocutory appeals may be taken to the Secretary or to the Secretary's designee for a decision.

(1) Interlocutory appeals must be filed no later than 10 working days after the matter being appealed has been decided in writing by the Administrative Law Judge.

(2) Interlocutory appeals must be filed with the Secretary's Office, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with certified copies served upon the Administrative Law Judge and the Office of Chief Counsel for the Office of Foreign Assets Control.

(h) *Opportunity for settlement.* Any party may, at any time during the hearing, unilaterally submit written offers or proposals for settlement of a proceeding to the Secretary or the Secretary's designee, at the address listed in paragraph (g)(2) of this section.

Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a hearing. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any hearing before this tribunal.

(i) *Failure to appear.* The unexcused failure of a respondent to appear in person at a hearing or to have duly authorized counsel appear in respondent's place, constitutes a waiver of the respondent's right to a hearing and is deemed an admission of the violation alleged. Without further proceedings or notice to the respondent, the Administrative Law Judge shall file with the Secretary or the Secretary's designee a recommended decision finding a violation and the amount of penalty as indicated in the prepenalty notice.

(j) *Motions*—(1) *Written motions.* Except as otherwise specifically provided herein, an application or request for an order or ruling must be made by written motion, in typed format.

(i) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(ii) No oral argument may be held on written motions unless directed by the Administrative Law Judge. Written memoranda, briefs, affidavits, and other relevant material and documents may be filed in support of or in opposition to a motion.

(2) *Oral motions.* A motion may be made orally on the record unless the Administrative Law Judge directs that such motion be made in writing.

(3) *Filing of motions*—(i) *In general.* Motions must be filed with the Administrative Law Judge, and with the Office of Chief Counsel, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked, ''Urgent: Annex—Room 3133,'' unless otherwise directed by the Administrative Law Judge, or agreed to by Chief Counsel.

(ii) *Interlocutory appeals.* Motions related to interlocutory appeals to the Secretary or the Secretary's designee must be sent by fax (fax number: 202/622–1188) and filed with the Secretary, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, marked ''Attention: OFAC Interlocutory Appeal.''

(4) *Responses.* (i) Any interested party may file a written response to a motion within 20 days of the date of mailing, by registered or certified letter service and pursuant to these regulations. If directed by the Administrative Law Judge response time may be shortened or extended. The Administrative Law Judge may allow each party to file a response before finally ruling upon any oral or written motion. The Administrative Law Judge may allow a rejoinder to responses for good cause shown. If a rejoinder is permitted, it must be filed within 15 days of the date the response was filed and served upon all parties.

(ii) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

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

(k) *Discovery*—(1) *In general.* The availability of information and documents through discovery is subject to the agency's assertion of privileges available to OFAC and/or to the Treasury and to the application of all exemptions afforded the agency 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) to all facets of discovery, including interrogatories, depositions that seek the release of trade secrets, proprietary materials, third party confidential and/or commercially sensitive material, placement of information, documents and/or materials under seal and/or protective order, and interlocutory appeal to the Secretary or the Secretary's designee from any decision of the Administrative Law Judge.

(2) *Types of discovery.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; 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 U.S. Treasury Department or at the location where the federal employee to be deposed performs his duties, whichever the federal employee's supervisor or Chief Counsel shall deem appropriate. All depositions of federal employees shall be held at a mutually agreed upon date and time, and for a mutually agreed upon length of time.

(3) *Interrogatories.* Respondent's interrogatories must be served upon the Chief Counsel within 20 days of respondent's written request for a hearing. Chief Counsel must serve Chief Counsel's interrogatories within 30 days of the receipt of service of respondent's interrogatories or within 30 days of the receipt of respondent's written request for a hearing if no interrogatories are filed by respondent by that time. Parties have 30 days to respond to interrogatories from 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.

(4) *Scope.* Parties may obtain discovery regarding any matter not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The Administrative Law Judge may make any order which justice requires to ensure that requests are not unreasonable, oppressive, excessive in scope or unduly burdensome, including the issuance of an order to show cause why a particular discovery request is justified upon the motion of the objecting party.

(5) *Privileged matter.* Privileged documents are not discoverable. Privileges include, inter alia, 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) and the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)).

(6) *Updating discovery.* Whenever a party receives new or additional information or documentation, all information produced, and all information required to be provided pursuant to the discovery and hearing process, must automatically be updated. The Administrative Law Judge may impose sanctions for failure to update, including prohibiting opposition to claims or defenses raised, striking pleadings or staying proceedings, dismissing the action or any part thereof, rendering a judgment by default, and holding a party in contempt.

(7) *Time limits.* All discovery, including all responses to discovery requests, shall be completed no later than 20 days prior to the date scheduled for the commencement of the hearing. No exceptions to this time limit shall be permitted, unless the Administrative Law Judge finds on the record that good cause exists for waiving the requirements of this paragraph (k)(7).

(l) *Summary disposition*—(1) *In general.* The Administrative Law Judge shall recommend that the Secretary or the Secretary's designee issue a final order granting a motion for summary disposition if the facts of the record show that:

(i) There is no genuine issue as to any material fact; and

(ii) The moving party is entitled to a decision in its favor as a matter of law.

(2) *Filing of motions and responses.* (i) Any party who believes that there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the Administrative Law Judge, may file a response to such motion.

(ii) 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 his 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 he or she contends a genuine dispute exists. Such 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.

(3) *Hearing on motion.* At the request of any party or on his own motion, the Administrative Law Judge may hear oral argument on the motion for summary disposition.

(4) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the Administrative Law Judge shall determine whether the moving party is entitled to summary disposition. If the Administrative Law Judge determines that summary disposition is warranted, the Administrative Law Judge shall submit a recommended decision to that effect to the Secretary. If the Administrative Law Judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

(5) *Interlocutory appeal.* Following receipt of the Administrative Law Judge's recommended decision relating to summary disposition, each party has the right to an interlocutory appeal to the Secretary or the Secretary's designee, within 20 days immediately following the Administrative Law Judge's decision.

(m) *Partial summary disposition.* If the Administrative Law Judge determines that a party is entitled to summary disposition as to certain claims only, the Administrative Law Judge shall defer submission of a recommended decision as to those claims. A hearing on the remaining issues must be ordered and those claims for which the Administrative Law Judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

(n) *Prehearing conferences and submissions*—(1) *Prehearing conferences.* The Administrative Law Judge may, on his own motion, or at the request of any party for good cause shown, direct counsel for the parties to meet with him (in person, by telephone, or by teleconference) at a prehearing conference to address any or all of the following:

(i) Simplification and clarification of the issues;

(ii) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

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

(iv) Limitation of the number of witnesses;

(v) Summary disposition of any or all issues;

(vi) Resolution of discovery issues or disputes; and

(vii) Such other matters as may aid in the orderly disposition of the proceeding.

(2) *Prehearing orders.* At, or within a reasonable time following the conclusion of, any prehearing conference, the Administrative Law Judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

(3) *Prehearing submissions.* Within 40 days of the receipt of respondent's request for a hearing or at a time set by the Administrative Law Judge, the Office of Foreign Assets Control shall serve on the respondent and upon the Administrative Law Judge, the following:

(i) Stipulations of fact, if any;

(ii) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(iii) A list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness.

(4) *Deadline for respondent's and other interested parties' submissions.* Unless for good cause shown the Administrative Law Judge permits an extension of time to file, the respondent and other interested parties shall have 20 days from the date of the submission by the Office of Foreign Assets Control of the items set forth in paragraph (n)(3) of this section, and/or of another interested party's service of items set forth in this paragraph (n)(4), to serve upon the Administrative Law Judge and all parties, the following:

(i) Its response to stipulations of fact, if any;

(ii) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(iii) A list of witnesses to be called to testify at the hearing, including the name and address of each witness and a short summary of the expected testimony of each witness.

(5) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraphs (n)(3) and (n)(4) of this section, except for good cause shown.

(o) *Public hearings*—(1) *In general.* All hearings shall be open to the public, unless the Administrative Law Judge, at his discretion, determines at any time prior to or during the hearing, that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice, any party may file with the Administrative Law Judge a request for a closed hearing, and any party may file a pleading in reply to such a request. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or closed.

(2) *Filing document under seal.* (i) The Office of Foreign Assets Control may file any documents or any part of a document under seal 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 or other Executive orders concerning disclosure of information, U.S. Treasury Department regulations, the Privacy Act, or the Freedom of Information Act.

(ii) The Administrative Law Judge shall also safeguard the security and integrity of any documents under seal and shall take all appropriate steps to preserve the confidentiality of such documents or any parts thereof, including closing portions of the hearing to the public. Release of any information under seal, in any form, or in any manner, is subject to the same sanctions and the exercise of the same authorities provided with respect to ex parte communications under paragraph (e)(5) of this section.

(iii) Should the Administrative Law Judge deny placement of any documents under seal or under protective order, any interested party, and any person whose documents or materials are at issue, may file an interlocutory appeal to the Secretary or the Secretary's designee. In such cases the Administrative Law Judge must not release or expose any of the records or documents in question to the public or to any other parties for a period of 20 days from the date of the Administrative Law Judge's ruling, in order to permit a petitioner the opportunity to either withdraw the records and documents or to file an interlocutory appeal with the Secretary or the Secretary's designee requesting an order that the records be placed under seal.

(iv) 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 respective parties, except when it may be necessary to retain a record until the judicial process is completed.

(v) Written notice of all requests for release of protected documents or materials shall be given to all interested parties registered with the Administrative Law Judge at least 20 days prior to any permitted release and prior to any access not specifically authorized under the protective order. A copy of all requests for information, including the name, address, and telephone number of the requester, shall be provided to the petitioner. Each request for access to protected material must also provide the names, addresses, and telephone numbers of all persons represented by the requester, including those on whose behalf the requester seeks access to protected information. The Administrative Law Judge shall impose sanctions provided under paragraphs (e)(4) and (5) of this section for failure to provide this information.

(p) *Conduct of hearings*—(1) *In general*—(i) *Overview.* Hearings shall be conducted to provide a fair and expeditious presentation of the relevant disputed issues and facts. 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.

(ii) *Order of hearing.* The Office of Foreign Assets Control shall present its case–in–chief first, unless otherwise ordered in advance by the Administrative Law Judge or otherwise expressly specified by law or regulation. The Office of Foreign Assets Control 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.

(iii) *Stipulations.* Unless the Administrative Law Judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which has been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(2) *Transcript.* A record of the hearing shall be made by manual or electronic means, including through the use of audio recorded diskettes or audio–visual cassettes, and transcribed unless the Administrative Law Judge rules otherwise. The transcript shall be made available to any party upon payment of the cost thereof. The Administrative Law Judge shall have authority to order the record corrected, either upon a motion to correct, upon a motion to stipulate by the parties for good cause shown, or following notice to the parties upon the Administrative Law Judge's own motion. The Administrative Law Judge shall serve notice upon all parties, at the addresses provided by the parties pursuant to § 500.703(b)(1)(iii), that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed with the Administrative Law Judge.

(q) *Evidence*—(1) *Admissibility.* (i) Except as is otherwise set forth in this section, evidence that is relevant and material is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(ii) Evidence may be excluded if it is misleading or its probative value is substantially outweighed by the danger of unfair prejudice or confusion of the issues, considerations of undue delay or waste of time, or of needless presentation of cumulative evidence.

(iii) Evidence that would be inadmissible under the Federal Rules of Evidence need not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant and material, and not unduly repetitive.

(2) *Official notice.* (i) Official notice may be taken of any material fact which may be judicially noticed by a United States district court.

(ii) All matters officially noticed by the Administrative Law Judge shall appear on the record.

(iii) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(3) *Duplicate copies.* A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(4) *Admissibility of evidence.* Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record. Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(5) *Rejected exhibits.* The Administrative Law Judge shall retain rejected exhibits, adequately marked for identification, in the event of an interlocutory appeal.

(6) *Stipulations.* The parties may stipulate as to any relevant matters of fact or to the authenticity of any relevant documents. Such stipulations may be received into evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(7) *Depositions of unavailable witnesses.* If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition within the United States to which all parties to the proceeding have received timely notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits. All costs of depositions shall be borne by the party requesting the deposition.

(r) *Proposed decision and supporting briefs*—(1) *Proposed decisions.* Any party may file with the Administrative Law Judge a proposed decision within 30 days after the parties have received notice that the transcript has been filed

with the Administrative Law Judge, unless otherwise ordered by the Administrative Law Judge.

(2) *Reliance on relevant authorities.* The proposed decision must be supported by citation to relevant authorities and by transcript page references to any relevant portions of the record. At the same time the proposed decision is filed, a post–hearing brief may be filed in support. The post–hearing brief shall be filed either as part of the same document or in a separate document.

(3) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed decision is due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed a proposed decision or a post–hearing brief may not file a reply brief.

(4) *Simultaneous filing required.* Absent a showing of good cause for the use of another procedure, the Administrative Law Judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

(s) *Recommended decision and filing of record.* Within 45 days after expiration of the time allowed for filing reply briefs, the Administrative Law Judge shall file with and certify to the Secretary or the Secretary's designee the record of the proceeding and the decision. The record must include the Administrative Law Judge's recommended decision, including a determination either that there was no violation by the person named in the prepenalty notice, or that there was a violation by the person named in the prepenalty notice, and the recommended monetary penalty and/or civil forfeiture and/or other disposition available to the Office of Foreign Assets Control. In addition to the proposed decision, the record must include all prehearing and hearing transcripts, exhibits, and rulings, and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The Administrative Law Judge shall have the recommended decision served upon each party.

(t) *Exceptions to the recommended decision.* When the Administrative Law Judge has issued his recommended decision, the Administrative Law Judge or his representative shall contact each party by telephone at the telephone number provided by each party pursuant to § 500.703(b)(1)(iii). Within 3 days of telephoning the parties, the recommended decision shall be mailed by the Administrative Law Judge to the parties. A party may file written exceptions to the recommended decision with the Secretary or the Secretary's designee within 30 days of the date the telephone call is placed by the Administrative Law Judge or his representative. A supporting brief may be filed at the time the exceptions are filed.

(u) *Final decision.* The final decision of the Secretary or the Secretary's designee shall be based on a review of the proposed decision and the entire record of the proceeding. The final written decision shall be provided to all parties.

**§ 500.707 Judicial review.**

Any person may seek judicial review as provided under 5 U.S.C. 702 for a penalty and/or forfeiture imposed pursuant to this part.

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

In the event that the respondent does not pay the penalty imposed pursuant to this part within 30 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.

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

1. The authority citation for part 505 is revised to read as follows:

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

2. Section 505.50 is revised to read as follows:

**§ 505.50 Penalties.**

For provisions relating to civil penalties and civil forfeiture, see subpart G of part 500 of this chapter.

## PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 is revised to read as follows:

Authority: 50 U.S.C. App. 1–44; 22 U.S.C. 6001–6010; 22 U.S.C. 6021–6091; 22 U.S.C. 2370(a); Pub. L. 104–132, 110 Stat. 1214, 1254 (18 U.S.C. 2332d); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

2. Subpart G is revised to read as follows:

**Subpart G—Penalties**



### Subpart G—Penalties

**§ 515.701 Penalties.**

(a) Attention is directed to section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16), 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 that act 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 that act 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.

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

(3) The Secretary of the Treasury may impose a civil penalty of not more than $55,000 per violation on any person who violates any license, order, or regulation issued under that act.

(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 the act shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

(b) The criminal penalties provided in the Trading with the Enemy Act are subject to increase pursuant to 18 U.S.C. 3571.

(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 representation 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 five years, or both.

**§ 515.702 Prepenalty notice; contents; service.**

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Trading with the Enemy Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty and/or forfeiture. The prepenalty notice may be issued whether or not another agency has taken any action with respect to this matter.

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

(2) *Respondent's rights*—(i) *Right to respond.* The prepenalty notice shall also inform the respondent of respondent's right to respond to the notice within 30 days of the mailing or other service of the notice pursuant to paragraph (c) of this section, as to why a monetary penalty and/or forfeiture should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

(ii) *Right to request a hearing.* The prepenalty notice shall also inform the respondent that, in the response provided for in paragraph (b)(2)(i) of this section, the respondent may also request a hearing conducted pursuant to 5 U.S.C. 554–557 to present the respondent's defenses to the imposition of a penalty and/or forfeiture and to offer any other information that the respondent believes should be included in the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture. Untimely response constitutes a waiver of a hearing.

(iii) *Right to request discovery prior to hearing.* The prepenalty notice shall also inform the respondent of the right to discovery prior to a requested hearing. Discovery must be requested in writing in the response provided for in paragraph (b)(2)(i) of this section, jointly with respondent's request for a hearing. Untimely response constitutes a waiver of prehearing discovery.

(c) *Service.* The prepenalty notice, or any amendment or supplement thereto, shall be served upon the respondent. Service shall be presumed completed:

(1) Upon mailing a copy by registered or certified mail, return receipt requested, addressed to the respondent at the respondent's last known address; or

(2) Upon presentment of a date–stamped postal receipt by the Office of Foreign Assets Control with respect to any respondent who has refused, avoided, or in any way attempted to decline delivery, tender, or acceptance of the registered or certified letter or has refused to recover a registered or certified letter served; or

(3) Upon leaving a copy with the respondent or an officer, a managing or general agent, or any other agent authorized by appointment or by law to accept or receive service for the respondent, evidenced by a certificate of service signed by the individual making such service, stating the method of service and the identity of the individual with whom the prepenalty notice was left; or

(4) 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 (c)(1) through (3) of this section inappropriate or ineffective for service upon the nonresident respondent.

**§ 515.703 Response to prepenalty notice; right to hearing and prehearing discovery; informal settlement.**

(a) *Deadline for response.* The respondent shall have 30 days from the date of mailing or other service of the prepenalty notice pursuant to § 515.702(c) to respond thereto.

(b) *Form and contents of response*—(1) *In general.* The written response need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should be responsive to the allegations contained therein and set forth the nature of the respondent's defenses.

(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 operate as a denial. Failure to deny, controvert, or object to any allegation will be deemed an admission of that allegation.

(ii) The response must also 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 or partial defense not specifically set forth in the response shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(iii) The response must also accurately state, for each respondent, the respondent's full name and address for future service, including current telephone number and area code. Respondents are responsible for providing timely written notice to all interested parties of any subsequent changes in the information provided.

(2) *Request for hearing.* Any request for an administrative hearing and prehearing discovery shall be made in the written response made pursuant to this section and within the 30–day time period specified in § 515.705(a).

(3) *Informal settlement.* In addition or as an alternative to a written response to a prepenalty notice pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30–day period specified in paragraph (a) of this

section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control. Untimely response constitutes a waiver of a hearing and prehearing discovery.

**§ 515.704 Penalty imposition or withdrawal absent a hearing request.**

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, the Director determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no civil monetary penalty or civil forfeiture pursuant to this subpart will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, the Director determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition by the Office of Foreign Assets Control of the civil monetary penalty and/or civil forfeiture and/or other available disposition on that respondent.

(1) The penalty/forfeiture notice shall inform the respondent that payment of the assessed penalty must be made within 30 days of the mailing of the penalty notice.

(2) The penalty/forfeiture notice shall inform the respondent of the requirement to furnish respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that the Department intends to use such number for the purposes of collecting and reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

**§ 515.705 Time and opportunity to request a hearing.**

(a) *Deadline for hearing request.* Within 30 days of the date of mailing or other service of the prepenalty notice pursuant to § 515.702(c), the respondent may file a written request for an agency hearing conducted pursuant to this section, to present the respondent's defenses to the imposition of a penalty and/or forfeiture, and to offer any other information found to be admissible into the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture.

(b) *Content of written response.* If an agency hearing is requested by the respondent or by the respondent's counsel, the written hearing request must be accompanied by a written response to the prepenalty notice containing the information required by § 515.703(b)(1)(i) through (iii). An untimely hearing request or written response to the prepenalty notice constitutes a waiver of a hearing.

(c) *Signature of filings.* All hearing requests, motions, responses, interrogatories, requests for deposition transcripts, requests for protective orders, and all other filings relating to requests for and responses to discovery or pertaining to the hearing process, must be signed by each requesting party and, if represented, by each party's counsel.

**§ 515.706 Hearing, discovery, and decision on the record.**

(a) *Notice of hearing.* (1) Any respondent requesting a hearing shall receive notice of the time and place of the hearing at the service address provided pursuant to § 515.703(b)(1)(iii). Requests to change the time and place of a hearing may be submitted to the Administrative Law Judge, who may modify the original notice or subsequently set hearing dates. All requests for any change in time and place of a hearing must be received in the Administrative Law Judge's chambers and served upon all interested parties no later than 10 working days before the scheduled hearing date.

(2) The hearing shall be conducted in a manner consistent with 5 U.S.C. 554–557, pursuant to section 1710(c) of the Cuban Democracy Act of 1992 (22 U.S.C. 6001–6010), and section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16).

(b) *Powers.* The Administrative Law Judge shall have all powers necessary to conduct the hearing, consistent with 5 U.S.C. 554–557, including the following powers:

(1) To administer oaths and affirmations;

(2) To require production of records or any information relative to any act or transaction subject to this part, including the imposition of 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;

(3) To receive relevant and material evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this part;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling or prehearing conferences as deemed necessary;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Secretary or the Secretary's designee shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Secretary or to the Secretary's designee a recommended decision as provided in paragraph (s) of this section;

(9) To recuse himself on motion made by a party or on the Administrative Law Judge's own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing;

(11) To perform all necessary or appropriate measures to discharge the duties of an Administrative Law Judge; and

(12) To set fees and expenses for witnesses, including expert witnesses.

(c) *Appearance and practice in a civil penalty hearing*—(1) *Appearance before an Administrative Law Judge by counsel.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, or territory of the United States, or the District of Columbia may represent respondents upon written request in a civil penalty hearing. A copy of the document appointing the counsel shall be presented to the Administrative Law Judge upon the first appearance of counsel.

(2) *Appearance before an Administrative Law Judge by a non–lawyer.* A respondent may appear on his own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any corporation may represent that corporation in a civil penalty hearing.

(3) *Office of Foreign Assets Control representation.* The Office of Foreign Assets Control shall be represented by the Chief Counsel of the Office of Foreign Assets Control or by the Chief Counsel's designee.

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

(2) *Corrective Measures.* The 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.

(e) *Ex parte communications*—(1) *Definition.* The term *ex parte communication* means any material oral or written communication not on the public record concerning the merits of an adjudicatory proceeding with respect to which reasonable prior notice to all parties is not given, on any material matter or proceeding covered by these regulations that takes place between:

(i) A party to the proceeding, a party's counsel, or any other individual; and

(ii) The Administrative Law Judge handling that proceeding, or the Secretary, or the Secretary's designee.

(2) *Exceptions.* (i) A request for the status of the proceeding does not constitute an ex parte communication; and

(ii) Settlement inquiries and discussions do not constitute ex parte communications.

(3) *Prohibition on ex parte communications.* From the time a respondent requests a hearing until the date that the Secretary or the Secretary's designee issues a final decision, no party, interested person, or counsel therefor shall knowingly make or cause to be made an ex parte communication. The Administrative Law Judge, the Secretary, and the Secretary's designee shall not knowingly make or cause to be made to a party, or to any interested person or counsel therefor, any ex parte communication.

(4) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the Administrative Law Judge, the Administrative Law Judge shall cause all 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. All parties to the proceeding shall have an opportunity, within 10 days of the receipt of service of the notice or of receipt of a memorandum of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (e)(5) of this section, appropriate under the circumstances, or may file an interlocutory appeal with the Secretary or the Secretary's designee.

(5) *Sanctions.* Any respondent, respondent's counsel, or other party 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 for good cause shown, or that may be imposed upon interlocutory appeal taken to the Secretary or the Secretary's designee, including, but not limited to, exclusion from the hearing and an adverse ruling on the issue which is the subject of the prohibited communication.

(f) *Time limits.* Except as provided elsewhere in this subpart, the Administrative Law Judge shall establish all time limits for filings with regard to hearings conducted pursuant to this subpart, except for decisions on interlocutory appeals filed with the Secretary or the Secretary's designee.

(g) *Interlocutory Appeal.* When exceptions, requests for extensions, or motions, including motions for summary disposition, are denied by the Administrative Law Judge, interlocutory appeals may be taken to the Secretary or to the Secretary's designee for a decision.

(1) Interlocutory appeals must be filed no later than 10 working days after the matter being appealed has been decided in writing by the Administrative Law Judge.

(2) Interlocutory appeals must be filed with the Secretary's Office, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with certified copies served upon the Administrative Law Judge and the Office of Chief Counsel for the Office of Foreign Assets Control.

(h) *Opportunity for settlement.* Any party may, at any time during the hearing, unilaterally submit written offers or proposals for settlement of a proceeding to the Secretary or the Secretary's designee, at the address listed in paragraph (g)(2) of this section. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a hearing. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any hearing before this tribunal.

(i) *Failure to appear.* The unexcused failure of a respondent to appear in person at a hearing or to have duly authorized counsel appear in respondent's place, constitutes a waiver of the respondent's right to a hearing and is deemed an admission of the violation alleged. Without further proceedings or notice to the respondent, the Administrative Law Judge shall file with the Secretary or the Secretary's designee a recommended decision finding a violation and the amount of penalty as indicated in the prepenalty notice.

(j) *Motions*—(1) *Written motions.* Except as otherwise specifically provided herein, an application or request for an order or ruling must be made by written motion, in typed format.

(i) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(ii) No oral argument may be held on written motions unless directed by the Administrative Law Judge. Written memoranda, briefs, affidavits, and other relevant material and documents may be filed in support of or in opposition to a motion.

(2) *Oral motions.* A motion may be made orally on the record unless the Administrative Law Judge directs that such motion be made in writing.

(3) *Filing of motions*—(i) *In general.* Motions must be filed with the Administrative Law Judge, and with the Office of Chief Counsel, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked, ''Urgent: Annex—Room 3133,'' unless otherwise directed by the Administrative Law Judge, or agreed to by Chief Counsel.

(ii) *Interlocutory appeals.* Motions related to interlocutory appeals to the Secretary or the Secretary's designee must be sent by fax (fax number: 202/622–1188) and filed with the Secretary, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, marked ''Attention: OFAC Interlocutory Appeal.''

(4) *Responses.* (i) Any interested party may file a written response to a motion within 20 days of the date of mailing, by registered or certified letter service and pursuant to these regulations. If directed by the Administrative Law Judge response time may be shortened or extended. The Administrative Law Judge may allow each party to file a response before finally ruling upon any oral or written motion. The Administrative Law Judge may allow a rejoinder to responses for good cause shown. If a rejoinder is permitted, it must be filed within 15 days of the date the response was filed and served upon all parties.

(ii) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

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

(k) *Discovery*—(1) *In general.* The availability of information and documents through discovery is subject to the agency's assertion of privileges available to OFAC and/or to the Treasury and to the application of all exemptions afforded the agency 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) to all facets of discovery, including interrogatories, depositions that seek the release of trade secrets, proprietary materials, third party confidential and/or commercially sensitive material, placement of information, documents and/or materials under seal and/or protective order, and interlocutory appeal to the Secretary or the Secretary's designee from any decision of the Administrative Law Judge.

(2) *Types of discovery.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; 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 U.S. Treasury Department or at the location where the federal employee to be deposed performs his duties, whichever the federal employee's supervisor or Chief Counsel shall deem appropriate. All depositions of federal employees shall be held at a mutually agreed upon date and time, and for a mutually agreed upon length of time.

(3) *Interrogatories.* Respondent's interrogatories must be served upon the Chief Counsel within 20 days of respondent's written request for a hearing. Chief Counsel must serve Chief Counsel's interrogatories within 30 days of the receipt of service of respondent's interrogatories or within 30 days of the receipt of respondent's written request for a hearing if no interrogatories are filed by respondent by that time. Parties have 30 days to respond to interrogatories from 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.

(4) *Scope.* Parties may obtain discovery regarding any matter not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The Administrative Law Judge may make any order which justice requires to ensure that requests are not unreasonable, oppressive, excessive in scope or unduly burdensome, including the issuance of an order to show cause why a particular discovery request is justified upon the motion of the objecting party.

(5) *Privileged matter.* Privileged documents are not discoverable. Privileges include, inter alia, 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) and the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)).

(6) *Updating discovery.* Whenever a party receives new or additional information or documentation, all information produced, and all information required to be provided pursuant to the discovery and hearing process, must automatically be updated. The Administrative Law Judge may impose sanctions for failure to update, including prohibiting opposition to claims or defenses raised, striking pleadings or staying proceedings, dismissing the action or any part thereof, rendering a judgment by default, and holding a party in contempt.

(7) *Time limits.* All discovery, including all responses to discovery requests, shall be completed no later than 20 days prior to the date scheduled for the commencement of the hearing. No exceptions to this time limit shall be permitted, unless the Administrative Law Judge finds on the record that good cause exists for waiving the requirements of this paragraph (k)(7).

(l) *Summary disposition*—(1) *In general.* The Administrative Law Judge shall recommend that the Secretary or the Secretary's designee issue a final order granting a motion for summary disposition if the facts of the record show that:

(i) There is no genuine issue as to any material fact; and

(ii) The moving party is entitled to a decision in its favor as a matter of law.

(2) *Filing of motions and responses.* (i) Any party who believes that there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the Administrative Law Judge, may file a response to such motion.

(ii) 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 his 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 he or she contends a genuine dispute exists. Such 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.

(3) *Hearing on motion.* At the request of any party or on his own motion, the Administrative Law Judge may hear oral argument on the motion for summary disposition.

(4) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the Administrative Law Judge shall determine whether the moving party is entitled to summary disposition. If the Administrative Law Judge determines that summary disposition is warranted, the Administrative Law Judge shall submit a recommended decision to that effect to the Secretary. If the Administrative Law Judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

(5) *Interlocutory appeal.* Following receipt of the Administrative Law Judge's recommended decision relating to summary disposition, each party has the right to an interlocutory appeal to the Secretary or the Secretary's designee, within 20 days immediately following the Administrative Law Judge's decision.

(m) *Partial summary disposition.* If the Administrative Law Judge

determines that a party is entitled to summary disposition as to certain claims only, the Administrative Law Judge shall defer submission of a recommended decision as to those claims. A hearing on the remaining issues must be ordered and those claims for which the Administrative Law Judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

(n) *Prehearing conferences and submissions*—(1) *Prehearing conferences.* The Administrative Law Judge may, on his own motion, or at the request of any party for good cause shown, direct counsel for the parties to meet with him (in person, by telephone, or by teleconference) at a prehearing conference to address any or all of the following:

(i) Simplification and clarification of the issues;

(ii) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

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

(iv) Limitation of the number of witnesses;

(v) Summary disposition of any or all issues;

(vi) Resolution of discovery issues or disputes; and

(vii) Such other matters as may aid in the orderly disposition of the proceeding.

(2) *Prehearing orders.* At, or within a reasonable time following the conclusion of, any prehearing conference, the Administrative Law Judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

(3) *Prehearing submissions.* Within 40 days of the receipt of respondent's request for a hearing or at a time set by the Administrative Law Judge, the Office of Foreign Assets Control shall serve on the respondent and upon the Administrative Law Judge, the following:

(i) Stipulations of fact, if any;

(ii) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(iii) A list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness.

(4) *Deadline for respondent's and other interested parties' submissions.* Unless for good cause shown the Administrative Law Judge permits an extension of time to file, the respondent and other interested parties shall have 20 days from the date of the submission by the Office of Foreign Assets Control of the items set forth in paragraph (n)(3) of this section, and/or of another interested party's service of items set forth in this paragraph (n)(4), to serve upon the Administrative Law Judge and all parties, the following:

(i) Its response to stipulations of fact, if any;

(ii) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(iii) A list of witnesses to be called to testify at the hearing, including the name and address of each witness and a short summary of the expected testimony of each witness.

(5) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraphs (n)(3) and (n)(4) of this section, except for good cause shown.

(o) *Public hearings*—(1) *In general.* All hearings shall be open to the public, unless the Administrative Law Judge, at his discretion, determines at any time prior to or during the hearing, that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice, any party may file with the Administrative Law Judge a request for a closed hearing, and any party may file a pleading in reply to such a request. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or closed.

(2) *Filing document under seal.* (i) The Office of Foreign Assets Control may file any documents or any part of a document under seal 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 or other Executive orders concerning disclosure of information, U.S. Treasury Department regulations, the Privacy Act, or the Freedom of Information Act.

(ii) The Administrative Law Judge shall also safeguard the security and integrity of any documents under seal and shall take all appropriate steps to preserve the confidentiality of such documents or any parts thereof, including closing portions of the hearing to the public. Release of any information under seal, in any form, or in any manner, is subject to the same sanctions and the exercise of the same authorities provided with respect to ex parte communications under paragraph (e)(5) of this section.

(iii) Should the Administrative Law Judge deny placement of any documents under seal or under protective order, any interested party, and any person whose documents or materials are at issue, may file an interlocutory appeal to the Secretary or the Secretary's designee. In such cases the Administrative Law Judge must not release or expose any of the records or documents in question to the public or to any other parties for a period of 20 days from the date of the Administrative Law Judge's ruling, in order to permit a petitioner the opportunity to either withdraw the records and documents or to file an interlocutory appeal with the Secretary or the Secretary's designee requesting an order that the records be placed under seal.

(iv) 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 respective parties, except when it may be necessary to retain a record until the judicial process is completed.

(v) Written notice of all requests for release of protected documents or materials shall be given to all interested parties registered with the Administrative Law Judge at least 20 days prior to any permitted release and prior to any access not specifically authorized under the protective order. A copy of all requests for information, including the name, address, and telephone number of the requester, shall be provided to the petitioner. Each request for access to protected material must also provide the names, addresses, and telephone numbers of all persons represented by the requester, including those on whose behalf the requester seeks access to protected information. The Administrative Law Judge shall impose sanctions provided under paragraphs (e)(4) and (5) of this section for failure to provide this information.

(p) *Conduct of hearings*—(1) *In general*—(i) *Overview.* Hearings shall be conducted to provide a fair and expeditious presentation of the relevant disputed issues and facts. 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.

(ii) *Order of hearing.* The Office of Foreign Assets Control shall present its case–in–chief first, unless otherwise ordered in advance by the Administrative Law Judge or otherwise

expressly specified by law or regulation. The Office of Foreign Assets Control 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.

(iii) *Stipulations.* Unless the Administrative Law Judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which has been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(2) *Transcript.* A record of the hearing shall be made by manual or electronic means, including through the use of audio recorded diskettes or audio–visual cassettes, and transcribed unless the Administrative Law Judge rules otherwise. The transcript shall be made available to any party upon payment of the cost thereof. The Administrative Law Judge shall have authority to order the record corrected, either upon a motion to correct, upon a motion to stipulate by the parties for good cause shown, or following notice to the parties upon the Administrative Law Judge's own motion. The Administrative Law Judge shall serve notice upon all parties, at the addresses provided by the parties pursuant to § 515.703(b)(1)(iii), that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed with the Administrative Law Judge.

(q) *Evidence*—(1) *Admissibility.* (i) Except as is otherwise set forth in this section, evidence that is relevant and material is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(ii) Evidence may be excluded if it is misleading or its probative value is substantially outweighed by the danger of unfair prejudice or confusion of the issues, considerations of undue delay or waste of time, or of needless presentation of cumulative evidence.

(iii) Evidence that would be inadmissible under the Federal Rules of Evidence need not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant and material, and not unduly repetitive.

(2) *Official notice.* (i) Official notice may be taken of any material fact which may be judicially noticed by a United States district court.

(ii) All matters officially noticed by the Administrative Law Judge shall appear on the record.

(iii) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(3) *Duplicate copies.* A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(4) *Admissibility of evidence.* Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record. Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(5) *Rejected exhibits.* The Administrative Law Judge shall retain rejected exhibits, adequately marked for identification, in the event of an interlocutory appeal.

(6) *Stipulations.* The parties may stipulate as to any relevant matters of fact or to the authenticity of any relevant documents. Such stipulations may be received into evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(7) *Depositions of unavailable witnesses.* If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition within the United States to which all parties to the proceeding have received timely notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits. All costs of depositions shall be borne by the party requesting the deposition.

(r) *Proposed decision and supporting briefs*—(1) *Proposed decisions.* Any party may file with the Administrative Law Judge a proposed decision within 30 days after the parties have received notice that the transcript has been filed with the Administrative Law Judge, unless otherwise ordered by the Administrative Law Judge.

(2) *Reliance on relevant authorities.* The proposed decision must be supported by citation to relevant authorities and by transcript page references to any relevant portions of the record. At the same time the proposed decision is filed, a post–hearing brief may be filed in support. The post–hearing brief shall be filed either as part of the same document or in a separate document.

(3) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed decision is due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed a proposed decision or a post–hearing brief may not file a reply brief.

(4) *Simultaneous filing required.* Absent a showing of good cause for the use of another procedure, the Administrative Law Judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

(s) *Recommended decision and filing of record.* Within 45 days after expiration of the time allowed for filing reply briefs, the Administrative Law Judge shall file with and certify to the Secretary or the Secretary's designee the record of the proceeding and the decision. The record must include the Administrative Law Judge's recommended decision, including a determination either that there was no violation by the person named in the prepenalty notice, or that there was a violation by the person named in the prepenalty notice, and the recommended monetary penalty and/or civil forfeiture and/or other disposition available to the Office of Foreign Assets Control. In addition to the proposed decision, the record must include all prehearing and hearing transcripts, exhibits, and rulings, and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The Administrative Law Judge shall have the recommended decision served upon each party.

(t) *Exceptions to the recommended decision.* When the Administrative Law Judge has issued his recommended decision, the Administrative Law Judge or his representative shall contact each party by telephone at the telephone number provided by each party pursuant to § 515.703(b)(1)(iii). Within 3 days of telephoning the parties, the recommended decision shall be mailed by the Administrative Law Judge to the parties. A party may file written exceptions to the recommended decision with the Secretary or the Secretary's designee within 30 days of the date the telephone call is placed by the Administrative Law Judge or his representative. A supporting brief may be filed at the time the exceptions are filed.

(u) *Final decision.* The final decision of the Secretary or the Secretary's designee shall be based on a review of the proposed decision and the entire record of the proceeding. The final written decision shall be provided to all parties.

**§ 515.707 Judicial review.**

Any person may seek judicial review as provided under 5 U.S.C. 702 for a penalty and/or forfeiture imposed pursuant to this part.

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

In the event that the respondent does not pay the penalty imposed pursuant to this part within 30 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.

Dated: December 23, 1996.

R. Richard Newcomb,

*Director, Office of Foreign Assets Control.*

Approved: December 31, 1996.

James E. Johnson,

*Assistant Secretary (Enforcement).*

[FR Doc. 97–3537 Filed 2–13–97; 8:45 am]

**BILLING CODE 4810–25–F**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Parts 3400, 3410, 3420, 3440, 3450, 3460, 3470, and 3480

**[WO–320–1320–02–1A]**

**RIN 1004–AC37**

### Federal Coal Management Program Regulations

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Bureau of Land Management (BLM) is withdrawing the proposed rule to amend the Federal Coal Management Program regulations. The proposal was published in the Federal Register on July 12, 1991. BLM is taking this action because we plan to issue a new proposal for public comment. We will write the new proposal in plain, understandable language as required by Executive Order 12866 and the President's regulatory reform initiative. This action will also give commenters on the 1991 proposal an opportunity to update their concerns.

**FOR FURTHER INFORMATION CONTACT:** William Radden-Lesage, Mining Engineer, Solid Minerals Group (WO–320), Bureau of Land Management, Mail Stop 501LS, 1849 ''C'' Street, N.W., Washington, DC 20240; telephone (202) 452–0350 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:** On July 12, 1991, BLM published a proposed rule to amend the Federal Coal Management Program regulations. See 56 FR 32002–32048. We intended the proposed changes in part to simplify and streamline the existing regulations. The initial comment period was to close on September 12, 1991, but we extended it at the request of commenters an additional 30 days, closing on October 12, 1991.

Shortly thereafter, the General Accounting Office began an investigation of the Federal coal leasing program that culminated in the issuance of a report, entitled ''Mineral Resources: Federal Coal-Leasing Program Needs Strengthening'' (GAO/RCED–94–10). We responded to the report by issuing a proposed rule to amend the regulations pertaining to logical mining units (59 FR 66874, Dec. 28, 1994). This 1994 proposal affected portions of the coal management regulations that had been proposed for reorganization, but not substantive change, under the 1991 proposal. We will soon complete work on the logical mining unit regulations and publish a final rule.

In the meantime, the President issued Executive Order 12866 which requires each agency to put all information provided to the public in plain, understandable language. See 58 FR 51736, Oct. 4, 1993. Further, in his February 21, 1995, message on regulatory reform, the President directed agencies to carry out a review of their regulations to reduce the regulatory burden on the American people. Therefore, we have decided to withdraw the 1991 proposal. We plan to issue a new proposal for public comment in the near future. This action will also give commenters on the 1991 proposal a chance to update any concerns or suggestions which they may have regarding BLM's coal management regulations based on changes in the coal industry since 1991.

Dated: February 5, 1997.

Bob Armstrong,

*Assistant Secretary, Land and Minerals Management.*

[FR Doc. 97–3699 Filed 2–13–97; 8:45 am]

**BILLING CODE 4310–84–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA–7199]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.