
For further information concerning OFAC are available from OFAC’s Web site (http://www.treas.gov/ofac). Certain general information pertaining to OFAC’s sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

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

ACTIONS: Interim final rule with request for comments.

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

ADDRESSES: You may submit comments by any of the following methods: Federal eRulemaking Portal: http://www.regulations.gov.

Follow the instructions for submitting comments.

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


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

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

Procedural Requirements

Because the amendment of 31 CFR parts 538 and 560 involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

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

Background

The Office of Foreign Assets Control (“OFAC”) today is adopting an interim final rule which makes technical changes to certain sections of the Sudanese Sanctions Regulations, 31 CFR parts 538 (the “SSR”), and the Iranian Transactions Regulations, 31 CFR part 560 (the “ITR”), relating to the Trade Sanctions Reform and Export Enhancement Act of 2000, as amended (22 U.S.C. 7201 et seq.) (“TSRA”). This interim final rule and accompanying preamble serve to clarify OFAC’s policy with respect to the process for issuing one-year licenses to export agricultural commodities, medicine, and medical devices to Sudan and Iran, and the considerations relevant to such licensing decisions.

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

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

OFAC published the 2001 interim rule describing the expedited licensing process in July 2001. As OFAC has stated publicly, circumstances developed almost immediately after publication of the 2001 interim rule that seriously limited OFAC’s ability to process applications as expeditiously as had been hoped. See Clarification of Policy With Respect to the Process for Issuing One-Year Licenses to Export Agricultural Commodities, Medicine, and Medical Devices to Sudan and Iran, 72 FR 12980 (March 20, 2007). To begin with, the terrorist attacks of September 11, 2001, magnified concerns about international terrorism and proliferation of weapons of mass destruction. These concerns prompted greater scrutiny on...
the part of OFAC and other agencies of the U.S. Government of those entities within state sponsors of terrorism to whom agricultural commodities, medicine, and medical devices were being exported. Moreover, the volume of license requests has increased substantially since the inception of the TSRA program, and applications are now much more complicated than earlier ones, often involving dozens and sometimes hundreds of products and parties to the transaction.

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

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

Moreover, briefly after the issuance of the 2001 interim rule and in response to the events of September 11, Congress enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. 107–56) (the “USA Patriot Act”). Section 221 of the USA Patriot Act amended or modified the application of TSRA in several ways, including by adding a section, codified at 22 U.S.C. 7210, which provides:

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

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

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

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

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

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

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

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

Paperwork Reduction Act

The collections of information related to 31 CFR parts 538 and 560 are contained in 31 CFR part 501 (the “Reporting, Procedures and Penalties Regulations”). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects

31 CFR Part 538

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

31 CFR Part 560

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

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

PART 538—SUDANESE SANCTIONS REGULATIONS

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


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

2. Revise § 538.523 to read as follows:

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

(a)(1) One-year specific license requirement. The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part 538), medicine, or medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the Government of Sudan and do not relate to the petroleum or petrochemical industries in Sudan, and also provided that all such exports or reexports are shipped within the 12-month period beginning on the date of the signing of the contract for export or reexport.

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

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

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

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

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

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

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

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

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

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

(5) An Official Commodity Classification of EAR 99 issued by the Department of Commerce, Bureau of Industry and Security (“BIS”), certifying that the product is EAR 99, is required to be submitted to OFAC with the request for a license authorizing the
importation or reexportation of all fertilizers, live horses, western red
cedar, and medical devices other than basic medical supplies, such as
syringes, bandages, gauze and similar items, that are specifically listed on

Medical supplies that are specifically listed on BIS’s Web site may not require
an Official Commodity Classification of EAR 99 from BIS. BIS will also provide
a list on its Web site of medicines that are ineligble for a one-year license
under these procedures. Exporters should seek an Official Commodity
Classification of EAR 99 from BIS for medicines and submit a copy to OFAC.

See 15 CFR 745.3 for instructions for obtaining Official Commodity
Classification of EAR 99 from BIS.

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

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

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

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

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

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

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

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

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

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

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

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

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

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

3. Revise § 538.525 to read as follows:

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

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

(1) Payment of cash in advance;

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

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

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

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

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

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

4. Revise § 538.526 to read as follows:

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

(a) General license for brokering sales
by U.S. persons. United States persons
are authorized to provide brokerage
services on behalf of U.S. persons for
the sale and exportation or
reexportation by United States persons
of agricultural commodities, medicine,
and medical devices to the Government
of Sudan, to any individual
or entity in a region of Sudan other than the
Specified Areas, or to persons in
third countries purchasing specifically
for resale to the foregoing, provided that the sale and exportation
or reexportation is authorized by a one-
The authority citation for part 560 is revised to read as follows:


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

6. Revise §560.530 to read as follows:

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

(a) One-year license requirement. The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix B to this part 560), medicine, or medical devices to the Government of Iran, any entity in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to the foregoing, is authorized, provided that performance of an executory contract is expressly made contingent upon the prior issuance of the one-year license described in paragraph (a) of this section.

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

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

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

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

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

(5) An Official Commodities Classification of EAR 99 issued by the Department of Commerce, Bureau of Industry and Security (“BIS”), certifying that the product is EAR 99, is required to be submitted to OFAC with the request for a license authorizing the exportation or reexportation of all fertilizers, live horses, western red cedar, and medical devices other than basic medical supplies, such as syringes, bandages, gauze and similar items, that are specifically listed on BIS’s Web site, http://www.bis.doc.gov/policiesandregulations/tradesanctions/reformexportenhancementact.html.

Medical supplies that are specifically listed on BIS’s Web site may not require
an Official Commodity Classification of EAR 99 from BIS. BIS will also provide
a list on its Web site of medicines that are
ineligible for a one-year license
under these procedures. Exporters
should seek an Official Commodity
Classification of EAR 99 from BIS for
medicines and submit a copy to OFAC.
See 15 CFR 745.3 for instructions for
obtaining Official Commodity
Classification of EAR 99 from BIS.
(d) Limitations. (1) Nothing in this
section or in any license issued
pursuant to paragraph (a) of this section
relieves the exporter from compliance
with the export license application
requirements of another Federal agency.
(2) Nothing in this section or in any
license issued pursuant to paragraph (a)
of this section authorizes the
exportation or reexportation of any
agricultural commodity, medicine, or
medical device controlled on the United
States Munitions List established under
section 38 of the Arms Export Control
Act (22 U.S.C. 2778); controlled on any
control list established under the Export
Administration Act of 1979 or any
successor statute (50 U.S.C. App. 2401
et seq.); or used to facilitate the
development or production of a
chemical or biological weapon or
weapon of mass destruction.
(3) Nothing in this section or in any
license issued pursuant to paragraph (a)
of this section affects prohibitions on
the sale or supply of U.S. technology or
software used to manufacture
agricultural commodities, medicine, or
medical devices, such as technology to
design or produce biotechnological
items or medical devices.
(4) Nothing in this section or in any
license issued pursuant to paragraph (a)
of this section affects U.S.
nonproliferation export controls,
including end-user and end-use controls
maintained under the Enhanced
Proliferation Control Initiative.
(5) This section does not apply to any
transaction or dealing involving
property blocked pursuant to this
chapter or any other activity prohibited
by this chapter not otherwise authorized
in this part.
(e) Covered items. For the purposes of
this part, agricultural commodities,
medicine, and medical devices are
defined below.
(1) Agricultural commodities. For the
purposes of this section, agricultural
commodities are:
(i) Products not listed on the
Commerce Control List in the Export
Administration Regulations, 15 CFR
part 774, supplement no. 1, and that fall
within the term “agricultural
commodity” as defined in section 102 of
the Agricultural Trade Act of 1978 (7
U.S.C. 5602); and
(ii) Products not listed on the
Commerce Control List in the Export
Administration Regulations, 15 CFR
part 774, supplement no. 1, that are
intended for ultimate use in Iran as:
(A) Food for humans (including raw,
processed, and packaged foods; live
animals; vitamins and minerals; food
additives or supplements; and bottled
drinking water) or animals (including
animal feeds);
(B) Seeds for food crops;
(C) Fertilizers or organic fertilizers; or
(D) Reproductive materials (such as
live animals, fertilized eggs, embryos,
and semen) for the production of food
animals.
(2) Medicine. For the purposes of this
section, the term medicine has the same
meaning given the term “drug” in
section 201 of the Federal Food, Drug,
and Cosmetic Act (21 U.S.C. 321) but
does not include any item listed on the
Commerce Control List in the Export
Administration Regulations, 15 CFR
part 774, supplement no. 1 (excluding
items classified as EAR 99).
(3) Medical device. For the purposes
of this section, the term medical device
has the meaning given the term
“device” in section 201 of the Federal
Food, Drug, and Cosmetic Act (21 U.S.C.
321) but does not include any item
listed on the Commerce Control List in the
Export Administration Regulations, 15 CFR
part 774, supplement no. 1 (excluding
items classified as EAR 99).
§ 560.532 Payment for and financing of
exports and reexports of agricultural
commodities, medicine, and medical
devices.
(a) General license for payment terms.
The following payment terms for sales
of agricultural commodities and
products, medicine, and medical
equipment pursuant to §§ 560.530 and
560.531 are authorized:
(1) Payment of cash in advance;
(2) Sales on open account, provided
that the account receivable may not be
transferred by the person extending the
credit; or
(3) Financing by third-country
financial institutions that are neither
United States persons nor Government
of Iran entities. Such financing may be
confirmed or advised by U.S. financial
institutions.
(b) Specific licenses for alternate
payment terms. Specific licenses may be
issued on a case-by-case basis for
payment terms and trade financing not
authorized by the general license in
paragraph (a) of this section for sales
pursuant to § 560.530. See § 501.801(b)
of this chapter for specific licensing
procedures.
(c) No debits or credits to Iranian
accounts on the books of U.S.
depositary institutions. Nothing in this
section authorizes payment terms or
trade financing involving debits or
credits to Iranian accounts, as defined in
§ 560.320.
(d) Transfers through the U.S.
financial system. Any payment relating
to a transaction authorized in or
pursuant to § 560.530 or § 560.531 that is
routed through the U.S. financial
system must reference the relevant
Office of Foreign Assets Control license
authorizing the payment to avoid the
rejection of the transfer. See
§ 560.516(c).
(e) Notwithstanding any other
provision of this part, no commercial
exportation to Iran may be made with
United States Government assistance,
including United States foreign
assistance, United States export
assistance, and any United States credit
or guarantees absent a Presidential
waiver.
8. Revise § 560.533 to read as follows:
§ 560.533 Brokering sales of agricultural
commodities, medicine, and medical
devices.
(a) General license for brokering sales
by U.S. persons. United States persons
are authorized to provide brokerage
services on behalf of U.S. persons for
the sale and exportation or
reexportation by United States persons
of agricultural commodities, medicine,
and medical devices, provided that the
sale and exportation or reexportation is
authorized by a one-year license issued
pursuant to § 560.530.
(b) Specific licensing for brokering
sales by non-U.S. persons of bulk
agricultural commodities. Specific
licenses may be issued on a case-by-case
basis to permit United States persons to
provide brokerage services on behalf of
non-United States, non-Iranian persons
for the sale and exportation or
reexportation of bulk agricultural
commodities to the Government of Iran,
entities in Iran or individuals in Iran.
Specific licenses issued pursuant to this
section will authorize the brokering
only of sales that:
(1) Are limited to the bulk agricultural
commodities listed in appendix B to
this part 560;
(2) Are to purchasers permitted
pursuant to § 560.530; and
Note to § 560.533(b)(2): Requests for
specific licenses to provide brokerage
services under this paragraph must include
all of the information described in
§ 560.530(c).
(3) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, items classified EAR 99 under the Export Administration Regulations, 15 CFR parts 730 through 774, may in certain instances require a license from the Department of Commerce, Bureau of Industry and Security. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9.)

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

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

Dated: November 17, 2009.

Adam J. Szubin,
Director, Office of Foreign Assets Control.

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

SUPPORT INFORMATION:

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

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

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

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

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

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

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

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

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

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

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

Paperwork Reduction Act
The collections of information related to the GTSR are contained in 31 CFR part 501 (the “Reporting, Procedures and Penalties Regulations”). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a