

Shippers' claim that oil pipeline index increases exceed the CPI does not support changes to the index because Liquids Shippers have not demonstrated that historic, industry-wide oil pipeline cost changes have corresponded to the CPI.<sup>92</sup>

49. Liquids Shippers' arguments that the Commission should change its regulations governing indexing are beyond the scope of this proceeding. The June 2015 NOI sought comment regarding two narrow issues, (a) the proposed index level and (b) possible changes to the Kahn Methodology used to calculate the index level.<sup>93</sup> Liquids Shippers' comments regarding the Commission's indexing policies, committed shipper contracts,<sup>94</sup> and other issues are beyond the scope of this limited inquiry.

50. Further, Liquids Shippers' comments have not persuaded us to reexamine the Commission-approved indexing methodology.<sup>95</sup> In general terms, Liquids Shippers have not substantiated their claims of unchecked oil pipeline over-recoveries. For example, of the 20 pipelines (out of Liquids Shippers' sample of 42) that Liquids Shippers allege are over-recovering, evidence provided in this proceeding indicates that 15 actually under-recovered their cost-of-service in one (and in many cases more) of the years between 2009 and 2014.<sup>96</sup>

<sup>92</sup> Similarly, Liquids Shippers' comparison to natural gas pipeline rate changes is misleading because Liquids Shippers' data only includes a portion of natural gas pipelines (not all natural gas pipelines) and does not include all rate changes proposed by those pipelines. Shehadeh October 2015 Affidavit at 31. The underlying economic premise of this analysis is also flawed. First, as Dr. Shehadeh explains, the analogy to natural gas pipelines depends upon a misunderstanding of prices—as price levels, not price growth, are determined by the level of competition in an industry. *Id.* at 30. Second, Liquids Shippers do not establish that the same market forces determining natural gas pipeline prices apply to oil pipelines. *Id.*

<sup>93</sup> June 2015 NOI, 151 FERC ¶ 61,278 at P 1.

<sup>94</sup> This five-year review addresses the calculation of the industry-wide index-level. Negotiated committed shipper contracts only incorporate indexing when both the pipeline and the committed shippers accept such terms. Any objections to these negotiated provisions (including the application of indexing) may be raised during the applicable petition for declaratory order process.

<sup>95</sup> The Commission's indexing methodology was affirmed on appeal following Order No. 561. *AOPL I*, 281 F.3d 239. The dissents and other materials from that proceeding cited by Liquids Shippers were part of the record at that time. In addition, Liquids Shippers cite a Congressional letter which was written before the indexing regulations were finalized, and does not accurately portray how those regulations have been implemented. For example, the letter implies that the index may only increase rates, when, in fact, under Commission regulations the index may require rates to go down. See 18 CFR 342.3(e) (2015).

<sup>96</sup> See Shehadeh September 2015 Affidavit at 32. Further, the industry as a whole continues to show

Furthermore, to the extent issues arise on a particular pipeline, a shipper may file complaints or protests against indexed rate increases<sup>97</sup> or complaints against an oil pipeline's underlying base rates. In addition to being beyond the scope of the June 2015 NOI, Liquids Shippers have not substantiated their claims.<sup>98</sup>

#### F. Suncor's Proposals

51. The Commission will not adopt the various proposals advanced by Suncor. The Commission's adoption of page 700 data addresses several of these proposals, which were advanced as alternatives should the Commission not adopt page 700 data. In addition, the Commission also will not adopt Suncor's proposed alternative methodology to trim the data set based upon anomalous years (as opposed to trimming pipelines reporting anomalous data) because the justification for this proposal, including the use of broader data set, was based upon the previously used Form No. 6 accounting data, not the page 700 data. Moreover, AOPL has presented evidence that Suncor's proposal included significant computational errors.<sup>99</sup>

#### IV. 2016–2021 Oil Pipeline Index

52. Based on the foregoing, the Commission calculates the five-year review of the index level used to determine annual changes to oil pipeline rate ceilings for the five-year period commencing July 1, 2016 as follows. First, as shown in Attachment A (Exhibit 13, Exhibit 14) we remove those pipelines that did not provide Form No. 6, page 700 data or provided incomplete data. Second, as shown in Attachment A (Exhibit 15) we look at the data on Form No. 6, page 700 to calculate each pipeline's cost change on a per barrel-mile basis over the prior five-year period (*e.g.* the years 2009–2014 in this proceeding). Third, in order to remove statistical outliers and

an under-recovery of the aggregate page 700 cost-of-service. Moreover, as has been recognized from the inception of indexing, some pipelines costs will exceed the rate increases allowed by indexing whereas efficient pipelines may benefit from controlling their costs. Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,948–49.

<sup>97</sup> Liquids Shippers argue that pipelines with page 700 revenues exceeding page 700 cost of service should not receive index increases. To the extent that index rate filings of particular pipelines substantially exacerbate pre-existing over-recoveries, current Commission policies allow shippers to file complaints against those index increases. *BP West Coast Products, LLC v. SFPP, L.P.*, 121 FERC ¶ 61,141 (2007).

<sup>98</sup> Remaining issues regarding the Commission's regulatory policies may be raised in an adjudicatory context or another, more appropriate forum.

<sup>99</sup> Shehadeh September 2015 Affidavit at 38.

spurious data, we trim the data set to those pipelines in the middle 50 percent of cost changes. Fourth, as shown in Attachment A (Exhibit 15) we calculate three measures of the middle 50 percent's central tendency: The median, the mean, and a weighted mean. Fifth, we calculate a composite by taking a simple average of those three measures of central tendency, as shown in Attachment A (Exhibit 1). Finally, this composite is compared to the value of the PPI-FG index data over the same period. The index level is then set at PPI-FG plus (or minus) this differential. Using these calculations, the Commission establishes an index level of PPI-FG plus 1.23 percent (PPI-FG+1.23) for the five-year period commencing July 1, 2016.

#### The Commission Orders

Consistent with the discussion in this order, the Commission determines that the appropriate oil pricing index for the next five years, July 1, 2016 through June 30, 2021, is PPI-FG+1.23.

By the Commission.

Issued: December 17, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

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## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### 31 CFR Part 578

#### Cyber-Related Sanctions Regulations

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

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is issuing regulations to implement Executive Order 13694 of April 1, 2015 (“Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities”). OFAC intends to supplement this part 578 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

**DATES:** *Effective:* December 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant

Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202-622-2410.

#### SUPPLEMENTARY INFORMATION:

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site ([www.treasury.gov/ofac](http://www.treasury.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

On April 1, 2015, the President issued Executive Order 13694 (80 FR 18077, April 2, 2015) (E.O. 13694), invoking the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701-1706). OFAC is issuing the Cyber-Related Sanctions Regulations, 31 CFR part 578 (the "Regulations"), to implement E.O. 13694, pursuant to authorities delegated to the Secretary of the Treasury in E.O. 13694. A copy of E.O. 13694 appears in Appendix A to this part.

The Regulations are being published in abbreviated form at this time for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part 578 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, including regarding "cyber-enabled" activities, and additional general licenses and statements of licensing policy. The appendix to the Regulations will be removed when OFAC supplements this part with a more comprehensive set of regulations.

#### Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. 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 Regulations 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 in 31 CFR Part 578

Administrative practice and procedure, Banking, Banks, Blocking of assets, Brokers, Credit, Critical infrastructure, Cyber, Cybersecurity, Foreign trade, Investments, Loans, Securities, Services, Trade secrets.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control adds part 578 to 31 CFR chapter V to read as follows:

#### PART 578—CYBER-RELATED SANCTIONS REGULATIONS

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Sec.

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578.901 Paperwork Reduction Act notice. Appendix A to Part 578—Executive Order 13694

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601-1651, 1701-1706; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110-96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13694, 80 FR 18077, April 2, 2015.

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

##### § 578.101 Relation of this part to other laws and regulations.

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

**Note to § 578.101:** This part has been published in abbreviated form for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, including regarding "cyber-enabled"

activities, and additional general licenses and statements of licensing policy.

### Subpart B—Prohibitions

#### § 578.201 Prohibited transactions.

All transactions prohibited pursuant to Executive Order 13694 of April 1, 2015, are also prohibited pursuant to this part.

**Note 1 to § 578.201:** The names of persons designated pursuant to Executive Order 13694, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the identifier "[CYBER]." The SDN List is accessible through the following page on OFAC's Web site: [www.treasury.gov/sdn](http://www.treasury.gov/sdn). Additional information pertaining to the SDN List can be found in Appendix A to this chapter. See § 578.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

**Note 2 to § 578.201:** The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier "[BPI–CYBER]".

**Note 3 to § 578.201:** Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

#### § 578.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 578.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interest.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 578.201, unless the person who holds or maintains such property, prior to that

date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, a license or other authorization issued by OFAC before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of OFAC each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with OFAC a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by OFAC; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

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

(e) Unless licensed pursuant to this part, any attachment, judgment, decree,

lien, execution, garnishment, or other judicial process is null and void with respect to any property and interests in property blocked pursuant to § 578.201.

#### § 578.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (e) or (f) of this section, or as otherwise directed by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 578.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 578.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 578.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity

securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 578.201, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

**§ 578.204 Expenses of maintaining blocked property; liquidation of blocked property.**

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 578.201 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 578.201 may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

**Subpart C—General Definitions**

**§ 578.300 Applicability of definitions.**

The definitions in this subpart apply throughout the entire part.

**§ 578.301 Blocked account; blocked property.**

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 578.201 held in the name of a person whose property and interests in property are blocked pursuant to § 578.201, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

**Note to § 578.301:** See § 578.406 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by persons whose property and interests in property are blocked pursuant to § 578.201.

**§ 578.302 Effective date.**

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part, and, with respect to a person whose property and interests in property are blocked pursuant to § 578.201, is the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

**§ 578.303 Entity.**

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

**§ 578.304 Financial, material, or technological support.**

The term *financial, material, or technological support*, as used in Executive Order 13694 of April 1, 2015, means any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. "Technologies" as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

**§ 578.305 Interest.**

Except as otherwise provided in this part, the term *interest*, when used with respect to property (e.g., "an interest in property"), means an interest of any nature whatsoever, direct or indirect.

**§ 578.306 Licenses; general and specific.**

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's Web site: [www.treasury.gov/ofac](http://www.treasury.gov/ofac).

(c) The term *specific license* means any license or authorization issued pursuant to this part but not set forth in subpart E of this part or made available on OFAC's Web site: [www.treasury.gov/ofac](http://www.treasury.gov/ofac).

**Note to § 578.306:** See § 501.801 of this chapter on licensing procedures.

**§ 578.307 OFAC.**

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

**§ 578.308 Person.**

The term *person* means an individual or entity.

**§ 578.309 Property; property interest.**

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

**§ 578.310 Transfer.**

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of

any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, or filing of, or levy of or under, any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

**§ 578.311 United States.**

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

**§ 578.312 United States person; U.S. person.**

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

**§ 578.313 U.S. financial institution.**

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, or commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

**Subpart D—Interpretations**

**§ 578.401 [Reserved]**

**§ 578.402 Effect of amendment.**

Unless otherwise specifically provided, any amendment,

modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by OFAC does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

**§ 578.403 Termination and acquisition of an interest in blocked property.**

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person whose property and interests in property are blocked pursuant to § 578.201, such property shall no longer be deemed to be property blocked pursuant to § 578.201, unless there exists in the property another interest that is blocked pursuant to § 578.201, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or other authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 578.201, such property shall be deemed to be property in which such a person has an interest and therefore blocked.

**§ 578.404 Transactions ordinarily incident to a licensed transaction.**

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

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 578.201; or

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

**§ 578.405 Setoffs prohibited.**

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 578.201 if effected after the effective date.

**§ 578.406 Entities owned by persons whose property and interests in property are blocked.**

Persons whose property and interests in property are blocked pursuant to § 578.201 have an interest in all property and interests in property of an entity in which such blocked persons own, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 578.201, regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

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

**§ 578.501 General and specific licensing procedures.**

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. General licenses and statements of licensing policy relating to this part also may be available through the Cyber-Related sanctions page on OFAC's Web site: [www.treasury.gov/ofac](http://www.treasury.gov/ofac).

**§ 578.502 [Reserved]**

**§ 578.503 Exclusion from licenses.**

OFAC reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. OFAC also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

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

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 578.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the

United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

**Note to § 578.504:** See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 578.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

**§ 578.505 Entries in certain accounts for normal service charges authorized.**

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

**§ 578.506 Provision of certain legal services authorized.**

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 578.201 or any further Executive orders relating to the national emergency declared in Executive Order 13694 of April 1, 2015, is authorized, provided that receipt of payment of professional fees and reimbursement of incurred expenses must be specifically licensed, authorized pursuant to § 578.507, which authorizes certain payments for legal services from funds originating outside the United States, or otherwise authorized pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 578.201 or any further Executive orders relating to the national emergency declared in Executive Order 13694 of April 1, 2015, not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 578.201 or any further Executive orders relating to the national emergency declared in Executive Order 13694 of April 1, 2015, is prohibited unless licensed pursuant to this part.

**Note to § 578.506:** U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of a limited amount of blocked funds for the payment of legal fees where alternative funding sources are not available. For more information, see OFAC's *Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings*, which is available on OFAC's Web site: [www.treasury.gov/ofac](http://www.treasury.gov/ofac).

**§ 578.507 Payments for legal services from funds originating outside the United States authorized.**

(a) Receipts of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 578.506(a) to or on behalf of any person whose property and interests in property are blocked pursuant to § 578.201 or any further Executive orders relating to the national emergency declared in Executive Order 13694, of April 1, 2015, are authorized from funds originating outside the United States, provided that the funds received by U.S. persons as payment of professional fees and reimbursement of incurred expenses for the provision of

legal services authorized pursuant to § 578.506(a) do not originate from:

(1) A source within the United States;

(2) Any source, wherever located, within the possession or control of a U.S. person; or

(3) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 578.506(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order.

**Note to paragraph (a) of § 578.507:** This paragraph authorizes the blocked person on whose behalf the legal services authorized pursuant to § 578.506(a) are to be provided to make payments for authorized legal services using funds originating outside the United States that were not previously blocked. Nothing in this paragraph authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 578.201, any other part of this chapter, or any Executive order has an interest.

(b) *Reports.* (1) U.S. persons who receive payments in connection with legal services authorized pursuant to § 578.506(a) must submit annual reports no later than 30 days following the end of the calendar year during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) The reports, which must reference this section, are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Annex, Washington, DC 20220.

**Note to § 578.507:** U.S. persons who receive payments in connection with legal services authorized pursuant to § 578.506(a) do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. Additionally, U.S. persons do not need to obtain specific authorization to provide related services that are ordinarily incident to the provision of legal services authorized pursuant to § 578.506(a).

**§ 578.508 Authorization of emergency medical services.**

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 578.201 or any further Executive orders relating to the national emergency declared in Executive Order 13694 of April 1, 2015 and all receipt of payment for such services are authorized.

**Subparts F–G—[Reserved]****Subpart H—Procedures****§ 578.801 [Reserved]****§ 578.802 Delegation by the Secretary of the Treasury.**

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13694 of April 1, 2015, and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

**Subpart I—Paperwork Reduction Act****§ 578.901 Paperwork Reduction Act notice.**

For approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

**Appendix A to Part 578—Executive Order 13694****Executive Order 13694 of April 1, 2015****Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, find that the increasing prevalence and severity of malicious cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the

United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. I hereby declare a national emergency to deal with this threat.

Accordingly, I hereby order:

**Section 1.** (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) any person determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be responsible for or complicit in, or to have engaged in, directly or indirectly, cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States that are reasonably likely to result in, or have materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States and that have the purpose or effect of:

(A) harming, or otherwise significantly compromising the provision of services by, a computer or network of computers that support one or more entities in a critical infrastructure sector;

(B) significantly compromising the provision of services by one or more entities in a critical infrastructure sector;

(C) causing a significant disruption to the availability of a computer or network of computers; or

(D) causing a significant misappropriation of funds or economic resources, trade secrets, personal identifiers, or financial information for commercial or competitive advantage or private financial gain; or

(ii) any person determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State:

(A) to be responsible for or complicit in, or to have engaged in, the receipt or use for commercial or competitive advantage or private financial gain, or by a commercial entity, outside the United States of trade secrets misappropriated through cyber-enabled means, knowing they have been misappropriated, where the misappropriation of such trade secrets is reasonably likely to result in, or has materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States;

(B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any activity described in subsections (a)(i) or (a)(ii)(A) of this section or any person whose property and interests in property are blocked pursuant to this order;

(C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order; or

(D) to have attempted to engage in any of the activities described in subsections (a)(i) and (a)(ii)(A)–(C) of this section.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

**Sec. 2.** I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 1 of this order.

**Sec. 3.** The prohibitions in section 1 of this order include but are not limited to:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

**Sec. 4.** I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in section 1(a) of this order would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants or nonimmigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

**Sec. 5.** (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

**Sec. 6.** For the purposes of this order:

(a) the term “person” means an individual or entity;

(b) the term “entity” means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term “United States person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term “critical infrastructure sector” means any of the designated critical infrastructure sectors identified in Presidential Policy Directive 21; and

(e) the term “misappropriation” includes any taking or obtaining by improper means, without permission or consent, or under false pretenses.

**Sec. 7.** For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer

funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

**Sec. 8.** The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

**Sec. 9.** The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

**Sec. 10.** This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Barack Obama  
THE WHITE HOUSE,  
April 1, 2015

Dated: December 11, 2015.

**John E. Smith,**

*Acting Director, Office of Foreign Assets Control.*

Approved:

Dated: December 16, 2015.

**Adam J. Zubin,**

*Acting Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury.*

[FR Doc. 2015-32881 Filed 12-30-15; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 217

[Docket ID: DOD-2007-OS-0001]

RIN 0790-A119

#### Service Academies

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes policy, assigns responsibilities, and prescribes procedures for DoD oversight of the Service academies (referred to in this rule as “the academies”). It implements the United States Code for the establishment and operation of the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy.

**DATES:** *Effective Date:* This rule is effective December 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** Lt. Col. Keithen Washington, 703 695-5529.

#### SUPPLEMENTARY INFORMATION:

##### Executive Summary

###### *I. Purpose of the Regulatory Action*

a. Purpose. This rule provides required updates to DoD policy and procedures because some policy changes and court decisions have had a great impact on the eligibility of potential applicants' entry into a military academy. All language addressing homosexuality, homosexual acts, homosexual statements and homosexual marriage has been removed in accordance with the December 22, 2010 repeal of Don't Ask, Don't Tell policy, which opened military service to homosexuals, and the subsequent *United States v. Windsor* decision (570 U.S. 12, 133 S. Ct. 2675 (2013), 1 U.S.C. 7; 28 U.S.C. 1738c) which found section 3 of the Defense of Marriage Act (DOMA) unconstitutional. By removing all references to homosexual conduct, acts or marriage as grounds for discharge, otherwise qualified applicants are now free to apply and enroll in a military academy without prejudice or fear of reprisal regardless of their sexual orientation. This rule is required immediately to remove any legal and policy restrictions which would prevent a potential applicant from entry into a military academy based solely on their sexual orientation.

Additionally, the academies must attract, recruit and retain high achieving citizens who are pursuing undergraduate degrees critical to the DoD's national security mission. A highly qualified and diverse pool of citizens is needed to replenish and fortify DoD's workforce. The academies finance higher education and provide opportunities to individuals who may not otherwise have the means nor the opportunity to pursue. Furthermore, because the Military Services provide critical national security, providing them with a skilled and talented workforce is vitally necessary to defend the United States. Updating these

policies and procedures is vital to the DoD meeting its mission to man an all-volunteer force with qualified citizens.

b. Succinct statement of legal authority for the regulatory action.

**Authority:** 10 U.S.C. Chapters 403, 603, and 903.

###### *II. Summary of the Major Provisions of the Regulatory Action*

The academies annually provide newly commissioned officers to each Service who have been immersed in the history, traditions, and professional values of the Military Services and developed to be leaders of character, dedicated to a career of professional excellence in service to the Nation. The accession of these officers generates a core group of innovative leaders capable of thinking critically who will exert positive peer influence to convey and sustain these traditions, attitudes, values, and beliefs essential to the long-term readiness and success of the Military Services.

###### *III. Costs and Benefits*

Administrative costs are negligible and the benefits would be clear, concise rules that enable the Secretary of Defense to ensure that the Service Academies operate efficiently and meet the needs of the armed forces.

###### **Retrospective Review**

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, “Improving Regulation and Regulatory Review,” DoD's full plan and updates can be accessed at: <http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036>.

###### **Public Comment**

Notice and comment are not required for this rule under the Administrative Procedure Act because, as the rule establishes policy, assigns responsibility, and prescribes procedures for DoD oversight of the academies, it directly relates to a military function of the United States (See 5 U.S.C. 553(a)(1)). However, DoD previously published a proposed rule on October 18, 2007 (72 FR 59053-59064), but that version was never finalized. One public comment was received that was provided as a means for improvement.

*Comment:* The comment received concerned the protocol requiring that all new cadets and midshipmen to undergo Human Immunodeficiency Virus (HIV), drug, and alcohol testing within 72 hours of reception, and the requirement that any appointment as a cadet or