

**THE ATLANTIC COUNCIL
OF THE UNITED STATES**

**U.S.-Iranian Relations:
An Analytic Compendium of U.S.
Policies, Laws and Regulations**

OCCASIONAL PAPER
DECEMBER 1999

KENNETH KATZMAN

THE ATLANTIC COUNCIL

OF THE UNITED STATES

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FOREWORD

After twenty years of hostility between the United States and Iran, some signs indicate that the relationship may be changing. The call by Iranian President Mohammed Khatami in December 1997 for a “dialogue of civilizations” and a June 1998 speech by Secretary of State Madeleine Albright in which she suggested the possibility of a roadmap to better relations, are two prominent examples of an interest on both sides for improving relations. The road ahead, however, is a long and difficult one.

Any approach to the normalization of relations with Iran must begin with a painstaking review of the numerous sanctions, travel restrictions, and commercial and military trade embargoes that define the current state of relations. To facilitate this, we have consolidated all the key U.S. policy declarations, legislation and regulations that govern our relations with Iran in one basic reference. This compendium is part of an Atlantic Council study on future U.S.-Iranian relations. It builds upon previous work on the process of reversing relations with former adversaries. These efforts include a book of case studies and a series of reports on U.S.-Cuban relations.

The documents that constitute this compendium are grouped under nine general subject headings based on the primary subject of the document. In those cases where documents contain provisions that relate to more than one subject, cross-references are provided and a subject index is included. Each document is preceded by an explanation of the major provisions of the document, as well as analysis of how it has been implemented and its implications for U.S.-Iranian relations. The analysis is the opinion of the author, a foreign policy specialist, and is not intended to serve as legal reference or opinion.

This project is made possible, in part, by a grant from the United States Institute for Peace. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the United States Institute for Peace, the Atlantic Council or any other sponsors. The Council owes a special debt to Jake Colvin and David Saltiel for their work editing and formatting the Compendium.

Lee Hamilton

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U.S.-Iranian Relations: An Analytic Compendium of Laws, Regulations and Policies

EXECUTIVE SUMMARY

The unexpected election in May 1997 of a relative moderate, Mohammed Khatami, as President of Iran, has led to a shift in U.S. policy toward Iran. Although the United States raised the possibility of a formal dialogue with Iran in the late 1980s, no active steps were taken to begin this dialogue until the election of Khatami. For their part, Khatami and his inner circle are working to change Iran's image as a leading sponsor of terrorism and a potential Persian Gulf hegemon. However, hardliners still dominate significant power centers in Iran, including the judiciary, and Khatami has been unable thus far to respond to U.S. calls for dialogue. Although the United States still finds many aspects of Iranian behavior objectionable, Clinton Administration officials now appear to believe that U.S.-Iranian differences may be narrowed if Iran were to engage in a dialogue with the United States.

U.S. laws do not prevent the president from opening a dialogue with Iran or even from reopening a U.S. diplomatic facility in Iran. However, over the 20-year period of U.S.-Iranian hostility, a number of U.S. laws and regulations have been enacted that prohibit virtually all commercial transactions between the two countries. U.S. foreign assistance to Iran, including loans and export credit guarantees, is banned, although U.S. disaster assistance is permitted. Many of the U.S. sanctions intended to hamper Iran's ability to acquire weapons or weapons of mass destruction (WMD) are so-called *secondary sanctions* — sanctions that penalize third countries or third country entities if they assist or sell weapons-related technology to Iran. U.S. nationals are permitted to travel to Iran, informational materials can be imported from or exported to Iran, and humanitarian donations by U.S. citizens also are allowed. In late April 1999, the administration announced an exemption to the U.S. trade ban, under which U.S. firms could apply for licenses to export food and medicine to Iran (and several other countries under similar restrictions) on a commercial basis.

Trade and Investment

Growing hostility in U.S.-Iranian relations was reflected in the May 6, 1995 Executive order (12959) banning U.S. trade with and investment in Iran (“the trade ban”). This represented a significant expansion of U.S. sanctions on Iran. The trade ban was issued after a series of terrorist bombings in Israel by pro-Iranian groups, and after Iran’s January 1995 contract for Russia to complete its Bushehr nuclear power reactor. The trade ban superseded a 1987 executive order banning the importation of Iranian goods into the United States, as well as a March 1995 ban on U.S. investment in Iran’s energy sector. The latter move was taken in response to the announcement that the U.S. energy firm Conoco was selected to develop Iranian oilfields in the Persian Gulf. The May 1995 executive order banned all U.S. investment in Iran and, most notably, prohibited the export and re-export to Iran of U.S. goods and services. The trade and investment ban also prohibits U.S. nationals from even discussing with Iran future contracts that might be agreed if and when the executive order is modified or repealed.

As an executive order, the trade and investment ban can be modified piecemeal or repealed wholesale. It is also subject to interpretation or re-interpretation by the various executive branch agencies charged with administering it. For example, the original version of the trade and investment ban prohibited transactions with Iran by foreign affiliates of U.S. firms. However, the regulations implementing the executive order interpreted this provision as requiring reports from these affiliates on purchases or swaps of Iranian oil and the sale of oil-related equipment or services to Iran. In November 1998, the Treasury amended the regulations to eliminate the reporting requirement for purchases or swaps of Iranian crude oil. That requirement was considered too cumbersome and difficult to implement. In April 1999, the administration further amended the trade and investment ban by announcing that license applications for commercial sales of agricultural and medical products would be reviewed on a case-by-case basis, a significant easing of the trade ban. A U.S. decision to accelerate efforts to improve relations with Iran could produce further amendments to this executive order, such as a repeal of the ban on imports on some or all Iranian goods.

The following year, Congress and the administration enacted the Iran-Libya Sanctions Act (ILSA). That legislation was intended to dissuade foreign countries from investing in Iran’s energy sector. The administration and Congress agreed that Iran’s energy sector was deteriorating, and that preventing an influx of new capital into Iran’s energy sector would, over the long term, deprive Iran of the resources it needs to fund terrorist groups and build up its strategic capabilities. However, the European Union and other countries viewed ILSA as an extraterritorial application of U.S. law, and they vigorously opposed it. To avoid a trade war with the EU, the

administration has thus far waived ILSA sanctions on foreign firms that violate its provisions.

Terrorism and Narcotics

Several of the most important U.S. sanctions follow from Iran's designation, in January 1984, as a state that supports acts of international terrorism. These laws ban U.S. assistance, arms exports, and U.S. support for international loans to countries on the "terrorism list." A 1996 law, the Anti-terrorism and Effective Death Penalty Act of 1996, also imposes some secondary sanctions on countries and entities that aid or provide technology to terrorism list countries. In virtually all of these cases, the applicable laws give the president the ability to waive application of the law, usually on grounds that doing so is in the national interest of the United States. However, modifications to these laws would require new legislation.

Aside from waiving terrorism list sanctions on Iran in specific cases, the president has the authority to remove Iran from the terrorism list entirely. Doing so would, with one decision, eliminate sanctions required as a result of that designation. If an administration decided that Iran met the criteria for removal from the list, Congress would have an opportunity to weigh in on the final decision. Removal from the terrorism list requires a presidential report to Congress that the terrorism list state has ceased supporting acts of international terrorism and provided assurances of future cessation. Congress is given the option to pass a joint resolution overriding the decision to remove a country from the list. Those in Congress who oppose normalization are almost certain to question any administration decision to this effect, under current circumstances. Even if an administration attempts to argue that the relatively moderate President Mohammad Khatami does represent a change in leadership and has fundamentally changed Iran's policies, the criteria for demonstrating that Iran has ceased supporting international terrorism are high. Doing so would require hard evidence that Iran has ceased all funding for radical Islamic groups such as Hizbollah, Hamas, and Palestinian Islamic Jihad. And Khatami may be unwilling or unable to totally end material support for these groups, particularly the support for organizations not under government control.

In December 1998, Iran was removed from the list of major narcotics producers in what some might see as foreshadowing an eventual removal of Iran from the terrorism list. However, the narcotics production decision was based on objective observations of areas under cultivation of opium. In addition, Iran was cooperating with neighboring Pakistan and the UN Drug Control Program to prevent narcotics trafficking across Iran's borders. However, support for international terrorism is much more difficult to quantify and determine, and therefore removal from the terrorism list might be harder to justify.

Short of removing Iran from the terrorism list, the administration has tried to recognize change in Iran publicly by ending its characterization of Iran as “the most active” or the “most dangerous” state sponsor of terrorism. These labels were used to describe Iran in recent annual editions of the State Department’s *Patterns of Global Terrorism* report on international terrorism. The report for 1998, issued in April 1999, dropped these descriptions, although the report, and accompanying administration statements, indicated that Iran is not close to qualifying for removal from the terrorism list.

Iran as a “Named Country” for Sanctions

Some U.S. restrictions on assistance to Iran are a result of Congress’ decision to name Iran as one among several countries subjected to a specific sanction. For example, Section 307 of the Foreign Assistance Act requires the United States to withhold its proportionate share of donations to international programs, such as the World Food Program, that work in countries named in that section, of which Iran is one. Most of the countries listed are terrorism list countries, but some, such as Burma, are not. Foreign aid appropriations laws for every fiscal year since 1988 have barred the United States from financing direct assistance (loans, credits, insurance and Export-Import Bank credits) to Iran and other named countries, and foreign aid laws since 1989 have barred indirect U.S. assistance (i.e. World Bank, International Monetary Fund, and other multilateral lending) to Iran and the other named countries. No waiver is provided for the ban on direct assistance. The ban on indirect assistance allows for a waiver, and is routinely waived because otherwise the United States would be obligated to cease contributing to these institutions. The waiver applies to all countries named in that provision — the president cannot selectively waive the provision for some of the named countries and not others. Therefore, there is no means in these provisions to signal improved relations with Iran other than for Congress to remove Iran from the list of countries named in the legislation.

Claims

Iranian leaders often demand as a precondition of improved relations that the United States release Iran’s “frozen assets.” Iran and the United States appear to be at odds over the very definition of this term but, in practice, mechanisms are in place to resolve bilateral financial disputes. Congress has not acted on the issue, and the president appears to have some discretion to resolve the disputes if he chooses. The United States government does maintain control over about \$22 million worth of Iranian diplomatic property in the United States. The property was blocked because Iran seized the United States Embassy in Tehran and has never paid compensation for it. If the United States and Iran were to reestablish diplomatic relations, the president could elect to return the properties to Iran’s control. Politically, however,

such a solution might require some Iranian compensation for the U.S. Embassy in Tehran, or Iran's agreement to pay for some or all of the costs of constructing a new embassy there.

The other large claim relates to the several hundred U.S. foreign military sales made during the Shah's regime. Iran claims, and the United States to some extent agrees, that the Shah paid for certain defense articles and services that, because of the revolution, the United States did not deliver or complete. These are not "frozen assets," but the subject of complicated and vigorously disputed cases before the U.S.-Iran Claims Tribunal at the Hague, a claims arbitration process established as part of the resolution of the hostage crisis. The president has latitude to offer Iran a lump sum amount rather than risk a much larger Tribunal judgment against the United States, but the large amounts in question (Iran has claimed several billion dollars) mean that a congressional appropriation probably will be needed to fund a resolution of the issue.

Other Issues

Other laws and executive actions also have an impact on U.S.-Iran relations. For example, Congress established and funded a "Radio Free Iran" in the State Department's appropriations law for fiscal year 1998. Congress intended the service to broadcast information critical of the Islamic Republic. Although the service is under the auspices of the nominally independent Radio Free Europe/Radio Liberty, the Clinton Administration has tried to ensure that the service is far less provocative than Congress intended. Nonetheless, Iran has cited the service as another in a long list of U.S. actions intended to meddle in Iran's internal affairs. Iran will almost certainly insist that the service be discontinued as a condition of improved relations, and the president will then have to decide whether or not to veto congressional efforts, if any, to continue to fund the service.

Another issue of importance to Iran is the United States' attitude toward the Iranian opposition People's Mojahedin Organization of Iran (PMOI) and its umbrella group, the National Council of Resistance (NCR). Pursuant to the Anti-Terrorism and Effective Death Penalty Act, the State Department named the PMOI as a terrorist organization because it allegedly continues to conduct attacks against regime installations and officials in Iran. Iran might have been expected to react positively to the State Department designation. Iran instead denounced the Department's decision not to name the NCR as an alias of the PMOI, thus sparing the NCR from the penalties provided for under that law. PMOI members in the United States operate primarily under the NCR banner. Iran therefore interpreted the designation as a sign that the United States secretly supports the PMOI. On October 8, 1999, the State Department designated NCR as an alias of the PMOI. The move was applauded by Iran, including Iranian hard-liners, as a "positive initiative."

SECTION 1

STATEMENTS OF U.S. POLICY

The “Dual Containment” Speech

On May 15, 1993 Martin Indyk, then National Security Council Senior Director for the Near East and South Asia, articulated the administration’s policy of “dual containment” of Iran and Iraq.

The policy pronouncement branded both Iran and Iraq as inherently hostile to U.S. interests, and stated that U.S. policy would be to weaken both countries to the maximum extent possible. The speech noted that the past policy of trying to balance Iran and Iraq by alternately tilting toward one or the other produced disastrous results, specifically the Iraqi invasion of Kuwait.

The policy pronouncement provoked substantial controversy. Many analysts noted that Iran and Iraq represented two different types of threats, and that a policy appropriate to one did not necessarily address the threats posed by the other. Several analysts argued that Iran was not a one party, or one man state, as Iraq is widely considered, and should not be regarded as irrevocably hostile to the United States. Administration officials maintained that dual containment did not imply “duplicate containment,” and that the concept allowed for different policy implementation toward the two states. The dual containment speech emphasized that it was not the policy of the United States to change the regime in Iran, while painting Iraq under Saddam Hussein as an unredeemable regime that should be changed.

Other critics maintained that the dual containment policy represented an attempt by the administration to focus primarily on the Arab-Israeli peace process, and not devise any creative approaches toward Iran or Iraq. The administration maintained that it was open to a dialogue with Iran, even under the dual containment policy, but no active steps were taken to promote such a dialogue until after the unexpected May 1997 election of Mohammad Khatami as president of Iran.

Khatami’s election and the subsequent U.S. gestures toward the new government raised questions as to whether the dual containment policy had been abandoned by the administration. Several statements by Mr. Indyk in 1999, in his capacity as Assistant Secretary of State for the Near East, indicated that it still was the administration’s operative Gulf policy. He and other administration officials said that the policy was not inconsistent with outreach toward Iran under Khatami.

Nonetheless, some outside observers believe that it might be difficult for Khatami to respond to U.S. calls for dialogue when the formally stated objective of U.S. policy toward Iran remains that of “containment.” Many feel that a decision to accelerate the process of outreach toward Iran might require dropping this policy label, even though efforts to hinder both the acquisition of WMD-related technology as well as support for international terrorist groups will likely continue unabated.

§ 1.1 - THE CLINTON ADMINISTRATION'S APPROACH TO THE MIDDLE EAST

Dr. Martin Indyk
National Security Council
May 15, 1993

My task is to try to lay out for you the Clinton administration's approach to the Middle East. The broad outlines of that approach were already determined by President Clinton during the campaign: a democracy-oriented foreign policy; a foreign policy that would promote the interests of American business abroad; a foreign policy that would work with our friends and allies in the Middle East-Israel, Egypt and Saudi Arabia-to protect American interests in the Middle East and to counter the threats to those interests from radical regimes, be they secular or religious; a foreign policy that would seek to stem the flow of weapons of mass destruction to this volatile region; a foreign policy that would have as a priority the promotion of real and comprehensive peace in the Middle East.

In other words, the "vision thing" is very clear to this president before he came into office. He understands that the Middle East is finely balanced between two alternative futures: one in which extremists, cloaked in religious or nationalist garb, would hold sway across the region, wielding weapons of mass destruction loaded onto ballistic missiles; and the other Future in which Israel, its Arab neighbors and the Palestinians would achieve an historic reconciliation that would pave the way for peaceful coexistence, regional economic development, arms control agreements and growing democratization throughout the Middle East.

President Clinton also understands that, in the wake of the demise of the Soviet Union and the Gulf War, the United States stands as the dominant power in the region, uniquely capable of influencing the course of events. By working energetically with America's friends and allies in the region, we hope to be able to tilt the balance in favor of that more peaceful future that the people of the region have longed for but have been too long denied.

The first task we faced was to develop a coherent strategy to achieve these objectives. We reviewed existing policies, analyzed the regional dynamics, engaged in extensive discussions with the various agencies involved in national security affairs and exchanged views with the regional leaders, both during Secretary of State Christopher's trip to the region in February and, subsequently, when President Clinton met with Prime Minister Rabin and President Mubarak. This was a deliberate process-it took a little time. That review is now all but complete and I would like to take this opportunity to outline the general approach that the Clinton administration will adopt toward the Middle East, highlighting some of the critical elements of our strategy.

Inevitably, there are elements of continuity and elements of change in the Clinton administration's approach. Continuity stems from the fact that many of America's vital interests in the region remain unchanged. Despite the dramatic developments in the global arena in the past four years, we still have an abiding interest in the freeflow of Middle Eastern oil at reasonable prices. We have an abiding interest in reciprocating the friendship of those in the Arab world who seek good relations with the United States. We still have an abiding interest in the security, survival and wellbeing of the state of Israel. And, because peaceful relations between the inhabitants of the region facilitates the promotion of those interests, we also have an abiding interest in the promotion of a just, lasting, comprehensive and real settlement of the Arab-Israeli conflict.

Changes in policy, on the other hand, stem from the dramatic global and regional developments that are impacting on the region's political dynamics. The end of the Cold War has had profound

consequences for the Middle East. The superpowers are no longer competing for influence in this volatile region and that means that the United States no longer needs to view the region through a competitive global prism. For the first time, we can judge developments there more in terms of how they impact on our regional rather than global interests.

For the first time since the 1950s, the U.S. is the unchallenged dominant power in the region and all sides now look to Washington to exert its influence. However, the absence of superpower competition also brings in its wake less influence over the policies of regional powers, let alone over our Cold War European and Japanese allies. And the post-Cold War reality is one of reduced military and economic means to influence events. We are tasked with greater regional responsibilities and yet have less ability to fulfill them.

Second, we can no longer deal with the region in compartments. With the proliferation of ballistic missiles, on the one hand, and the spread of extremism, on the other, conflict or turmoil in one part of the region can have a dramatic impact on events elsewhere. No longer could a war be waged for eight years between two of the region's powers, Iraq and Iran, while the rest of the region went about business as usual. As the Gulf War demonstrated, the missile age in the Middle East has created a situation where Riyadh and Tel Aviv can find themselves under simultaneous Iraqi attack.

Similarly, Iran has demonstrated its regional reach by fishing in troubled waters all the way from the Gulf, through Egypt and Lebanon to Algeria. Its funding, arming and training of Hezbollah and Hamas have gained it an ability to interfere in the Arab-Israeli peace process as well. And its North Korean missiles could provide it with the capability of striking Israel and the Arab states. In short, what happens in the east of the region can now have immediate import for events in the west of the region, and vice versa.

Third, with the end of the Cold War comes a need to redefine the region. Although on the periphery of the Middle East, the newly emerging Muslim states of Central Asia need to be factored into our strategy for the region. And, once we do that, we come to understand the increasingly important role of Turkey in our regional calculations. During the Cold War, Turkey was treated very much as a European power, a partner in NATO's efforts to contain the Soviet Union. Now Turkey is coming to play an important role not only in Central Asia but also in the Middle East. Bordering on Iran, Iraq and Syria, Turkey is already critical to our efforts to contain Saddam Hussein's regime and to maintain the Operation Provide Comfort arrangements for the people of northern Iraq. In short, Turkey is a secular, democratic Muslim nation, a strategically located military and economic power, and a long-time ally of the United States. One of our challenges is to find a way to put these factors to better use in the pursuit of our objectives in the Middle East.

When we make a strategic assessment of the region as a whole, we see three major challenges to American interests. First, we are very fortunate to have inherited an ongoing Arab-Israeli negotiating process, involving the Palestinians, all of Israel's immediate Arab neighbors, as well as the Maghreb and GCC states. The Clinton administration's challenge here is to turn the peace process into peacemaking, achieving an early breakthrough to peace agreements.

Second, as a result of the Iraq-Iran War and the Gulf War, we are also fortunate to inherit a balance of power in the region and a much-reduced level of military capability to threaten our interests. The million-man Iraqi army of seventy divisions is no more. The challenge here is to maintain that situation in the face of determined efforts by both Iran and Iraq to rebuild their arsenals, particularly in the nuclear and ballistic missile fields.

Third, in the wake of the collapse of the Soviet Union and the defeat of Iraq, came the collapse of the radical, rejectionist front in the Middle East. But nature – especially Middle East nature – abhors a

vacuum. With one set of troublemakers down, another set has emerged to take its place. Decades of neglect and dashed hopes for political participation and social justice have nurtured some violent movements cloaked in religious garb that have begun to challenge governments across the Arab world with the potential of destabilizing the region.

We must not oversimplify a complex challenge with differing regional and national wellsprings, and we must not dismiss all religious reformers as extremists. Neither, however, can we afford to ignore that in its resort to violence, some religious extremists have found succor from fundamentalist regimes in Iran and Sudan. Our third challenge is to help the people and Governments of the Middle East confront this emerging threat, in part by pursuing peace with vigor, in part by containing extremism throughout the region, and in part by holding out an alternative vision of democratic political development and free market economic development not just for the people of the former Soviet Union, but for the people of the Middle East as well.

Developing a coherent regional strategy which combines all of these considerations is a formidable challenge all on its own for the Clinton administration. Our approach begins with a concept of interdependence between the eastern and western halves of the region; thus, containing the threats posed by Iraq and Iran in the east will impact on our ability to promote peace between Israel and its Arab neighbors in the west; similarly, promoting Arab-Israeli peace in the west will impact on our ability to contain the threats from Iraq and Iran in the east; and our success in both realms will affect our ability to help friendly governments create a better life for their peoples than that offered by proponents of violence.

A short-hand way of encapsulating the Clinton administration strategy is thus: "dual containment" of Iran and Iraq in the east; promotion of Arab-Israeli peace in the west; backed by energetic efforts to stem the spread of weapons of mass destruction and promote a vision of a more democratic and prosperous region for all the 'copies of the Middle East.

Because my time is short, I thought it would be useful to focus on the Clinton administration's approach to the first two branches of our Middle East strategy, leaving to a later date and people more expert than I am, the articulation of policy on the third branch.

DUAL CONTAINMENT IN THE EAST

The Clinton administration's policy of "dual containment" of Iraq and Iran derives in the first instance from an assessment that the current Iraqi and Iranian regimes are both hostile to American interests in the region. Accordingly, we do not accept the argument that we should continue the old balance of power game, building up one to balance the other. We reject that approach not only because its bankruptcy was demonstrated in Iraq's invasion of Kuwait. We reject it because of a clear-headed assessment of the antagonism that both regimes harbor towards the United States and its allies in the region. And we reject it because we don't need to rely on one to balance the other.

The coalition that fought Saddam remains together, as long as we are able to maintain our military presence in the region, as long as we succeed in restricting the military ambitions of both Iraq and Iran, and as long as we can rely on our regional allies: Egypt, Israel, Saudi Arabia and the GCC, and Turkey-to preserve a balance of power in our favor in the wider Middle East region, we will have the means to counter both the Iraqi and Iranian regimes. We will not need to depend on one to counter the other. As Secretary of State Christopher has argued, we must not allow our efforts to press Iraq to comply fully with all UN resolutions to divert us from a recognition of the threat that Iran poses to our interests in the Middle East. And, by the same token, we must not allow our concern with the Iranian threat to divert us from our efforts to force Iraqi compliance.

I hope that by now the Clinton administration policy towards Iraq is clearly understood. Simply stated, we seek Iraq's full compliance with all UN resolutions. The regime of Saddam Hussein must never again pose a threat to Iraq's neighborhood. And we are also committed to ensuring Iraq's compliance with UN Resolution 688, which calls upon the regime to end its repression of the Iraqi people.

Some have tried to portray our policy as a softening of previous policy. But by now it should be clear that we seek full compliance for all Iraqi regimes. We will not be satisfied with Saddam's overthrow before we agree to lift sanctions. Rather, we will want to be satisfied that any successor government complies fully with all UN resolutions.

Nor do we seek or expect a reconciliation with Saddam Hussein's regime. The Clinton administration's decision to release the judge advocate general's report, which details the regime's war crimes and crimes against humanity in Kuwait, was but a first step. Now, we have decided to seek the establishment of a UN commission to investigate the charges of war crimes and crimes against humanity in Iraq itself and to assemble the voluminous evidence to back up these charges. Our purpose is deliberate: it is to establish clearly and unequivocally that that current regime in Iraq is a criminal regime, beyond the pale of international society and, in our judgement, irredeemable.

We are also providing stronger backing for the Iraqi National Congress as a democratic alternative to the Saddam Hussein regime. The INC has succeeded in broadening its base to encompass representatives of all three major communities in Iraq: Sunni, Shi'ite and Kurd. It is committed, as are we, to maintaining the territorial integrity of Iraq and to adhering to Iraq's international responsibilities. We are now urging others in the region to accord the INC the recognition and support it deserves.

It should be clear that our quarrel is not with the Iraqi people. Their plight is the responsibility solely of the dictatorship in Baghdad. We are engaged in a UN effort to provide them with humanitarian assistance and to prevent them, as best we can, from falling victim again to Saddam Hussein's brutal repression. That is the purpose of Operation Provide Comfort and the no-fly zones in northern and southern Iraq. That is also the purpose of UN Resolutions 706 and 712 which provide for much greater humanitarian assistance but which the Iraqi regime refuses to accept. We are now looking, on an urgent basis, at other ways we can assist the Iraqi people. For example, we support proposals to send UN monitors to Iraq to observe human rights violations.

Containing the threat from Iran is a more difficult though no less necessary undertaking. When we assess Iranian intentions and capabilities we see a dangerous combination for Western interests. Iran is engaged in a five-part challenge to the United States and the international community. It is the foremost state sponsor of terrorism and assassination across the globe. Through its support for Hamas and Hezbollah, Iran is doing its best to thwart our efforts to promote peace between Israel, the Palestinians and the Arab states. Through its connections Sudan, Iran is fishing in troubled waters across the Arab world, actively seeking to subvert friendly governments. Through its active efforts to acquire offensive weapons, Iran is seeking to dominate the Gulf by military means. And, perhaps most disturbing, Iran is seeking a weapons of mass destruction capability including clandestine nuclear weapons capability and ballistic missiles to deliver weapons of mass destruction to the Middle East.

I should emphasize that the Clinton administration is not opposed to Islamic government in Iran. Indeed we have excellent relations with a number of Islamic governments. Rather, we are firmly opposed to these specific aspects of the Iranian regime's behavior, as well as its abuse of the human rights of the Iranian people. We do not seek a confrontation but we will not normalize relations with

Iran until and unless Iran's policies change, across the board. We are willing to listen to what Iran has to say, provided that this comes through authoritative channels. However, in the absence of dramatic changes in Iran's behavior, we will work energetically to persuade our European and Japanese allies, as well as Russia and China, that it is not in their interests to assist Iran to acquire nuclear weapons or the conventional means to pose a regional threat. Nor do we believe it is in their interests to ease Iran's economic situation so that it can pursue normal commercial relations on one level while threatening our common interests on another level.

We will pursue this effort of active containment unilaterally, maintaining the counterterrorism sanctions and other measures enacted by previous administrations to encourage a change in Iranian behavior. However, we recognize that success will require multilateral efforts since much of what Iran seeks in order to build up its military power is obtainable elsewhere. In this regard, we will seek to impress upon our allies the necessity for responding to the Iranian threat and the opportunity now presented by Iran's current circumstances.

The necessity to act now derives from the fact that Iran's threatening intentions for the moment outstrip its capabilities. But this moment will not last for long. If we fail in our efforts to modify Iranian behavior, five years from now Iran will be much more capable of posing a real threat to Israel, to the Arab world and to Western interests in the Middle East. The opportunity to act now, on the other hand, derives from the fact that Iran is no longer a good commercial proposition. It is \$5 billion in arrears on its term international loans and this figure is growing in leaps and bounds. Iran suffers from 30 percent inflation and 30 percent unemployment. In short, Iran is a bad investment in both commercial and strategic terms, not just for the United States but for all responsible members of the international community.

This argument should be compelling for another reason as well. Iran does not yet face the kind of international regime that has been imposed on Iraq. A structural imbalance therefore exists between the measures available to contain Iraq and Iran. To the extent that the international community, as a result, succeeds in containing Iraq but fails to contain Iran, it will have inadvertently allowed the balance of power the Gulf to have tilted in favor of Iran, with very dangerous consequences. That imbalance therefore argues for a more energetic effort to contain Iran and modify its behavior even as we maintain the sanctions regime against Iraq.

PURSuing MIDDLE EAST PEACE

This effort at dual containment in the Gulf is also lent greater urgency by its impact on the other arm of our policy toward the Middle East—the pursuit of Middle East peace. The opportunity that we believe exists for Arab-Israeli peacemaking stems in large part from changes in strategic circumstances in the region.

After four decades of trying to settle their conflict by force, Arabs and Israelis have come to recognize that it is time to settle their differences through direct negotiations. But if the balance of power in the region should shift again in favor of radical forces led by Iraq or Iran, this effort is likely to fail as the military option appears more viable to some of the participants in the negotiations.

President Clinton's ability to fulfill his campaign promise to maintain continuity in these peace negotiations was due in large part to the fact that the strategic calculations of the parties to the peace negotiations had not changed in the interregnum between administrations. Indeed, the one new factor that emerged during this period – the rising tide of religious extremism – seemed actually to reinforce the interests of all the parties, not only in returning to the table, but also in demonstrating

that negotiations can produce results. For the Islamic extremists pose a common threat to all the parties engaged in the peace talks, be it Israel, the Palestinians or even Syria.

Nevertheless, bringing the parties back to the table was still no easy task. And the way the Clinton administration pursued this objective has established a precedent for the way we will conduct policy with regard to the negotiations. First, based on our assessment that the negotiations were ripe for breakthroughs on several fronts, we offered to step up America's role in the negotiations by offering to become a "full partner" to all the parties. This, however, remains a contingent offer. We can only be a full partner if the parties themselves are willing to assume their responsibilities. In this regard, returning to the table is not enough. We cannot and will not substitute ourselves for their direct involvement with each other in the give and take of negotiations. If they are ready to solve their problems through compromises, which take account of the minimum requirements of the other side, we are ready to act as the facilitator and intermediary. But we will not be the ones to deliver or impose our will.

Second, the president and the secretary of state made it clear that our approach to the negotiations will involve working with Israel, not against it. We are committed to deepening our strategic partnership with Israel in the pursuit of peace and security. Those who genuinely seek a comprehensive and real peace recognize that this cannot be accomplished without Israel undertaking a withdrawal from territory, involving tangible risks to its security. And those who seek real progress should understand that it won't come without this kind of special relationship between the United States and Israel.

Prime Minister Rabin has made it clear that his government is ready to take those risks for peace. But he cannot do that unless Israel is offered real peace in return and unless Israel is secure in the knowledge that the United States stands four-square behind it. That is precisely why, when the prime minister told President Clinton that he was prepared to take risks for peace, President Clinton responded that our role is to minimize those risks. One way we can do that is by fulfilling our commitment to Israel's qualitative military edge. Another way is to establish a partnership in the development and production of high technology goods. That is why the president has already fulfilled his campaign pledge to establish the U.S.-Israeli Science and Technology Commission under the chairmanship, on the American side, of Commerce Secretary Ron Brown.

Third, we have demonstrated that we are also prepared to work as full partners with the Arab parties involved in the negotiations. They too will have to take risks for peace and we recognize this. We understand the pressure the Palestinian negotiators are under and the difficulties they have in engaging in negotiations. But to achieve their objectives there can be no substitute for engaging in negotiations about the substance of interim self-government arrangements without knowing the final status of the West Bank and Gaza. They will know, however, that engagement will bring empowerment over their lives and fate for the first time in their troubled history. And they will know that in the third year of the interim period they will be in a position to negotiate the final status issues under the aegis of UN Resolutions 242 and 338. The Syrians need to be willing to commit themselves to real peace with Israel with all that means for ending the conflict, normalizing relations, opening borders, exchanging embassies and establishing commercial relations. If they are ready to engage in negotiations in this way, we are ready to do our part to ensure that a breakthrough to peace is achieved.

Ladies and gentlemen, as you can see from this tour of the Middle East policy horizon, the Clinton administration faces a large agenda and some daunting challenges. A great deal is at stake for the future of the region and for American interests there. At a time when many other issues demand the attention of the president and his national security team, he is nevertheless determined to devote

energy to seizing the moment. As President Clinton declared in announcing the dispatch of Secretary of State Warren Christopher to the Middle East on his first mission abroad:

We cannot impose a solution on the Middle East. Only the leaders of the region can make peace. Theirs is an awesome responsibility. Those who oppose the process, who seek to subvert it through violence and intimidation, will find no tolerance here for their methods. But those who are willing to make peace will find in me and my administration a full partner. This is an historic moment. It can slip away all too easily. But if we seize the opportunity, we can begin now to construct a peaceful Middle East for future generations.

Secretary of State Albright Speech to The Asia Society

The following speech by Secretary of State Madeleine Albright was delivered to the Asia Society on June 17, 1998. It is often referred to as the “roadmap speech” because the Secretary offered to Iran the possibility of developing a roadmap to normal relations. The Secretary said that the United States had taken up President Khatami’s January 1998 call for cultural and academic exchanges and that the United States was ready to explore further confidence building measures. She urged Iran to take parallel steps that can be “sustained in a way that addresses the concerns of both sides.”

The speech was significant because it offered Iran an opportunity to consider an eventual normalization of relations, essentially leapfrogging the offer of an official dialogue that had been welcomed since the Bush Administration. However, the speech also represented some U.S. frustration that Khatami had thus far rejected an official dialogue, and the belief that unofficial exchanges would not produce an early breakthrough in relations. The speech appeared intended to signal Iranian officials that continued moderation and pragmatism on the part of Iran would be reciprocated by the United States. In that respect, one goal of the speech might have been to prop up Khatami internally by demonstrating that he was capable of reducing U.S. hostility to Iran and, possibly, by gaining the easing of U.S. sanctions.

In September 1998, Iran formally reacted to the speech when Foreign Minister Kamal Kharazmi gave a speech, also to the Asia Society. He did not take up the concept of developing a roadmap to normal relations, although he said that the United States and Iran could cooperate in a number of fields, including bringing peace to Afghanistan and on counter-narcotics.

§1.2 - SPEECH TO THE ASIA SOCIETY

Madeleine Albright
June 17, 1998

Well, I'm very delighted to be here. Thank you very much, Hank, for that wonderful introduction. My good friend, Nick Platt, David Comansky. Congratulations to my fellow honorees - Peter Kann, P.H. Koo, and Jonathon Spence.

I have to tell you that my speech is a little long tonight; but it's raining, and you can't go anywhere, anyway.

Besides, if I can't give a long speech on Asia to this group, I can't do it anywhere. So I am very glad, members of the Asia Society and guests, to be here, and very pleased to have this opportunity.

As a professor in my former life, I used to ask my students to put aside the map we customarily use, which shows North and South America as the center of the world. Instead, I would turn the globe to the great Asian land mass, and make the point that, to most of the people on Earth, that is the center of the world.

I am a great fan of the Asia Society because it sees the value in building bridges between these two worlds, and these two perceptions. No work is more important for the 21st century than promoting understanding across the Asia Pacific. And, in this effort, you have made great progress. To cite just two examples, by strengthening US-Asian ties, you've done wonders for the pitching staffs of the Yankees and Mets.

And you have created such a reservoir of goodwill within Asia that it even survived my singing last summer at ASEAN.

In recent weeks, I have given a series of commencement addresses, and I have been struck by the number of Asian surnames among the graduates. This is a huge change from a generation ago, and it shows that the Asian and American cultures will enrich each other even more in the decades to come. That is the good news. The bad news is that, through much of Asia, the past year has been one of enormous stress. The financial crisis first sent ripples, then shockwaves, throughout the region. A lot of good hardworking people have had their hopes for the future dashed or put on hold.

Tonight, as we meet, the crisis continues to deepen.

All this has great implications. For this audience, I do not have to spell out the vast connections. Previous speakers have explained all that. But there are vast connections now that exist between our security, prosperity and freedom and that of Asia's. But I do want to stress the importance of getting that message out to the American people. I find it very disturbing, quite frankly, that Congress has not approved funds to back efforts by the International Monetary Fund to help Asian economies reform and restore financial confidence. Nor has it approved our request to pay the \$1 billion we owe to the United Nations.

On matters this urgent and fundamental to our national interests, the United States should be a leader not a laggard. I hope you agree that Congress should act now.

One aspect of the Asia Society's work that I have always admired is that it is inclusive. It is truly the Asia Society, not just a Japan and China society under another name. That is good because despite the importance of those two countries, I intend only to touch on them in my remarks tonight.

I had the great pleasure of visiting Japan last month to reaffirm our unique and wide-ranging partnership, which is stronger than ever. The US-Japan security alliance is a foundation of Asian stability. We coordinate now on issues from elections in Cambodia to proliferation in South Asia to safeguarding the global environment. While in Tokyo, I took the opportunity to express US concerns about Japan's economic situation. These concerns remain very substantial.

Japan has committed more than \$40 billion through bilateral and multilateral channels to help other nations weather the region's financial crisis. Unfortunately, the continuing stagnation of Japan's economy and the resulting depreciation of the yen are viewed by many as a serious obstacle to regional recovery. Japanese investment and trade have been vital contributors to the Asian miracle. If Asia is to grow again, Japan's economy must return to health.

The world is looking to Japan for leadership, and Prime Minister Hashimoto has already taken some courageous steps to stimulate the economy and address problems in Japan's financial sector. We welcome the \$116 billion fiscal stimulus package approved this week by Japan's Parliament. We also were pleased with the Prime Minister's announcement this morning that Japan will make every effort to restore its banking system to health, to achieve domestic demand-led growth, and to open and deregulate its markets.

In the context of this plan to strengthen Japan's economy, Secretary Rubin indicated that US and Japanese monetary authorities have cooperated in intervening in exchange markets. As you know, the President talked with Prime Minister Hashimoto last evening, and assured him of US support for Japan's actions so that it can once more serve as the engine of Asian growth.

As for China, the President set out our policy in his speech in Washington last Thursday. Now, as you know, there are a number in Congress and elsewhere who say the President shouldn't go to China. I deeply respect their right to be wrong.

The President will have the opportunity to say things in Beijing that the people of China cannot say, and have not heard. His very presence in Tiananmen Square will ensure that the world does not forget, as it must not forget, the terrible wrongs perpetrated there. But the President will also focus on the future. In Beijing, he will support China's constructive role in responding to the South Asia nuclear tests, and urge China to do all it can to stop the spread of nuclear weapons and the systems that deliver them. He will seek to bring China further into the world economy, to establish greater common ground on global issues, and to reaffirm the importance of democracy in Hong Kong. He will express concern about preserving the unique cultural, religious and linguistic heritage of Tibet. And he will stress the universal nature of human rights, including the right of peaceful political dissent and the right freely and without harassment to worship God.

In short, he will go to Beijing to advance America's interest in a peaceful, prosperous and free world. China must participate and cooperate if such a world is to be achieved. That is why, in going to China, the President is doing exactly what he should be doing; and I hope he will have your understanding and support.

But as I said, I'm not going to talk about China tonight. Nor do I plan to talk, as I often have in recent weeks, about South Asia, although this Society has been very active in promoting better ties to, and within, that vital region. Instead, I want to take advantage of the Asia Society's emphasis on diversity, and focus on three countries that illustrate that diversity quite dramatically—the Republic of Korea, Indonesia and the Islamic Republic of Iran.

Obviously, these countries are quite different culturally, as well as geographically. But each has an important role to play in regional and global affairs. Each is in the midst of an historic transition, and the course of events in each will do much to shape the challenges and opportunities of the new

century. I will begin with Korea; and, more specifically, with my reaction to the new President of that country which is, to use an old Confucian expression, "Halleluia".

As was evident to me during my visit to Seoul, where I did make great friends with the Foreign Minister - we had Georgetown in common and many other things, and we did hit it off immediately. During my visit to Seoul in May, and to the world during his state visit to the United States last week, President Kim Dae Jung is a truly remarkable man. More than any other person, he has discredited the worn out debate between so-called Asian values and Western values. President Kim embodies human values, which apply everywhere to everybody; and for that alone he will be honored by the historians of our age.

But the long-time hero is also a new president and, in that capacity, he has his work cut out for him. During the summit last week, President Clinton made it clear that the United States cherishes our alliance with Seoul and our friendship with the Korean people. In addition to our alliance with Japan, this relationship is the bedrock of our security strategy in Northeast Asia; which aims, in part, to facilitate a lasting peace on the Korean Peninsula.

President Kim has approached this issue with great confidence. The United States fully supports his efforts to re-institute a regular North-South dialogue in parallel to the four-party talks. We have agreed to coordinate closely on the issue of sanctions. We are conveying a common message to the North on the importance of adhering to the agreed framework. After all, the South Asia tests provide no license for the North to renege on its commitments. And do not doubt that we will live up to ours. Few countries have been hit as hard by the financial crisis as South Korea.

Fortunately, the shortcomings of the past are clearly recognized by the new government. President Kim has shown courage in attempting to get Korea's financial house in order. But this is a complex and painful task that will be opposed both by the architects of the old system, and by those hurt most by the adjustments now required.

The road ahead is rocky, but the United States stands fully behind Korea's reform program. And there are reasons to be optimistic. No one can doubt the resilience of the Korean people or their ability to overcome setbacks. A reformed Korean economy, spurred by more open markets, and by a cleaner and more accountable financial sector, would be a formidable and world-class competitor.

I'm told there is an old Korean adage, cited by President Kim in his letters from jail, that even if the heavens were to crash down, there is a hole through which to rise up; and even if taken in a tiger's teeth, there is a way to survive. Korea, like its President, has known hard times before. Because it has chosen the democratic path and is facing its problems squarely, I believe Korea will emerge from the present problems stronger, and with unshakable US support, safer and more secure.

One of the lessons of the past year is a lesson Kim Dae Jung has been teaching for decades: democracies are better able to adjust to change than regimes that are autocratic. A true democracy has flexibility built into its system. The public has outlets for expressing anxiety, frustration and new ideas. Leaders can point to a popular mandate to carry out difficult policies. In times of stress, a democratic people is more likely to pull together than to fall apart.

There could be no better illustration of all this than the past year of living precariously in Indonesia. Here, the financial crisis led to massive demonstrations, ugly ethnic-related violence, the martyrdom of at least four students and a sudden end to the rule of President Soeharto.

The new President, B. J. Habibie, has moved to address popular concerns by promising new elections and releasing political prisoners. He has also assembled a strong economic team to grapple with a crisis aggravated by debt, looting, business flight, currency depreciation, rising unemployment and

inflation. Over the long term, Indonesia clearly has the resources and the skills to bounce back. But today, the average citizen is hurting.

If Indonesia is to recover, its new leaders must reach beyond the traditional centers of power to build a consensus for peaceful, but profound, political reform based on democratic principles. It is too early to judge whether the new government will pursue and succeed on such a course. But it is not too early to reaffirm America's commitment to do all we can to help the Indonesian people. This is the right thing to do. It is also the smart thing, because prospects for a stable transition to democracy will increase if humanitarian needs are addressed.

Accordingly, I am pleased to report that we have restored to Embassy Jakarta and throughout Indonesia the full complement of our diplomatic, USAID and other personnel. Second, we will support proposals for new World Bank and Asian Development Bank lending to Indonesia. Third, we are waiting for the report of the IMF team that is now in Jakarta to review its program there and discuss necessary adjustments, including those to address humanitarian concerns. We hope that an agreement can be reached soon that will release the next tranche of funds. Finally, we will be pledging \$65 million in food and medical supplies for Indonesia, in addition to our ongoing assistance programs.

The US has long been the world's leading outside supporter of human rights, legal aid and environmental organizations in Indonesia. Today, those groups are playing an indispensable role in helping their country build a true and lasting democracy. We are considering how best to use our support in the months ahead in areas such as civic education, development of a free press, the promotion of ethnic tolerance and technical assistance for elections.

President Habibie has also taken steps to begin to address the long-standing problem of East Timor. The United States would strongly support efforts by the new government to build a real consensus on East Timor through additional confidence building measures, a reduced military presence, and a genuine dialogue with its people.

Indonesia is a country of critical strategic importance. If it is able to recover and move ahead with freer institutions and a more open economy, it will reclaim its position as an anchor of stability and prosperity throughout its region. It will also fulfill, at long last, the deepest aspirations of its people.

Moving now from Southeast Asia to Southwest, we come to another strategic state—the Islamic Republic of Iran. One of the oldest continuous civilizations in the world, Iran is at the center of a region which includes countries that contain three quarters of the world's population, three quarters of the world's proven energy resources and sixty percent of global GNP. These facts of life, and the critical role that Iran plays in that region, make the question of US-Iran relations a topic of great interest and importance to this Secretary of State.

The United States established relations with Iran, then Persia, in 1856. For decades, our ties were limited but cordial. After the Second World War, America supported Iran in a bitter territorial dispute with the Soviet Union. And through the first decades of the Cold War, as part of a strategy intended to counter Soviet expansionism, the US supported the Shah's regime and allocated to it large quantities of military and economic assistance.

We did so because of a common strategic interest. We were concerned with an effort to contain the spread of totalitarian influence across the globe. The exigencies of the Cold War also generated US policies and activities that were resented by many Iranians. In retrospect, it is possible to understand their reaction, but the Cold War is now over and it is time to put that period behind us.

After the forced departure of the Shah in 1979, Iran turned inward, in keeping with the Ayatollah Khomeini's slogan that "we must become isolated in order to become independent." This trend was manifested most extremely and unacceptably in the seizure of hostages at the US Embassy.

Neither country has forgotten the past, but most Iranians, like most Americans, are now focused on the future. And clearly, it is possible now—if Iran so chooses—for it to be both fully independent and fully open to the world.

Last May, Iran's people were given a chance to voice their support for a more open society, and did so. Nearly 70 percent supported the election of Mohammad Khatami as President, providing him with a mandate for change, demanding from the Iranian Government greater freedoms, a more civil society based on the rule of law, and a more moderate foreign policy aimed at ending Iran's estrangement from the international community.

At the time, President Clinton welcomed this election, and as a former professor and lifelong student of history, I found the vote remarkable. The depth of the demand for change was obvious. So too was the evident desire of young Iranians and many Iranian women for greater openness and more personal liberty.

I was most impressed by the size of the mandate. Twenty million Iranians came forward to make themselves heard in the hope that, by so doing, they could effect real change in their government and in their daily lives.

Since taking office, President Khatami has responded to the demands of the Iranian people by emphasizing the importance of dialogue among nations and cultures, and by acknowledging the world's growing interdependence. He has said that "a society intending to reach development cannot succeed without understanding Western civilization." I would say, in response, that the same can be said with respect to Eastern civilization and Islamic civilization.

President Khatami has said that the American Government deserves respect because it is a reflection of the great American people. I would say that President Khatami deserves respect because he is the choice of the Iranian people. In his interview with CNN in January, President Khatami called for a dialogue between civilizations, something which President Clinton welcomed because of our strongly-held view that there is much common ground between Islam and the West, and much that we can do to enrich each other's societies.

In past years, Iran's opposition to the Middle East Peace Process and to those willing to negotiate with Israel has been vitriolic and violent. The Islamic Republic still refuses to recognize Israel, and its leaders continue to denounce Israel in inflammatory and unacceptable terms. But last December, Iranian officials welcomed Chairman Arafat to the Islamic Summit in Tehran and said that, although they did not agree with the logic of the peace process, they would not seek to impose their views and would accept what the Palestinians could accept.

In January, President Khatami publicly denounced terrorism and condemned the killing of innocent Israelis. He argued that terrorism was not only against Islam but also counterproductive to Iran's purposes. Iran, after all, has also been a victim of terrorism.

If these views are translated into a rejection of terrorism as a tool of Iranian statecraft, it would do much to dispel the concerns of the international community from Germany to the Persian Gulf, and from Argentina to Algeria.

There are other signs of change, as well. For example, Iran's record in the war against drugs has greatly improved—at least within its own borders—and it has received high marks from the UN for

its treatment of more than two million Iraqi and Afghan refugees. Iran is also participating in diplomatic efforts to bring peace and stability to Afghanistan and is making a welcome effort to improve relations with Saudi Arabia and other neighbors in the Gulf.

We view these developments with interest, both with regard to the possibility of Iran assuming its rightful place in the world community, and the chance for better bilateral ties. However, these hopes must be balanced against the reality that Iran's support for terrorism has not yet ceased; serious violations of human rights persist; and its efforts to develop long range missiles and to acquire nuclear weapons continue.

The United States opposes, and will continue to oppose, any country selling or transferring to Iran materials and technologies that could be used to develop long-range missiles or weapons of mass destruction. Similarly, we oppose Iranian efforts to sponsor terror. Accordingly, our economic policies, including with respect to the export pipelines for Caspian oil and gas, remain unchanged.

But let me be clear. These policies are not, as some Iranians allege, anti-Islamic. Islam is the fastest-growing religious faith in the United States. We respect deeply its moral teachings and its role as a source of inspiration and instruction for hundreds of millions of people around the world. US policy is directed at actions, not peoples or faiths. The standards we would like Iran to observe are not merely Western, but universal. We fully respect Iran's sovereignty. We understand and respect its fierce desire to maintain its independence. We do not seek to overthrow its government.

But we do ask that Iran live up to its commitments to the international community. As in Indonesia, we hope Iran's leaders will carry out the people's mandate for a government that respects and protects the rule of law, both in its internal and external affairs. Certainly, Iranian voters last year were concerned primarily with domestic issues. But the Iranian people are also conscious of the critical role their country has long played in a region of global importance. What Iran must decide now is how its strength will be projected and to what ends. Much has changed in the almost twenty years Iran has been outside or on the fringes of the international system.

Nations have recognized, for example, that if they are to safeguard their own interests from the threat of terror, they cannot tolerate acts of indiscriminate violence against civilians, nor can they offer refuge to those who commit such acts.

Despite the recent South Asia tests, more and more nations have enlisted in the fight against the proliferation of weapons of mass destruction. Respected nations from South Korea to South Africa to South America have decided that it is best for their people to forgo developing such weapons. The tide of non-proliferation agreements reached in the last two decades is ample evidence of this trend.

What have proliferated are multilateral efforts to protect international security. The UN, regional organizations and coalitions have countered threats to peace during the Gulf War and in peacekeeping operations around the world. This global network has grown largely without Iranian participation. But Iran would be welcome if it is willing to make a constructive contribution.

We believe that President Khatami expressed the sentiments of the Iranian people when he voiced the desire for a world in which misunderstandings can be overcome and mutual respect and logic govern relations among states. The United States shares that desire, and we are taking concrete steps in that direction. This month, we implemented a new, more streamlined procedure for issuing visas to Iranians who travel to the United States frequently. We also revised our Consular Travel Warning for Iran so that it better reflects current attitudes in Iran towards American visitors.

We have supported cultural and academic exchanges, and facilitated travel to the United States by many Iranians. We are ready to explore further ways to build mutual confidence and avoid

misunderstandings. The Islamic Republic should consider parallel steps. If such a process can be initiated and sustained in a way that addresses the concerns of both sides, then we in the United States can see the prospect of a very different relationship. As the wall of mistrust comes down, we can develop with the Islamic Republic, when it is ready, a road map leading to normal relations.

Obviously, two decades of mistrust cannot be erased overnight. The gap between us remains wide. But it is time to test the possibilities for bridging this gap. As the nations I have focused on tonight reflect, Asia is a region in transition. This is true from the Persian Gulf to the Korean Peninsula and virtually all points in between. In responding to this dynamic world, America cannot view every issue or nation through a single prism. We must take into account the full range of our interests. We must combine adherence to principle with a pragmatic sense of what works. We must know when to raise our voices in public and when to work quietly behind the scenes. We must know when to engage and when to isolate, and we must always be flexible enough to respond to change and to seize historic opportunities when they arise.

Above all, we must maintain our commitment to human freedom. For of all the ties that bind together the American and Asian peoples, this is the strongest. The story of Asia throughout this century has been the story of steadily increasing freedom and independence, steadily increasing control by the people of their own lives and their own destinies. For more than 200 years, that has also been the story of America. And it remains the basic objective of US foreign policy to make possible a world in which every people, including those from every part of Asia, have that freedom and that control.

Thank you very much.

*Assistant Secretary of State Indyk's Speech
to the Council on Foreign Relations*

On April 22, 1999, almost six years after he introduced the dual containment policy, Martin Indyk delivered the following speech which appeared to reflect an Administration desire to counter the widespread conclusion of policy analysts that the dual containment policy had been overtaken by events, particularly U.S. gestures toward Khatami's Iran. In the speech, Assistant Secretary Indyk notes that the dual containment policy was not designed to be static or inflexible over time, and that "it is quite natural that [Iran and Iraq] would evolve differently, and that our policies would evolve in response." This statement, similar to Secretary Albright's, seems to emphasize the notion that U.S. calls for dialogue with Khatami's government in no way represent an abandonment of U.S. efforts to contain Iranian strategic power.

In the speech, Assistant Secretary Indyk says that the United States has pursued several steps that can broaden U.S. engagement with Iran, despite Iran's reluctance to engage in a direct government-to-government dialogue. He notes that the United States has streamlined its visa policies for visiting Iranians and supported academic and athletic exchanges. At the same time, according to Indyk, some of Iran's objectionable practices have continued, and he said it is still the intent of U.S. sanctions to deprive Iran of the resources to pursue objectionable activities. Indyk indicates that U.S. opposition to investment in Iran's energy sector and participation in Caspian Sea resources development, would continue until Iran "bring[s] its practices into line with international norms, or at least demonstrate[s] a willingness to begin such a process."

§1.3 - U.S POLICY IN THE MIDDLE EAST

Martin Indyk
April 23, 1999

I very much appreciate the opportunity to speak to you today on U.S. policy in the Middle East. I am particularly pleased to do so here at the Council of Foreign Relations, whose work contributes so richly to the foreign policy debate and where some of our most trenchant critics and defenders reside.

In the Middle East, as in the rest of the world, we stand on the threshold of a new millennium. But this region finds itself caught between its turbulent, conflict-ridden past and a future of greater peace, stability, prosperity, and popular participation. It is not at all clear which direction it will take because the indicators are mixed.

The stalling of the Arab-Israeli peace process on all tracks over the past two and a half years has dramatically slowed the momentum towards positive change and reduced the hopes of many that a comprehensive peace would usher in a new era of coexistence and regional cooperation. However, elections in Israel hold out the possibility that a broader-based government will emerge capable of moving forward in the peace process.

Saddam Hussein's defiance of the UN Security Council threatens to destabilize the Gulf while exacting a heavy price from the Iraqi people. But the Iraqi tyrant has emerged from the Desert Fox campaign weakened and isolated and less capable of creating trouble for his neighbors.

President Khatami's election in Iran and the recent local elections there have made clear that a significant majority of the people of this great nation support political liberalization, respect for the rule of law, and a constructive role for Iran in regional and international affairs. But this evolution still faces strong and sometimes violent opposition from some quarters inside Iran. Moreover, Iran's determined development of ballistic missiles to enable delivery of its weapons of mass destruction over long distances has the potential to trigger a new and dangerous arms race across the region.

Islamic extremism is now on the defensive in Algeria and Egypt after years of bloody confrontation, and across the Arab world a gradual process of political liberalization and economic reform is taking place. In Morocco, the opposition has become the government; in Qatar women have voted for the first time in a GCC state; the Palestinian Authority is being held to account by an elected Palestinian Legislative Council; and in Yemen and Kuwait democratic, multi-party elections have been held.

Developments in the recent Algerian elections were a disappointment to us but the people's desire for political and economic reform is manifest and we hope that President Bouteflika will be responsive. Meanwhile, Egypt, Tunisia, and Morocco have implemented significant and far-reaching economic reforms.

Finally, King Hussein's untimely death has underscored the fact that a process of succession is under way across the region after decades of unchanging rule in most Arab countries. The transitions in Jordan and Bahrain have been encouragingly smooth but these may be the exceptions rather than the rule. And we must remain cognizant of the fact that over the next decade, leaders who have built up credibility and legitimacy over many years will be replaced by a younger generation that will take some time to establish themselves.

Because the Middle East is a region of vital interest to the United States, we are committed to helping it achieve a better future in the 21st century than it has experienced in the last half of the 20th century, when the Middle East was often a synonym for trouble and hopelessness. Above all, we have an

intense interest in preventing it from backsliding into another era of extremism and conflict, marked by a new arms race in ballistic missiles and weapons of mass destruction.

In confronting these challenges, the Clinton administration has sought on the one hand to contain those governments or political movements that use violence as a matter of policy to advance a hostile agenda. At the same time, we have mounted a steady and determined effort to expand the breadth and depth of our partnerships with friendly governments in the region to promote the peace, stability and prosperity which remain our abiding vision for the Middle East. We have also sought to encourage states in the region that have developed the bad habit of acting outside of international norms to change in ways that would permit their reintegration into the international community. As a consequence, this always crisis-prone region has seen a marked decline in violence and conflict in the past six years and a significant deepening of peace and stability.

In the six years since Oslo, we have witnessed the signing of a peace treaty between Jordan and Israel, the Israeli-Palestinian Interim Agreements, the Hebron Protocol, and the Wye River Memorandum. The PLO has revised its Charter, and Arafat has pledged that there will be no return to violence. The Likud-led government of Israel took a historically important step by agreeing to turn parts of the West Bank over to Palestinian Authority control. The process of normalization and Middle East Economic Summits have resulted in the abandonment of the secondary Arab boycott and the establishment of commercial contacts between Israel and all but a handful of Arab countries, including the establishment of trade offices with Morocco, Tunisia, Oman and Qatar. And although agreement was not reached, Israeli-Syrian negotiations did establish the basis for settlement of that long-standing conflict.

The strength of our relationship with our Arab partners is clearly demonstrated in our common and ongoing effort to contain Iraq. Despite Saddam's persistent attempts to drive a wedge between the U.S. and its Arab allies, the common resolve remains to confront what is recognized to be a dangerous and de-legitimized regime. Indeed, at a time when pundits are quick to declare the collapse of the Gulf War coalition, the reality is that all of the Arab states that stood with us at that time still do so today, and many of the Arab and Gulf states that sympathized with Saddam Hussein then no longer do so today.

We have also seen the fruits of our close cooperation in the fight against terror. After a sustained effort on our part, the Palestinian Authority is moving effectively to prevent terrorist efforts to torpedo the Middle East peace process. The Government of Israel has recently acknowledged this development. And thanks in no small part to the efforts of countries like Saudi Arabia, Egypt, and South Africa we have finally succeeded -- after ten long years -- in bringing to the bar of justice those individuals identified by the international community as the prime suspects in the murder of so many innocents aboard flight Pan Am 103.

As we look to the future of the region, the question before us is: how can we expand engagement and reinforce containment? How can we widen the circle of peace while countering those who would oppose the promotion of a more normal existence for all the people of the region? The answer in our minds is clear. We must broaden the scope and depth of our relationships with those states that share our commitment to a more peaceful and prosperous region, working with them to achieve our common vision.

At the same time, we must maintain our ability to contain those states and those forces who threaten those interests.

My purpose today is to share with you the Clinton administration's strategy for achieving these goals as we head into the 21st century.

ARAB-ISRAELI PEACE PROCESS

Looking back in time, enormous progress has been made in realizing the historic goal of a comprehensive Arab-Israeli peace. Twenty years after the Israel-Egypt treaty -- which remains the bedrock of all subsequent progress -- peace between Israel and all of her neighbors is in sight. While we are not there yet, the coming months should offer a renewed opportunity to move forward on all tracks. President Clinton intends to make full use of this period to bring the parties to a settlement of final status issues. On the Palestinian track, we are at the moment in the throes of trying to manage the expiry of the interim period on May 4. It is our view that a unilateral declaration of a state by the Palestinians will undermine final status negotiations. But by the same token, Wye obligations must be fulfilled by both sides, and the final status negotiations must be resumed immediately after the Israeli elections and be brought to a prompt conclusion.

It is clear that these negotiations cannot be open-ended. And just as the President and Secretary of State were prepared to devote themselves to an extraordinary effort at Wye to bring those negotiations to a successful conclusion, so, too, are they prepared to make a similar effort in the final status negotiations.

After the Israeli elections, the timing may also be propitious for a new effort to achieve a final status agreement on the Syrian and Lebanese tracks. There have been no direct negotiations in three years; when there were negotiations, progress was made but significant gaps remained, particularly in the all-important area of security arrangements. If the parties are willing to match our effort, we are prepared to make peace between Israel and Syria a high priority in our Middle East diplomacy. This is not only because of our commitment to a comprehensive peace. It is also because an Israel-Syria peace agreement would have important regional benefits: a secure Israeli-Lebanese border; the ending of the Arab-Israeli conflict; the isolation of those parties that continue to reject peace and reconciliation; and the easing of pressure against normalization of relations between the Arab world and Israel.

DUAL CONTAINMENT

In May of 1993, almost six years ago, I outlined the Clinton Administration's dual containment policy toward Iraq and Iran. This policy reflected the geo-political reality at the time: the recent conclusion of three wars -- the Cold War, the Iran-Iraq war, and the war to liberate Kuwait -- had left the United States the dominant power in the region. It had also left both Iran and Iraq, while war-weary and economically weakened, still militarily ambitious and clearly hostile to the United States and our interests in the region.

Dual containment was premised on the notion that the U.S. needed to shift away from our earlier policy of relying on one of these regional powers to balance the other, a policy we had followed throughout the previous decade with disastrous results. Rather, we would now focus our efforts on containing Saddam Hussein's threats to his neighbors and his own people, while at the same time pursuing multilateral efforts to prevent Iran from acquiring and developing weapons of mass destruction and the ballistic missiles necessary to deliver them. Our policy vis-a-vis Iran was also based on continuing to seek change in dangerous Iranian policies -- including support for terrorism, subversion of friendly governments, and violent opposition to the Middle East peace process -- through economic pressure aimed mainly at Iran's oil industry.

Dual containment, however, never prescribed identical policies towards Iraq and Iran, nor was dual containment designed to be static or inflexible over time. Indeed, it is quite natural that these two states would evolve differently, and that our policies would evolve in response. Nor was dual containment meant to impose a kind of Pax Americana on the region, in which Iran and Iraq -- both large and important regional players -- would permanently be excluded from making positive and

constructive contributions to the economics, politics, and security of the region, should they be inclined to change their hostile ways.

Over the past six years we have in fact seen pronounced differences in the evolution of both the external and internal policies of these two regional powers. And U.S. policy has adapted in response. Iraq, under Saddam Hussein, remains dangerous, unreconstructed, defiant, and isolated. We have come to the conclusion, after more than seven years of effort at seeking Saddam's compliance with UN Security Council resolutions, that his regime will never be able to be rehabilitated or reintegrated into the community of nations. This conclusion is based on what Saddam's record makes manifest -- that he will never relinquish what remains of his WMD arsenal, and that he will never cease being a threat to the region, U.S. interests, and his own people. It is based on Saddam's policies, not on any predetermined policy of our own. Thus, in November of last year, President Clinton announced a new policy with regard to Iraq: henceforth, we would contain Saddam Hussein until a new regime can govern in Baghdad. The President committed the United States to support those Iraqis -- inside and outside Iraq -- who seek a better future and a new government for the people of Iraq.

The evolution in Iran, and hence our own response, has been markedly different. In recent years, the Iranian people have demonstrated a desire for greater participation in their governance, freedom from undue interference by the state in their private affairs, and greater openness and contact with the outside world. Iran's leaders have taken steps to address these concerns, conducting free and fair presidential and local elections, allowing increased public debate, and publicly shifting from a foreign policy of confrontation to one of dialogue and cooperation. Despite these positive developments, we continue to have serious concerns about some Iranian policies that violate international norms and threaten our interests and those of our allies.

We would be remiss, however, were we to fail to adjust our approach to the changing reality in Iran. As Iran's leaders have shown an interest in re-engaging with the international community, we have sought to respond by highlighting our interest in engaging Iran in a dialogue, an approach first enunciated by Secretary Albright last June in her speech to the Asia Society here in New York.

Let me lay out our current policies towards Iraq and Iran in more depth.

IRAQ

Eight years after the Gulf War and Saddam's persistent defiance of the international community, we are under no illusions that Iraq under Saddam Hussein will comply with UNSC resolutions on disarmament, human rights, accounting for POW's and the return of stolen property.

In view of this reality, our policy rests on three pillars. First, we will contain Saddam Hussein in order to reduce the threat he poses both to Iraq's neighbors and to the Iraqi people. Second, we will seek to alleviate the humanitarian cost to the Iraqi people of containment. Finally, we will work with forces inside and outside Iraq, as well as Iraq's neighbors, to help a stable, peaceful Iraq rejoin the community of nations when the departure of Saddam Hussein makes this possible.

Our containment policy is designed to protect the citizens of Iraq and its neighbors from an aggressive and hostile regime. Sanctions prevent Saddam Hussein from reconstituting his military or WMD capabilities. Operations Northern and Southern Watch prevent Saddam from using his air force against the civilian populations north of the 36th parallel and south of the 33rd. We maintain a robust force in the region, which we have made clear we are prepared to use should Saddam cross our well-established red lines. Those red lines include: should he reconstitute or deploy weapons of mass destruction; should he again threaten his neighbors or our forces in the region; should he move against his own people, especially in the north; or, should he challenge us in the no fly zones. We are also committed to maintaining sanctions against the Iraqi regime that is in defiance of the UNSC

resolutions, while lifting the burden of sanctions off the backs of the Iraqi people through the expansion and streamlining of the oil-for-food program.

This humanitarian relief program is the second pillar of our policy. Sanctions were never directed against the Iraqi people. In fact, food and medicine are specifically exempt from sanctions. Iraq has always been free to buy and import these goods, but Saddam Hussein has chosen not to do so in order to manipulate public opinion by deliberately causing the suffering of his own citizens. Our response has been to first establish, and then expand the oil-for-food program, which provides a mechanism for the international community to use revenues from the sale of Iraqi oil for the purchase of humanitarian supplies for the Iraqi people. Despite attempts at interference by the regime, the oil-for-food program has ensured that the people of Iraq receive the food and medicine, which their own government denies them. There is a fundamental principle at work here. As long as Saddam is in defiance of the UNSC resolutions, we will never allow him to regain control of Iraq's oil revenues. They will continue to be escrowed by the UN and their uses controlled by the UN sanctions committee.

Although effective, containment has its costs. As we have seen repeatedly since 1991, a contained Iraq under the leadership of Saddam Hussein remains a threat both to the region and to the Iraqi people. Both are paying a very high price for Saddam's continued rule. In our judgment, both deserve better.

For these reasons, President Clinton announced in November that the United States would work with the Iraqi people toward a government in Iraq which is prepared to live in peace with its neighbors and respect the rights of its people. Make no mistake: we are now clearly committed to supporting the Iraqi people in bringing about a change of regime in Baghdad.

In pursuit of this objective, the United States will adhere to two important principles: one, we will uphold the territorial integrity of Iraq; and two, we will not seek to impose from the outside a particular government or leaders on the people of Iraq. We do support a change of government that will be responsive to the aspirations of the Iraqi people -- one that takes meaningful steps toward a democratic future for the country and can represent fairly the concerns of all of Iraq's communities. And we will work with a new Iraqi government, as it fulfills its international obligations, to lift the sanctions, to deal with the large debt burden, and to reintegrate Iraq into the international community.

If it is to be successful, change must come from within, from the Iraqis themselves. It cannot be "made in America." The support of Iraqi exiles, including the politically active opposition, along with neighboring states, however, is indispensable. Our approach is to work in an intensive and coordinated way with these partners to support the aspirations of the Iraqi people for a new Iraq under new leadership. Free Iraqis -- those in exile and those who live in relative freedom in northern Iraq -- bear a special responsibility to develop a coherent vision for a brighter future. They must take the lead in developing and promoting an alternative vision based on the restoration of civil society, the rebuilding of the economy, and the promotion of a new role for Iraq as a force for peace and reconciliation in the region. They can also play an effective role in delegitimizing Saddam, in helping to build the case for his prosecution as a war criminal, and in getting the truth into and out of Iraq.

Congress has provided the Administration with a number of important tools to support Iraqis who are working toward a better future for Iraq. These include \$8 million in Economic Support Funds. We are using these funds to strengthen opposition political unity, to support the Iraq war crimes initiative, to support humanitarian programs and the development of civil society, and for activities inside Iraq. We have established Radio Free Iraq, which operates independently and broadcasts daily in Arabic uncensored news and information to the Iraqi people.

We have named a Special Coordinator for Transition in Iraq, Frank Ricciardone, who is managing the overall effort. Mr. Ricciardone has already had some success in helping some of the disparate opposition groups work together and elect a new interim leadership that will now prepare the way for an Iraqi opposition conference that will have as broad participation as possible.

We have also made progress working with the two major Kurdish factions in the North, the PUK and the KDP, to help them reconcile their differences and better provide for all the people of northern Iraq.

Finally, there is the Iraq Liberation Act, which provides discretionary authority to the President to direct up to \$97 million in Defense Department drawdown and training for designated Iraqi opposition groups.

Many have called on the President to use this authority to arm the Iraqi opposition and support military action against Saddam Hussein. We believe such action is premature. There are a host of issues that must be resolved before such equipment and training could be provided with confidence that it would advance our objectives of promoting a change of regime and not just lead to more Iraqis being killed unnecessarily. One requirement is a credible, broad-based, Iraqi political umbrella movement, based on consensus, that can authoritatively articulate a future vision for those Iraqis who now lack a voice in their own fate. Through such a movement, it will become possible to channel substantial assistance to those resisting Saddam's oppression inside Iraq.

We also need the cooperation of Iraq's Arab neighbors and Turkey if we are to provide effective support to the internal Iraqi opposition. Although they would all prefer Saddam gone, they have strong views about a post-Saddam Iraq which have to be taken into account. We are working closely with them to achieve our common objective of an Iraq that can assume its rightful place in the region as a constructive and stabilizing power.

IRAN

Turning to Iran, Secretary Albright discussed our policy towards Iran at length in her Asia Society speech last June. The main point the Secretary made was that we are prepared to develop with the Islamic Republic, when it is ready, a road map in which both sides would take parallel steps leading to normal relations. Unfortunately, the Iranian Government has made it clear that at this stage it is not ready to engage, insisting instead that the U.S. first take a number of unilateral steps.

Given Iran's reluctance to begin a bilateral dialogue, we have pursued other avenues that can serve to broaden our engagement with Iran. We have worked constructively with Iran in multilateral settings on issues of common concern, such as the spread of narcotics and the situation in Afghanistan. Last year, Iran's eradication of its poppy crop made it possible for us to remove Iran from our list of major drug producers, and we fully support the UN Drug Control Program's plans to increase its activities in Iran. This is a case where positive Iranian actions have been met with a positive U.S. response. We also continue to work with Iran in the six-plus-two forum at the United Nations on Afghanistan, where the Islamic Republic has played a constructive role in the search for a peaceful solution to the civil strife in that war-torn country. As chair of the Organization of the Islamic Conference, Iran has become more actively involved in the search for diplomatic solutions to other world crises, and we welcome that as well, including the OIC's support for efforts in Kosovo.

We have also supported greater contact between our two peoples, for we believe that such exchanges can increase mutual understanding and respect and can help overcome decades of mistrust. We have streamlined our visa policies and supported academic and athletic exchanges. We have hosted wrestling teams, newspaper editors, film directors and musicians, and numerous Iranian scholars. We have also on occasion relaxed the 25-mile travel limit for Iranian officials assigned to Iran's Mission to

the United Nations, allowing Iran's ambassador to the United Nations and other officials to speak to American audiences in California, Michigan, Pennsylvania and elsewhere.

We are pleased that Iran has opened its doors to increasing numbers of American visitors -- wrestling teams, scholars, graduate students, and museum officials. But we are disappointed that the Iranian government has not yet shown the same readiness for the Iranian public to hear directly from U.S. officials, or even ex-officials, about our perspectives on the way forward.

Given the intense interest in U.S. sanctions policy with respect to Iran, I would like to remind you of the rationale for the sanctions as well as our reasons for some decisions we have made recently in this regard. First, U.S. sanctions are a response to Iranian Government practices that violate international norms and threaten our interests and those of our allies. Their intent is to deprive Iran of the resources to pursue those activities and to demonstrate to Iran's leaders that pursuing such policies comes at a price.

Some of these objectionable Iranian Government practices unfortunately have continued, although not to the same degree in all areas, under the present government. Iran remains on this year's State Department list of state supporters of terrorism. While we have seen some diminution in the number of assassinations of Iranian dissidents abroad, and condemnation by Iranian officials of certain terrorist attacks, Iran continues to provide support to a variety of terrorist groups, particularly some of those that violently oppose progress in the Middle East peace process. President Khatami has publicly denounced terrorism and condemned the killing of innocents, including Israelis; the Iranian government has also stated that Iran would accept peace acceptable to the Palestinians. We assume that these statements are sincerely made, and it is therefore also reasonable for us to expect that the actions and policies of the Islamic Republic should reflect them. Unfortunately, so far this has not been the case.

Of greatest concern to us, however, is Iran's continued drive to develop weapons of mass destruction and the ballistic missiles necessary to deliver them. Clandestine efforts to procure nuclear, chemical and biological weapons continue despite Iran's adherence to relevant international nonproliferation conventions. In this regard, we are particularly concerned about Iran's nuclear drive. Last summer, Iran also tested a ballistic missile -- the Shahab III -- capable of delivering warheads 800 miles. We have reports that Iran is close to producing a missile with an even greater range. These developments pose significant potential threats to U.S. forces and our friends in the region. Clearly, our concern about Iranian WMD and missile development must be considered in a regional context. We continue to support a Middle East free of all WMD. But the kind of proliferation we see in the region today -- be it in Iran, India, or Pakistan -- is leading exactly in the wrong direction. Proliferation on the eastern side of the Persian Gulf is, among other things, increasing nervousness on the other side of the Gulf and could drive other countries to seek their own weapons systems.

We have to act quickly to forestall this imminent arms race in ballistic missiles and WMD by working with our friends in the region including the GCC, Jordan, and Israel, to develop effective responses to the emerging threat. These responses include: strengthening active and passive defenses; enhancing deterrence; slowing down proliferation; and if possible, moderating the policies of those regimes that are trying to acquire these systems.

Iran's efforts to develop WMD and ballistic missiles together with its other ongoing policies of concern are the reason we oppose investment in Iran's petroleum sector, Iran's participation in the development of Caspian resources, multilateral lending to Iran, and Iran's full integration in international economic fora. A change in the U.S. position on these issues will require Iran to bring its practices into line with international norms, or at least demonstrate a willingness to begin such a process. We look forward to a time when greater economic interaction with Iran will be possible, but this depends not just on us, but on the Iranian Government's willingness to address practices that in

our view continue to disqualify Iran from enjoying the full economic and commercial advantages that come with responsible membership in the international community.

Finally, we continue to observe with great interest internal developments in Iran. As we have often said, we fully respect Iran's sovereignty and the right of the Iranian people to choose their system of government as they see fit. That said, we will not shy away from expressing our support for values that we believe to be universal: human rights, rule of law, free markets, and democracy. In this regard, both the presidential election in 1997 and the recent municipal elections were remarkable for their openness and the level of participation of the Iranian people. We continue to believe that nations living according to democratic and pluralistic values internally will also abide more fully and more naturally with internationally accepted norms of behavior in their foreign policies. This is a principle that underlines our approaches to both Iran and Iraq.

CONCLUSION

At the close of the twentieth century, the United States occupies a unique position in the history of international relations. We are both the world's leading democracy and its sole superpower. As the world's foremost democracy, the people of the United States expect their country will act in defense of the values and beliefs it represents. As the single remaining superpower, we have a responsibility to use our power in the interests of international peace and security.

For this reason, we now find ourselves facing demands for intervention in ways and in places that are unprecedented. As befits our unique position in the world, and consistent with our national interests, we must be responsive.

The history of the post-cold war world has demonstrated, however, that we cannot effectively impose solutions on unwilling partners or hostile adversaries unilaterally. Our preponderant economic and military strength notwithstanding, advancing national interests and fulfilling the responsibilities of a superpower is a multilateral exercise. Simply put, while we will and must lead, we should not go it alone.

Containing Saddam Hussein; working for a new government in Iraq; promoting an Arab-Israeli peace; fighting terrorism and the proliferation of weapons of mass destruction requires the support and cooperation of our regional friends and allies. Over the course of years of sustained diplomacy, we have developed a level of trust and confidence with the key states of the region. This gives us confidence that our policies of expanded engagement and strengthened containment will prevail over time.

Assistant Secretary of State Indyk's Speech to the Asia Society

On October 14, 1999 Assistant Secretary of State for Near Eastern Affairs Martin Indyk delivered a speech on Iran to the Asia Society. The speech came about a week after the Administration confirmed that it had sent a direct message to Iran some time during the summer of 1999, reportedly asking Iran for cooperation in the investigation of the June 1996 bombing of the Khobar Towers complex in Saudi Arabia.

The speech was another follow-on to Secretary Albright's speech suggesting that the two countries develop a road map to normal relations. The Indyk speech reiterated that theme, and again asked Iran to enter into a formal dialogue with the United States. Indyk's statement that the dialogue would be conducted "on the basis of equality and mutual respect," appeared intended to respond to Iran's repeated assertions that U.S. hostility and lack of respect for Iran did not justify engaging in a dialogue.

Indyk introduced a number of nuances that could be read by experts as signals to Iran. In the first instance, he explained that the United States had, on October 8, 1999, designated the National Council of Resistance, a key opposition organization, as an alias of the People's Mojahedin Organization of Iran (PMOI). The move has the net effect of essentially closing down the NCR's operations in the United States. Assistant Secretary Indyk, although critical of Iran's weapons of mass destruction programs, noted in his speech that these programs "must be considered in a regional context, in which states of the region including Iran need to feel secure. That statement appeared to signal Iran that the United States would recognize that it has security needs and perceives real regional threats.

The speech also appeared to break some new ground by calling on Iran to allow U.S. officials to visit Iran. Mr. Indyk noted that the United States allows Iranian officials to engage in people-to-people contacts with Iran, but that Iran does not allow U.S. officials to visit. His statement suggested that the Administration has shifted somewhat by allowing Executive branch travel to Iran, if Iran were to invite such travel.

At the same time, Mr. Indyk reiterated longstanding U.S. concerns, and noted that Iran had not made progress on several fronts of U.S. concern. These concerns would, for now, lead the United States to keep its sanctions policy in place. However, according to Mr. Indyk, the United States is ready to change its positions if Iran behaves according to international norms. He was also critical of Iran's human rights abuses, particularly the arrest of 13 Jews in the spring of 1999 on espionage charges.

U.S. Department of State
Martin S. Indyk
Assistant Secretary for Near East Asian Affairs

Asia Society,
"Iran and the United States: Prospects for a New Relationship"
Washington, DC, October 14, 1999

Iran and the United States: Prospects for a New Relationship

Thank you very much Nick. Ladies and Gentlemen it is a real pleasure and honor for me to appear at a forum sponsored by the Asia Society. Ever since Congressman Steve Solarz took South Asia away from the Near East Bureau, we have not had the opportunity to work much with such a respected think tank that does such excellent work promoting U.S. relations with the vast area that encompasses Asia. Our only overlap in fact is Iran, where the Near Eastern Bureau has responsibility. Therefore, we were delighted that the Secretary of State, Madeline Albright, was able to make her milestone speech on Iranian policy before the Asia Society last year. I am delighted to have a chance to follow in that tradition to address the prospects for a new relationship between Iran and the United States today.

As you look across the region for which I am responsible at the State Department, which covers the area from the Maghreb through the Middle East across the Gulf to Iran, one is struck by the changes underway. The Israelis and Palestinians are moving forward quickly to implement their interim commitments and negotiate a framework agreement on final status issues designed to end the conflict between them. We are working with Israel and Syria to lay the groundwork not only for resuming negotiations but also for bringing them to a prompt conclusion. Within the next year, there is a very real opportunity to settle this longstanding Arab-Israeli conflict in a comprehensive way, once and for all. Elsewhere, in Algeria, Egypt, Turkey and Jordan, extremism is on the retreat. Moderation and pragmatism are on the march. And as we've seen in Jordan, Morocco, and Bahrain, a new generation of leaders is coming of age in the region, leaders who bring with them a new vision and a new energy for a new millennium.

Iran too is engaged in a process of change. In recent years, drawing on their proud and glorious history of tolerance and justice, the Iranian people have demonstrated a powerful desire for greater participation in their governance, freedom from undue interference by the state in their private affairs, and greater openness and contact with the outside world. Iran's leaders have taken steps to address these concerns, conducting fair presidential and local elections, allowing increased public debate, placing greater emphasis on the rule of law, and shifting in some important areas from a foreign policy of confrontation to one of dialogue and cooperation.

Secretary Albright acknowledged these changes in her Asia Society speech last year. The main point that she made at the time, in signaling a willingness to change our policy towards Iran, was that we are prepared to develop with the Islamic Republic a road map in which both sides would take parallel steps to deal with the issues of concern to each other so that together we could lay the foundations for building and sustaining a normal relationship. Since then, President Clinton has made clear his own personal commitment to this approach and his desire to acknowledge past differences and overcome current ones. Unfortunately, the Iranian Government's response to this overture has been, for the most part, hide-bound and unimaginative, insisting that the U.S. must first take a number of unilateral steps as some kind of precondition for an official dialogue.

Given Iran's current reluctance to begin a bilateral dialogue, we have pursued other avenues that can serve to broaden our engagement with Iran. We have worked constructively with Iran in multilateral settings on issues of common concern, such as countering the spread of narcotics and the situation in Afghanistan. Last year, Iran's eradication of its poppy crop meant that Iran no longer met the criteria for inclusion on our list of major drug producers. Accordingly, we removed Iran from that list, and we fully support the UN Drug Control Program's plans to increase its cooperation with and activities in Iran. This is a case where positive Iranian actions have been met with a positive U.S. response. We also continue to work with Iran in the six-plus-two forum on Afghanistan, where the Islamic Republic has played a constructive role in the search for a peaceful solution to the civil strife in that war-torn country.

We have also supported greater contact between our two peoples, for we believe that such exchanges can increase mutual understanding and respect and can help overcome decades of mistrust. We have streamlined our visa policies and supported academic and athletic exchanges. We have hosted wrestling teams, newspaper editors, film directors and musicians, and numerous Iranian scholars here in the United States. At the same time, we are pleased that Iran has opened its doors to increasing numbers of American visitors--wrestling teams, scholars, graduate students, and museum officials. We were glad to note yesterday a clear public statement by a high Iranian official about the need to ensure the safety of tourists in Iran, and visitors, including Americans. We have also, on a regular basis, permitted Iranian government representatives to travel to a variety of locations in the U.S. to take part in these "people-to-people" exchanges. We think it's time that Iran allowed U.S. officials the same privilege in their country.

Additionally, and within the context of a broad review of U.S. sanctions policy, President Clinton announced in April his decision to exempt commercial sales of food, medicines and medical equipment from future and current sanctions regimes where we have the authority to do so. The Treasury Department in August published regulations implementing this policy change. This decision has enabled the sale of certain U.S. items to Iran, notably bulk sales of U.S.- origin grain.

This change in our policy does not conflict with our effort to apply economic sanctions on the Government of Iran. Any benefit derived will accrue to the Iranian people and of course to American farmers and manufacturers. It is important to remember that U.S. sanctions policy seeks to influence the behavior of regimes, not to deny their people basic humanitarian necessities. Sales of food, medicine and other human necessities do not enhance a nation's weapons of mass destruction capabilities or its ability to support international terrorism.

Apart from this recent adjustment, our sanctions policy remains in force vis-a- vis Iran. The reasons behind this policy of applying economic pressure remain the same today as they did when that policy was first invoked. U.S. sanctions are a response to Iranian Government practices that violate international norms and threaten our interests and those of our allies. Their intent is to deprive Iran of the resources to pursue those activities and to demonstrate to Iran's leaders that pursuing such policies comes at a price: that they cannot threaten Western interests and yet enjoy the benefits of normal relations with the West. In this regard, we will continue to oppose investment in the development of Iran's energy sector, bilateral debt rescheduling, Paris Club debt treatment for Iran, and the extension of favorable credit terms by Iran's principal foreign creditors. We will also continue to oppose loans to Iran by the international financial institutions. But we have made clear that we stand ready to change all of these policies as soon as Iran changes its practices in the areas of our concern. Some of these objectionable Iranian Government practices unfortunately have continued, although not to the same degree in all areas, under the present government. Iran remains on this year's State Department list of state supporters of terrorism. While Iran apparently conducted fewer anti-dissident assassinations abroad in 1998 than in 1997, Iran continues to support a variety of groups that use terrorism to pursue their objectives.

At the same time, Iran is also a victim of terrorism. In 1998 several high-ranking members of the Iranian Government were attacked and at least two were killed in attacks claimed by the terrorist group Mujahedin-e Khalq (MEK). More recently, that same group claimed responsibility for the assassination of Iran's deputy chief of staff. We condemn these acts as we condemn all acts of terrorism. In this regard, just last week we redesignated the MEK as a foreign terrorist organization and, for the first time, listed the National Council of Resistance (NCR) as an alias of the MEK. Such designations have the effect of making it illegal to provide financial support to these organizations. This will further reduce the MEK's ability to generate support in this country.

Senior Iranian officials have publicly denounced terrorism and condemned the killing of innocents, including Israelis; the Iranian government has also stated that Iran would accept a peace acceptable to the Palestinians. We assume that these statements are sincerely made, and it is therefore also reasonable for us to expect that the actions and policies of the Islamic Republic should reflect them. Unfortunately, so far this has not been the case. Iran was harshly critical of the Wye Agreement and again criticized the recent Sharm al Sheikh agreement. Iran's Hezbollah proxy in Lebanon has threatened Chairman Arafat's life for the supposed sin of making peace with Israel. President Khatami himself met with leaders of the Palestinian rejectionist groups when he visited Syria in May and apparently promised them more support. And this Iranian encouragement comes at a time when Syria itself is telling most of these groups to cease their "military" activity and Libya is apparently evicting Abu Nidal operatives from its territory and forbidding other terrorist elements from entering Libya.

This is no small matter. At a time when the rest of the Arab world is looking towards a future of peace and reconciliation with Israel, what business is it of Iran to encourage terrorist activity involving Hezbollah, Hamas, Palestinian Islamic Jihad, and Ahmed Jibril's PFLP-GC with the intention of destroying the hopes of Israelis and Arabs alike for a comprehensive peace? Why is Iran still fomenting trouble in Jordan and giving support and safe haven to Egyptian extremists at the same time as it is moderating its policies towards most of its Arab neighbors across the Gulf? Is it because Egypt and Jordan play a leading role in the peace process?

We have made clear to Iran that there not cannot be a lifting of the sanctions we have imposed or an improvement in relations until Iran takes meaningful steps to end its support for terrorism and cooperates in the fight against terrorism.

In the case of the attack on U.S. personnel at Khobar, Saudi Arabia, our investigation is ongoing. This week, we removed Hani al Sayegh to Saudi Arabia, where we expect him to stand trial for his involvement in the Khobar bombing. We are investigating information concerning the involvement of Saudi nationals, Iranian government officials and others. We have not reached a conclusion regarding whether the attack was directed by the government of Iran. Iran has denied any involvement in the bombing. Cooperation by Iran in this investigation would be an important signal that it is changing its policy of threatening our interests and those of our friends and allies in the Middle East.

We are also concerned by Iran's continued drive to develop weapons of mass destruction and the ballistic missiles necessary to deliver them. Clandestine efforts to procure nuclear, chemical and biological weapons continue despite Iran's signature on relevant international nonproliferation conventions. In this regard, we are particularly concerned about Iran's nuclear drive. Iran has also tested a ballistic missile--the Shehab III--capable of delivering warheads 800 miles and is reported to be close to producing a missile with an even greater range. These developments pose significant potential threats to our friends in the region and to our own presence there.

Clearly, our concern about Iranian WMD and missile development must be considered in a regional context, in which states of the region--including Iran--need to feel secure. We continue to support a Middle East free of all WMD. But the kind of proliferation we see in the region today--be it in Iran,

India, or Pakistan--is leading exactly in the wrong direction. Proliferation on the eastern side of the Persian Gulf is, among other things, increasing nervousness on the other side of the Gulf and could drive other countries to seek their own weapons systems. Thus Iran's drive for what may be intended as a deterrent capability has the potential to be deeply destabilizing for the Middle East region.

Iran's efforts to develop WMD and ballistic missiles, together with its other ongoing policies of concern, are the reason we oppose investment in Iran's petroleum sector, Iran's participation in the development and transport of Caspian resources (including pipelines across Iran), multilateral lending to Iran, and Iran's full integration in international economic fora. A change in the U.S. position on these issues will require Iran to begin to bring its practices into line with international norms.

Finally, we continue to observe with great interest internal developments in Iran. As we have often said, we fully respect Iran's sovereignty and the right of the Iranian people to choose their system of government as they see fit. We have no interest in and we have no policy of interference in Iran's internal affairs. However, we will not shy away from expressing our support for values that we believe to be universal: human rights, rule of law, and democracy. In this regard, both the presidential election in 1997 and the recent municipal elections were remarkable for their openness and the level of participation of the Iranian people. Iran faces another important election in February of next year, when the Iranian people will again exercise their constitutional right to choose their parliamentary representatives. Statements by Iran's elected leadership in support of human rights and the rule of law deserve acknowledgment and support. Further, a vigorous press continues to assert itself admirably in the face of efforts at censorship. These are important developments that represent real change.

At the same time, we are concerned at the gap that remains between words and deeds. A revolutionary court judge recently announced that four of the student demonstrators arrested in July had been tried and sentenced to death. Many others remain in custody. We have also seen the continuing detention, without formal charge, of 13 members of the Jewish communities of Shiraz and Isfahan, on unfounded accusations of espionage. Our recently published report on religious freedom in Iran detailed the persistent mistreatment by the Iranian government of the Baha'i religious minority. The systematic oppression of the Baha'i, including the denial of their right to worship, elect officers within their religious hierarchy and educate their young, as well as arbitrary arrest, detention and torture of Baha'i followers led the Secretary to designate Iran as a country of particular concern for religious freedom under the terms of the International Religious Freedom Act. In sum, we have seen real change for the better in Iran, but the picture remains mixed and the outcome still uncertain.

We continue to believe that nations upholding respect for democratic values, tolerance and the rule of law internally will also respect and abide by internationally accepted norms of behavior in their foreign policies. This is a principle that underlines our approach to Iran, as well as to other parts of the world.

The United States has an interest in better relations with the Islamic Republic of Iran. But for this to happen, we must find a way together to address the respective concerns of each side. For our part, we want to encourage Iran to change its policies on terrorism, violent opposition to the peace process and the proliferation of weapons of mass destruction. For their part, they want us to change our policies on sanctions. We believe the best way to achieve these changes is through a parallel process that can only be developed through an authoritative government-to-government dialogue, without preconditions. We should move beyond the stage of gestures and symbols. Indeed, it is time for the United States of America and the Islamic Republic of Iran to engage each other as two great nations: face-to-face, and on the basis of equality and mutual respect. When the Government of Iran is ready to engage, we will be too.

SECTION 2

SANCTIONS ON TRADE, AID AND INVESTMENT

U.S. Trade and Investment Ban

There is little doubt that the most important ruling on U.S. commercial interaction with Iran is Executive Order 12959 of May 6, 1995, and its subsequent modifications. This executive order bans almost all U.S. trade with and investment in Iran. However, U.S. firms are permitted to apply for licenses to conduct oil swaps and, as of August 1999, to engage in commercial sales of food and medicine to Iran.

Most of the implementing Iranian Transaction Regulations (See §2.51) flow from this executive order and its amendments. The trade and investment ban significantly expanded on trade restrictions imposed under previous executive orders. The primary authority for the president's action was the International Emergency Economic Powers Act (IEEPA, 50 U.S.C. 1601 et seq.) The executive order followed by two months a more limited executive order (12957, March 15, 1995) that banned U.S. investment in Iran's energy sector, and accompanied an administration determination that Iran's foreign policy behavior constituted an unusual and extraordinary threat to the national security of the United States.¹ The imposition of these sanctions in 1995 followed a series of bombings in Israel by pro-Iranian terrorist groups and Iran's signing of a contract for Russia to complete its nuclear power reactor at Bushehr. The sanctions also followed steps by a U.S. firm, Conoco Corp., to make a substantial investment to help Iran develop its energy resources.

In addition to expanding the March 1995 ban on U.S. investment to all sectors in Iran's economy, the trade and investment ban had the net effect of banning U.S. exports of civilian goods to Iran. It also prohibited re-exportation of any U.S. goods to Iran, although that provision has proven very difficult to enforce in practice. A ban on imports from Iran had already been in effect since 1987 under a Reagan Administration executive order (E.O. 12613).² The import ban was imposed under a 1985 law that authorized the president to ban imports from countries on the U.S. list of state sponsors of terrorism.

Supporters of the trade and investment ban expected it to close a large loophole in the import ban. The 1987 import ban prevented U.S. firms from importing Iranian crude oil into the United States, but U.S. firms and their affiliates could trade Iranian crude oil overseas. The original version of the May 1995 trade and investment ban indicated that the new ban would apply to foreign affiliates of U.S. firms. However,

¹Sections 1 and 2 of EO 12957 are revoked by EO 12959.

²Sections 1 and 2 of EO 12613 are revoked by EO 12959.

in writing implementing regulations, the administration apparently considered that application too difficult to enforce; a September 1995 amendment to the trade and investment ban required only *reporting* of oil-related transactions with Iran by foreign affiliates of U.S. firms. Subsequent amendments to the regulations by the Office of Foreign Assets Control (OFAC, which administers U.S. trade restrictions) watered down this requirement even further. On April 23, 1997, for example, OFAC issued an amendment to require reports on foreign affiliates transactions with Iran of \$1 million or more per year. On November 10, 1998, OFAC eliminated the requirement to report foreign affiliate transactions with Iran on petrochemicals.

The trade and investment ban still allows U.S. firms to import to the United States, Iranian oil refined in a third country. Refined petroleum products are considered a product of the country in which they are refined. Usually, the Iranian crude is mixed with other crudes in the refining process, and it has always been deemed impossible to determine what proportion of the oil product is Iranian. The trade and investment ban does not permit U.S. firms or persons to negotiate with Iran on any future deals, although U.S. firms apparently can purchase information about Iranian tender offers -- the trade ban specifically permits trade in purely informational materials.

The most visible and important easing of the trade and investment ban came on April 28, 1999, when the administration, as part of a broader review of unilateral sanctions, said that commercial sales to Iran (and other countries in which almost all trade is banned) of agricultural products, medicine and medical equipment would be evaluated on a case-by-case basis. The decision came after a U.S. firm applied for a license to sell Iran \$500 million worth of U.S. agricultural products. The administration announced that licensing of such sales would take into account whether the importing country might become involved in armed conflict with the United States, whether the country's regime might divert the import to its armed forces or political supporters, or whether regime officials might unduly benefit from the import. At the time of the decision, the administration announced that there would be no U.S. government credit guarantees for licensed sales, although the administration subsequently stated that this position could be reevaluated. The ban on U.S. assistance to Iran (see below) does not include Commodity Credit Corporation (CCC) guarantees, because agricultural product sales under that program are considered purchases by the United States Government, not by the end user country. Commercial agricultural sales to Iran could, therefore, qualify for CCC credit guarantees under existing laws and regulations.

It should be noted that the trade and investment ban also has been tightened in some respects since it was issued. A follow-on executive order (13059 of August 19, 1997) specified that the ban on trade with Iran applied to U.S. persons *wherever* located and that no U.S. person can *knowingly* export goods that are intended to be shipped to

Iran or *incorporated, outside the United States, into products* (such as automobiles) that will be exported to Iran.

One of the more controversial aspects of the trade and investment ban was a provision, in the original text of the order, permitting applications for licenses of Central Asian oil swap arrangements with Iran. As now written, the Executive order permits oil swap license applications “to the extent provided in section 203 (b) of IEEPA”, without mentioning Central Asian oil specifically. On the basis of this provision of the order, in April 1998 Mobil Corp. applied to conduct oil swaps with Iran. However, on April 28, 1999, the same day the food and medicine easing was announced, the administration also announced that Mobil’s application had been turned down. The administration apparently wanted to prevent Iran from becoming a major outlet for Central Asian energy resources, preferring instead routes that transit Turkey.

§2.1.1 - EXECUTIVE ORDER 12957 OF MARCH 15, 1995

Prohibiting Certain Transactions With Respect to The Development of Iranian Petroleum Resources

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.), the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, find that the actions and policies of the Government of Iran constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat. I hereby order:

Section 1. The following are prohibited, except to the extent provided 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: (a) the entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of (i) a contract that includes overall supervision and management responsibility for the development of petroleum resources located in Iran, or (ii) a guaranty of another person's performance under such a contract;

(b) the entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of (i) a contract for the financing of the development of petroleum resources located in Iran, or (ii) a guaranty of another person's performance under such a contract; and

(c) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 2. 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, 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 (including foreign branches), or any person in the United States; and

(d) The term "Iran" means the land territory claimed by Iran and any other area over which Iran claims sovereignty, sovereign rights or jurisdiction, including the territorial sea, exclusive economic zone, and continental shelf claimed by Iran.

Sec. 3. The Secretary of the Treasury, in consultation with 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 me by the International Emergency Economic Powers Act 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. 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. 4. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 5. (a) This order is effective at 12:01 a.m., eastern standard time, on March 16, 1995.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

THE WHITE HOUSE, March 15, 1995.

§2.1.2 - EXECUTIVE ORDER 12959 OF MAY 6, 1995

Prohibiting Certain Transactions With Respect to Iran

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.), section 505 of the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa-9) (ISDCA), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, in order to take steps with respect to Iran in addition to those set forth in Executive Order No. 12957 of March 15, 1995, to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States referred to in that order, hereby order:

Section 1. The following are prohibited, except to the extent provided 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: (a) the importation into the United States, or the financing of such importation, of any goods or services of Iranian origin, other than Iranian-origin publications and materials imported for news publications or news broadcast dissemination;

(b) except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)), the exportation from the United States to Iran, the Government of Iran, or to any entity owned or controlled by the Government of Iran, or the financing of such exportation, of any goods, technology (including technical data or other information subject to the Export Administration Regulations, 15 CFR Parts 768-799 (1994) (the "EAR")), or services;

(c) the reexportation to Iran, the Government of Iran, or to any entity owned or controlled by the Government of Iran, of any goods or technology (including technical data or other information) exported from the United States, the exportation of which to Iran is subject to export license application requirements under any United States regulations in effect immediately prior to the issuance of this order, unless, for goods, they have been (i) substantially transformed outside the United States, or (ii) incorporated into another product outside the United States and constitute less than 10 percent by value of that product exported from a third country;

(d) except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)), any transaction, including purchase, sale, transportation, swap, financing, or brokering transactions, by a United States person relating to goods or services of Iranian origin or owned or controlled by the Government of Iran;

(e) any new investment by a United States person in Iran or in property (including entities) owned or controlled by the Government of Iran;

(f) the approval or facilitation by a United States person of the entry into or performance by an entity owned or controlled by a United States person of a transaction or contract (i) prohibited as to United States persons by subsection (c), (d), or (e) above, or (ii) relating to the financing of activities prohibited as to United States persons by those subsections, or of a guaranty of another person's performance of such transaction or contract; and

(g) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 2. 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, 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 (including foreign branches), or any person in the United States;

(d) the term “Iran” means the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements; and

(e) the term “new investment” means (i) a commitment or contribution of funds or other assets, or (ii) a loan or other extension of credit.

Sec. 3. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, the requirement of reports, including reports by United States persons on oil transactions engaged in by their foreign affiliates with Iran or the Government of Iran, and to employ all powers granted to the President by IEEPA and ISDCA 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. 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. 4. The Secretary of the Treasury may not authorize the exportation or reexportation to Iran, the Government of Iran, or an entity owned or controlled by the Government of Iran of any goods, technology, or services subject to export license application requirements of another agency of the United States Government, if authorization of the exportation or reexportation by that agency would be prohibited by law.

Sec. 5. Sections 1 and 2 of Executive Order No. 12613 of October 29, 1987, and sections 1 and 2 of Executive Order No. 12957 of March 15, 1995, are hereby revoked to the extent inconsistent with this order. Otherwise, the provisions of this order supplement the provisions of Executive Orders No. 12613 and 12957.

Sec. 6. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

Sec. 8. (a) This order is effective at 12:01 a.m., eastern daylight time, on May 7, 1995, except that (i) section 1(b), (c), and (d) of this order shall not apply until 12:01 a.m., eastern daylight time, on June 6, 1995, to trade transactions under contracts in force as of the date of this order if such transactions are authorized pursuant to Federal regulations in force immediately prior to the date of this order (“existing trade contracts”), and (ii) letters of credit and other financing agreements with respect to existing trade contracts may be performed pursuant to their terms with respect to underlying trade transactions occurring prior to 12:01 a.m., eastern daylight time, on June 6, 1995.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

THE WHITE HOUSE,

May 6, 1995.

§2.1.3 - EXECUTIVE ORDER 13059 OF AUGUST 19, 1997

Prohibiting Certain Transactions With Respect to Iran

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.), section 505 of the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa-9) (“ISDCA”), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, in order to clarify the steps taken in Executive Orders 12957 of March 15, 1995, and 12959 of May 6, 1995, to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States declared in Executive Order 12957 in response to the actions and policies of the Government of Iran, hereby order:

Section 1. Except to the extent provided in section 3 of this order or in regulations, orders, directives, or licenses 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, the importation into the United States of any goods or services of Iranian origin or owned or controlled by the Government of Iran, other than information or informational materials within the meaning of section 203(b)(3) of IEEPA (50 U.S.C. 1702(b)(3)), is hereby prohibited.

Sec. 2. Except to the extent provided in section 3 of this order, in section 203(b) of IEEPA (50 U.S.C. 1702(b)), or in regulations, orders, directives, or licenses 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, the following are prohibited:

(a) the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran, including the exportation, reexportation, sale, or supply of any goods, technology, or services to a person in a third country undertaken with knowledge or reason to know that:

(i) such goods, technology, or services are intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran or the Government of Iran; or

(ii) such goods, technology, or services are intended specifically for use in the production of, for commingling with, or for incorporation into goods, technology, or services to be directly or indirectly supplied, transshipped, or reexported exclusively or predominantly to Iran or the Government of Iran;

(b) the reexportation from a third country, directly or indirectly, by a person other than a United States person of any goods, technology, or services that have been exported from the United States, if:

(i) undertaken with knowledge or reason to know that the reexportation is intended specifically for Iran or the Government of Iran, and

(ii) the exportation of such goods, technology, or services to Iran from the United States was subject to export license application requirements under any United States regulations in effect on May 6, 1995, or thereafter is made subject to such requirements imposed independently of the actions taken pursuant to the national emergency declared in Executive Order 12957; provided, however, that this prohibition shall not apply to those goods or that technology subject to export license application requirements if such goods or technology have been:

(A) substantially transformed into a foreign-made product outside the United States; or

(B) incorporated into a foreign-made product outside the United States if the aggregate value of such controlled United States goods and technology constitutes less than 10 percent of the total value of the foreign-made product to be exported from a third country;

(c) any new investment by a United States person in Iran or in property, including entities, owned or controlled by the Government of Iran;

(d) any transaction or dealing by a United States person, wherever located, including purchasing, selling, transporting, swapping, brokering, approving, financing, facilitating, or guaranteeing, in or related to:

(i) goods or services of Iranian origin or owned or controlled by the Government of Iran; or

(ii) goods, technology, or services for exportation, reexportation, sale, or supply, directly or indirectly, to Iran or the Government of Iran;

(e) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this order if performed by a United States person or within the United States; and

(f) any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 3. Specific licenses issued pursuant to Executive Orders 12613 (of October 29, 1987), 12957, or 12959 continue in effect in accordance with their terms except to the extent revoked, amended, or modified by the Secretary of the Treasury. General licenses, regulations, orders, and directives issued pursuant to those orders continue in effect in accordance with their terms except to the extent inconsistent with this order or to the extent revoked, amended, or modified by the Secretary of the Treasury.

Sec. 4. 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, 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 (including foreign branches), or any person in the United States;

(d) the term "Iran" means the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements;

(e) the term "Government of Iran" includes the Government of Iran, any political subdivision, agency, or instrumentality thereof, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran;

(f) the term "new investment" means:

(i) a commitment or contribution of funds or other assets; or

(ii) a loan or other extension of credit, made after the effective date of Executive Order 12957 as to transactions prohibited by that order, or otherwise made after the effective date of Executive Order 12959.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State and, as appropriate, other agencies, is hereby authorized to take such actions, including the promulgation of rules and regulations, the requirement of reports, including reports by United States persons on oil and related transactions engaged in by their foreign affiliates with Iran or the Government of Iran, and to employ all powers granted to me by IEEPA and the ISDCA 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. 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. 6. (a) The Secretary of the Treasury may authorize the exportation or reexportation to Iran or the Government of Iran of any goods, technology, or services also subject to export license application requirements of another agency of the United States Government only if authorization by that agency of the exportation or reexportation to Iran would be permitted by law.

(b) Nothing contained in this order shall be construed to supersede the requirements established under any other provision of law or to relieve a person from any requirement to obtain a license or other authorization from another department or agency of the United States Government in compliance with applicable laws and regulations subject to the jurisdiction of that department or agency.

Sec. 7. The provisions of this order consolidate the provisions of Executive Orders 12613, 12957, and 12959. Executive Order 12613 and subsections (a), (b), (c), (d), and (f) of section 1 of Executive Order 12959 are hereby revoked with respect to transactions occurring after the effective date of this order. The revocation of those provisions shall not alter their applicability to any transaction or violation occurring before the effective date of this order, nor shall it affect the applicability of any rule, regulation, order, license, or other form of administrative action previously taken pursuant to Executive Orders 12613 or 12959.

Sec. 8. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 9. The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

Sec. 10. (a) This order is effective at 12:01 a.m. eastern daylight time on August 20, 1997.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

THE WHITE HOUSE,

August 19, 1997.

The Iran-Libya Sanctions Act (ILSA)

The U.S. trade and investment ban, discussed in the preceding section, was imposed at a time when Iran was beginning to open up its energy sector to foreign investment. The administration agreed with some in Congress that, without further action, the U.S. ban would have the net effect of diverting Iran's energy development business from U.S. to European and other companies. The U.S. ban would not, in and of itself, prevent Iran from developing its energy resources.

To address this problem, in late 1995 and early 1996, the administration and the 104th Congress reached agreement on legislation, originally sponsored by Senator Alfonse D'Amato, to sanction foreign companies that invested in Iran's (and Libya's) energy sector.¹ The legislation, signed on August 5, 1996, is the Iran-Libya Sanctions Act, ILSA, P.L. 104-172. It was hoped that the law would deter foreign firms from bidding on eleven "buy back" energy projects offered to foreign bidders by forcing them to choose between doing business with Iran or with the United States. The law was also intended to dissuade foreign firms from helping regional governments build energy routes that transit Iran.

According to the law, any firm determined to have invested \$20 million or more to help Iran develop its energy resources², will face the imposition of at least *two* of the following *six* specified sanctions:

- (1) denial of U.S. Export-Import Bank credits for the export of any goods or services to the sanctioned entity.
- (2) denial of specific export licenses for shipments of goods to the sanctioned entity, assuming the exported goods require a license.
- (3) prohibition of U.S. banks from lending the sanctioned entity more than \$10 million in any one year.
- (4) if the sanctioned entity is a financial institution, prohibiting that institution from serving as a primary dealer in U.S. Government debt instruments and from serving as a repository of U.S. government funds.
- (5) prohibition on U.S. Government procurement of goods or services from the sanctioned entity.

¹ For the purposes of this paper, only Iran will be discussed.

² The figure was decreased to \$20 million from \$40 million on August 5, 1997, one year after ILSA was signed, when no countries agreed to enter with the United States into a formal multilateral or bilateral sanctions regime against Iran.

- (6) the imposition of restrictions on imports from the sanctioned entity, in accordance with IEEPA.

ILSA provides for two types of presidential waivers. The president might waive ILSA sanctions if the government with jurisdiction over the offending entity takes specific actions to terminate the entity's involvement in the project with Iran. Another waiver is permitted on the grounds that doing so is important to the national interests of the United States. It is on this latter basis that president Clinton in May 1998 waived ILSA sanctions on three firms (Total SA of France, Gazprom of Russia, and Petronas of Malaysia) that agreed to develop Iran's large South Pars gas field. The administration also asserted that these three countries had agreed to help the United States combat Iranian-sponsored terrorism and to prevent the export to Iran of civilian items that can have military applications ("dual use items"). However, many believe that the waivers were granted primarily to avoid an EU to such legislation in the World Trade Organization.

In spite of its detail, several aspects of ILSA remain unclear. The mere financing of an energy project in Iran is not specifically mentioned as sanctionable under ILSA, according to the definition of investment in ILSA. This raises questions as to whether or not a financial institution that financed all or part of an energy project in Iran, without taking an equity position in the project, would be subject to ILSA sanctions. This issue has not yet been tested.

One area that has been tested, to some extent, centers on the construction of energy routes through Iran. In August 1996, just after ILSA was signed, Turkey and Iran finalized a long-discussed deal to construct a natural gas pipeline from Iran to Turkey. They would join their lines at their common border and each country would be responsible for constructing its side of the pipeline. It appeared to most observers that the project would not be sanctionable because it did not involve "investment" as defined in the legislation. In July 1997, the State Department said publicly that the project was not sanctionable, but only because Turkey had subsequently agreed to import gas only from Turkmenistan, via a linkup between Iran and Turkmenistan. The Department left open whether or not it considered the project sanctionable as an investment, as that term is defined in ILSA, and U.S. officials subsequently stated that energy routes through Iran would be evaluated for ILSA sanctions. However, many firms and countries might argue that the U.S. government, by not sanctioning the Iran-Turkey line, has, in effect, set a precedent that similar route construction arrangements would not constitute "investment" as defined in ILSA, and should not be subject to sanctions.

The future of ILSA appears set to intersect with developments in U.S.-Iranian relations. As provided in ILSA, two conditions could instantly nullify ILSA's application to Iran -- Iran's removal from the terrorism list and its cessation of efforts to acquire weapons of mass destruction (WMD). Khatami has tried to distance

Iran from materially supporting terrorist groups but has not disavowed Iran's WMD programs, particularly its growing ballistic missile capability.

Absent this, ILSA expires on August 5, 2001, five years after its signature. It is an open question whether or not ILSA will be renewed in its present form. Some in Congress might argue that allowing ILSA to expire will remove a deterrent to firms that are helping Iran ensure a steady stream of energy revenues well into the future — revenues that could be put to work against U.S. interests. Others in Congress, reviewing the record of presidential waivers and general reluctance to irritate U.S. allies, will probably be content to allow ILSA to expire. The outcome of the debate might hinge on whether or not president Khatami continues to take steps to try to end Iran's image as a pariah state and chief sponsor of international terrorism. If there is a move in Congress to renew ILSA in a form approximating the present one, Khatami's efforts could determine whether or not the president vetoes renewal legislation and, if he does, what the prospects are for an override of the veto.

§2.2 - Iran-Libya Sanctions Act of 1996

An Act

To impose sanctions on persons making certain investments directly and significantly contributing to the enhancement of the ability of Iran or Libya to develop its petroleum resources, and on persons exporting certain items that enhance Libya's weapons or aviation capabilities or enhance Libya's ability to develop its petroleum resources, and for other purposes.³

Be it enacted by the Senate and House of Representatives of the United States of America in Congress⁴ assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Iran and Libya Sanctions Act of 1996".

SEC. 2.⁵ FINDINGS.

The Congress makes the following findings:

(1) The efforts of the Government of Iran to acquire weapons of mass destruction and the means to deliver them and its support of acts of international terrorism endanger the national security and foreign policy interests of the United States and those countries with which the United States shares common strategic and foreign policy objectives.

(2) The objective of preventing the proliferation of weapons of mass destruction and acts of international terrorism through existing multilateral and bilateral initiatives requires additional efforts to deny Iran the financial means to sustain its nuclear, chemical, biological, and missile weapons programs.

(3) The Government of Iran uses its diplomatic facilities and quasi-governmental institutions outside of Iran to promote acts of international terrorism and assist its nuclear, chemical, biological, and missile weapons programs.

(4) The failure of the Government of Libya to comply with Resolutions 731, 748, and 883 of the Security Council of the United Nations, its support of international terrorism, and its efforts to acquire weapons of mass destruction constitute a threat to international peace and security that endangers the national security and foreign policy interests of the United States and those countries with which it shares common strategic and foreign policy objectives.

SEC. 3.⁶ DECLARATION OF POLICY.

(a) Policy With Respect to Iran.—The Congress declares that it is the policy of the United States to deny Iran the ability to support acts of international terrorism and to fund the development and acquisition of weapons of mass destruction and the means to deliver them by limiting the development of Iran's ability to explore for, extract, refine, or transport by pipeline petroleum resources of Iran.

(b) Policy With Respect to Libya.—The Congress further declares that it is the policy of the United States to seek full compliance by Libya with its obligations under Resolutions 731, 748, and 883 of the Security Council of the United Nations, including ending all support for acts of international terrorism and efforts to develop or acquire weapons of mass destruction.

³ Aug. 5, 1996 - [H.R. 3107]

⁴ Iran and Libya Sanctions Act of 1996. 50 USC 1701 note.

⁵ 50 USC 1701 note.

⁶ 50 USC 1701 note.

SEC. 4.7 MULTILATERAL REGIME.

(a) **Multilateral Negotiations.**—In order to further the objectives of section 3, the Congress urges the President to commence immediately diplomatic efforts, both in appropriate international fora such as the United Nations, and bilaterally with allies of the United States, to establish a multilateral sanctions regime against Iran, including provisions limiting the development of petroleum resources, that will inhibit Iran's efforts to carry out activities described in section 2.

(b) **Reports to Congress.**—The President shall report to the appropriate congressional committees, not later than 1 year after the date of the enactment of this Act, and periodically thereafter, on the extent that diplomatic efforts described in subsection (a) have been successful. Each report shall include—

(1) the countries that have agreed to undertake measures to further the objectives of section 3 with respect to Iran, and a description of those measures; and

(2) the countries that have not agreed to measures described in paragraph (1), and, with respect to those countries, other measures (in addition to that provided in subsection (d)) the President recommends that the United States take to further the objectives of section 3 with respect to Iran.

(c) **Waiver.**—The President may waive the application of section 5(a) with respect to nationals of a country if—

(1) that country has agreed to undertake substantial measures, including economic sanctions, that will inhibit Iran's efforts to carry out activities described in section 2 and information required by subsection (b)(1) has been included in a report submitted under subsection (b); and

(2) the⁸ President, at least 30 days before the waiver takes effect, notifies the appropriate congressional committees of his intention to exercise the waiver.

(d) **Enhanced Sanction.**—

(1) **Sanction.**—With respect to nationals of countries except those with respect to which the President has exercised the waiver authority of subsection (c), at any time after the first report is required to be submitted under subsection (b), section 5(a) shall be applied by substituting "\$20,000,000" for "\$40,000,000" each place it appears, and by substituting "\$5,000,000" for "\$10,000,000".

(2) **Report to congress.**—The President shall report to the appropriate congressional committees any country with respect to which paragraph (1) applies.

(e) **Interim Report on Multilateral Sanctions; Monitoring.**—The President, not later than 90 days after the date of the enactment of this Act, shall report to the appropriate congressional committees on—

(1) whether the member states of the European Union, the Republic of Korea, Australia, Israel, or Japan have legislative or administrative standards providing for the imposition of trade sanctions on persons or their affiliates doing business or having investments in Iran or Libya;

(2) the extent and duration of each instance of the application of such sanctions; and

(3) the disposition of any decision with respect to such sanctions by the World Trade Organization or its predecessor organization.

⁷ President. 50 USC 1701 note.

⁸ Notification.

SEC. 5.⁹ IMPOSITION OF SANCTIONS.

(a) Sanctions With Respect to Iran.—Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, with actual knowledge, on or after the date of the enactment of this Act, made an investment of \$40,000,000 or more (or any combination of investments of at least \$10,000,000 each, which in the aggregate equals or exceeds \$40,000,000 in any 12-month period), that directly and significantly contributed to the enhancement of Iran’s ability to develop petroleum resources of Iran.

(b) Mandatory Sanctions With Respect to Libya.—

(1) Violations of prohibited transactions.—Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, with actual knowledge, on or after the date of the enactment of this Act, exported, transferred, or otherwise provided to Libya any goods, services, technology, or other items the provision of which is prohibited under paragraph 4(b) or 5 of Resolution 748 of the Security Council of the United Nations, adopted March 31, 1992, or under paragraph 5 or 6 of Resolution 883 of the Security Council of the United Nations, adopted November 11, 1993, if the provision of such items significantly and materially—

(A) contributed to Libya’s ability to acquire chemical, biological, or nuclear weapons or destabilizing numbers and types of advanced conventional weapons or enhanced Libya’s military or paramilitary capabilities;

(B) contributed to Libya’s ability to develop its petroleum resources; or

(C) contributed to Libya’s ability to maintain its aviation capabilities.

(2) Investments that contribute to the development of petroleum resources.—Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, with actual knowledge, on or after the date of the enactment of this Act, made an investment of \$40,000,000 or more (or any combination of investments of at least \$10,000,000 each, which in the aggregate equals or exceeds \$40,000,000 in any 12-month period), that directly and significantly contributed to the enhancement of Libya’s ability to develop its petroleum resources.

(c) Persons Against Which the Sanctions Are To Be Imposed.—The sanctions described in subsections (a) and (b) shall be imposed on—

(1) any person the President determines has carried out the activities described in subsection (a) or (b); and

(2) any person the President determines—

(A) is a successor entity to the person referred to in paragraph (1);

(B) is a parent or subsidiary of the person referred to in paragraph (1) if that parent or subsidiary, with actual knowledge, engaged in the activities referred to in paragraph (1); or

(C) is an affiliate of the person referred to in paragraph (1) if that affiliate, with actual knowledge, engaged in the activities referred to in paragraph (1) and if that affiliate is controlled in fact by the person referred to in paragraph (1).

For purposes of this Act, any person or entity described in this subsection shall be referred to as a “sanctioned person”.

⁹ President. 50 USC 1701 note.

(d) **Publication in Federal Register.**—The President shall cause to be published in the Federal Register a current list of persons and entities on whom sanctions have been imposed under this Act. The removal of persons or entities from, and the addition of persons and entities to, the list, shall also be so published.

(e) **Publication of Projects.**—The President shall cause to be published in the Federal Register a list of all significant projects which have been publicly tendered in the oil and gas sector in Iran.

(f) **Exceptions.**—The President shall not be required to apply or maintain the sanctions under subsection (a) or (b)--

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(B) if the President determines in writing that the person to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(C) if the President determines in writing that such articles or services are essential to the national security under defense coproduction agreements;

(2) in the case of procurement, to eligible products, as defined in section 308(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b)(1) of that Act (19 U.S.C. 2511(b)(1));

(3) to products, technology, or services provided under contracts entered into before the date on which the President publishes in the Federal Register the name of the person on whom the sanctions are to be imposed;

(4) to—

(A) spare parts which are essential to United States products or production;

(B) component parts, but not finished products, essential to United States products or production; or

(C) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(6) to information and technology essential to United States products or production; or

(7) to medicines, medical supplies, or other humanitarian items.

SEC. 6.¹⁰ DESCRIPTION OF SANCTIONS.

The sanctions to be imposed on a sanctioned person under section 5 are as follows:

(1) **Export-import bank assistance for exports to sanctioned persons.**—The President may direct the Export-Import Bank of the United States not to give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to any sanctioned person.

¹⁰ 50 USC 1701 note.

- (2) **Export sanction.**—The President may order the United States Government not to issue any specific license and not to grant any other specific permission or authority to export any goods or technology to a sanctioned person under—
- (i) the Export Administration Act of 1979;
 - (ii) the Arms Export Control Act;
 - (iii) the Atomic Energy Act of 1954; or
 - (iv) any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.
- (3) **Loans from United States financial institutions.**—The United States Government may prohibit any United States financial institution from making loans or providing credits to any sanctioned person totaling more than \$10,000,000 in any 12-month period unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.
- (4) **Prohibitions on financial institutions.**—The following prohibitions may be imposed against a sanctioned person that is a financial institution:
- (A) **Prohibition on designation as primary dealer.**—Neither the Board of Governors of the Federal Reserve System nor the Federal Reserve Bank of New York may designate, or permit the continuation of any prior designation of, such financial institution as a primary dealer in United States Government debt instruments.
 - (B) **Prohibition on service as a repository of government funds.**—Such financial institution may not serve as agent of the United States Government or serve as repository for United States Government funds. The imposition of either sanction under subparagraph (A) or (B) shall be treated as 1 sanction for purposes of section 5, and the imposition of both such sanctions shall be treated as 2 sanctions for purposes of section 5.
- (5) **Procurement sanction.**—The United States Government may not procure, or enter into any contract for the procurement of, any goods or services from a sanctioned person.
- (6) **Additional sanctions.**—The President may impose sanctions, as appropriate, to restrict imports with respect to a sanctioned person, in accordance with the International Emergency Economic Powers Act (50 U.S.C. 1701 and following).

SEC. 7.¹¹ ADVISORY OPINIONS.

The Secretary of State may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this Act. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, will not be made subject to such sanctions on account of such activity.

SEC. 8.¹² TERMINATION OF SANCTIONS.

(a) **Iran.**—The requirement under section 5(a) to impose sanctions shall no longer have force or effect with respect to Iran if the President determines and certifies to the appropriate congressional committees that Iran—

- (1) has ceased its efforts to design, develop, manufacture, or acquire—

¹¹ 50 USC 1701 note.

¹² 50 USC 1701 note.

- (A) a nuclear explosive device or related materials and technology;
- (B) chemical and biological weapons; and
- (C) ballistic missiles and ballistic missile launch technology; and

(2) has been removed from the list of countries the governments of which have been determined, for purposes of section 6(j) of the Export Administration Act of 1979, to have repeatedly provided support for acts of international terrorism.

(b) *Libya.*—The requirement under section 5(b) to impose sanctions shall no longer have force or effect with respect to Libya if the President determines and certifies to the appropriate congressional committees that Libya has fulfilled the requirements of United Nations Security Council Resolution 731, adopted January 21, 1992, United Nations Security Council Resolution 748, adopted March 31, 1992, and United Nations Security Council Resolution 883, adopted November 11, 1993.

SEC. 9.¹³ DURATION OF SANCTIONS; PRESIDENTIAL WAIVER.

(a) *Delay of Sanctions.*—

(1) *Consultations.*—If the President makes a determination described in section 5(a) or 5(b) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions under this Act.

(2) *Actions by government of jurisdiction.*—In order to pursue consultations under paragraph (1) with the government concerned, the President may delay imposition of sanctions under this Act for up to 90 days. Following such consultations, the President shall immediately impose sanctions unless the President determines and certifies to the Congress that the government has taken specific and effective actions, including, as appropriate, the imposition of appropriate penalties, to terminate the involvement of the foreign person in the activities that resulted in the determination by the President under section 5(a) or 5(b) concerning such person.

(3) *Additional delay in imposition of sanctions.*—The President may delay the imposition of sanctions for up to an additional 90 days if the President determines and certifies to the Congress that the government with primary jurisdiction over the person concerned is in the process of taking the actions described in paragraph (2).

(4) *Report to congress.*—Not later than 90 days after making a determination under section 5(a) or 5(b), the President shall submit to the appropriate congressional committees a report on the status of consultations with the appropriate foreign government under this subsection, and the basis for any determination under paragraph (3).

(b) *Duration of Sanctions.*—A sanction imposed under section 5 shall remain in effect—

(1) for a period of not less than 2 years from the date on which it is imposed; or

(2) until such time as the President determines and certifies to the Congress that the person whose activities were the basis for imposing the sanction is no longer engaging in such activities and that the President has received reliable assurances that such person will not knowingly engage in such activities in the future, except that such sanction shall remain in effect for a period of at least 1 year.

(c) *Presidential Waiver.*—

(1) *Authority.*—The¹⁴ President may waive the requirement in section 5 to impose a sanction or sanctions on a person described in section 5(c), and may waive the continued

¹³ 50 USC 1701 note.

¹⁴ Reports.

imposition of a sanction or sanctions under subsection (b) of this section, 30 days or more after the President determines and so reports to the appropriate congressional committees that it is important to the national interest of the United States to exercise such waiver authority.

(2) Contents of report.—Any report under paragraph (1) shall provide a specific and detailed rationale for the determination under paragraph (1), including—

(A) a description of the conduct that resulted in the determination under section 5(a) or (b), as the case may be;

(B) in the case of a foreign person, an explanation of the efforts to secure the cooperation of the government with primary jurisdiction over the sanctioned person to terminate or, as appropriate, penalize the activities that resulted in the determination under section 5(a) or (b), as the case may be;

(C) an estimate as to the significance—

(i) of the provision of the items described in section 5(a) to Iran's ability to develop its petroleum resources, or

(ii) of the provision of the items described in section 5(b)(1) to the abilities of Libya described in subparagraph (A), (B), or (C) of section 5(b)(1), or of the investment described in section 5(b)(2) on Libya's ability to develop its petroleum resources, as the case may be; and

(D) a statement as to the response of the United States in the event that the person concerned engages in other activities that would be subject to section 5(a) or (b).

(3) Effect of report on waiver.—If the President makes a report under paragraph (1) with respect to a waiver of sanctions on a person described in section 5(c), sanctions need not be imposed under section 5(a) or (b) on that person during the 30-day period referred to in paragraph (1).

SEC. 10.¹⁵ REPORTS REQUIRED.

(a) Report on Certain International Initiatives.—Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the President shall transmit a report to the appropriate congressional committees describing—

(1) the efforts of the President to mount a multilateral campaign to persuade all countries to pressure Iran to cease its nuclear, chemical, biological, and missile weapons programs and its support of acts of international terrorism;

(2) the efforts of the President to persuade other governments to ask Iran to reduce the presence of Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran and to withdraw any such diplomats or representatives who participated in the takeover of the United States embassy in Tehran on November 4, 1979, or the subsequent holding of United States hostages for 444 days;

(3) the extent to which the International Atomic Energy Agency has established regular inspections of all nuclear facilities in Iran, including those presently under construction; and

(4) Iran's use of Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran to promote acts of international terrorism or to develop or sustain Iran's nuclear, chemical, biological, and missile weapons programs.

¹⁵ President. 50 USC 1701 note.

(b) Other Reports.—The President shall ensure the continued transmittal to the Congress of reports describing—

(1) the nuclear and other military capabilities of Iran, as required by section 601(a) of the Nuclear Non-Proliferation Act of 1978 and section 1607 of the National Defense Authorization Act for Fiscal Year 1993; and

(2) the support provided by Iran for acts of international terrorism, as part of the Department of State’s annual report on international terrorism.

SEC. 11.¹⁶ DETERMINATIONS NOT REVIEWABLE.

A determination to impose sanctions under this Act shall not be reviewable in any court.

SEC. 12.¹⁷ EXCLUSION OF CERTAIN ACTIVITIES.

Nothing in this Act shall apply to any activities subject to the reporting requirements of title V of the National Security Act of 1947.

SEC. 13.¹⁸ EFFECTIVE DATE; SUNSET.

(a) Effective Date.—This Act shall take effect on the date of the enactment of this Act.

(b) Sunset.—This Act shall cease to be effective on the date that is 5 years after the date of the enactment of this Act.

SEC. 14.¹⁹ DEFINITIONS.

As used in this Act:

(1) Act of international terrorism.—The term “act of international terrorism” means an act—

(A) which is violent or dangerous to human life and that is a violation of the criminal laws of the United States or of any State or that would be a criminal violation if committed within the jurisdiction of the United States or any State; and

(B) which appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(2) Appropriate congressional committees.—The term “appropriate congressional committees” means the Committee on Finance, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Foreign Relations of the Senate and the Committee on Ways and Means, the Committee on Banking and Financial Services, and the Committee on International Relations of the House of Representatives.

(3) Component part.—The term “component part” has the meaning given that term in section 11A(e)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2410a(e)(1)).

(4) Develop and development.—To “develop”, or the “development” of, petroleum resources means the exploration for, or the extraction, refining, or transportation by pipeline of, petroleum resources.

¹⁶ 50 USC 1701 note.

¹⁷ 50 USC 1701 note.

¹⁸ 50 USC 1701 note.

¹⁹ 50 USC 1701 note.

(5) Financial institution.—The term “financial institution” includes—

(A) a depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act), including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

(B) a credit union;

(C) a securities firm, including a broker or dealer;

(D) an insurance company, including an agency or underwriter; and

(E) any other company that provides financial services.

(6) Finished product.—The term “finished product” has the meaning given that term in section 11A(e)(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2410a(e)(2)).

(7) Foreign person.—The term “foreign person” means—

(A) an individual who is not a United States person or an alien lawfully admitted for permanent residence into the United States; or

(B) a corporation, partnership, or other nongovernmental entity which is not a United States person.

(8) Goods and technology.—The terms “goods” and “technology” have the meanings given those terms in section 16 of the Export Administration Act of 1979 (50 U.S.C. App. 2415).

(9) Investment.—The term “investment” means any of the following activities if such activity is undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Government of Iran or a nongovernmental entity in Iran, or with the Government of Libya or a nongovernmental entity in Libya, on or after the date of the enactment of this Act:

(A) The entry into a contract that includes responsibility for the development of petroleum resources located in Iran or Libya (as the case may be), or the entry into a contract providing for the general supervision and guarantee of another person’s performance of such a contract.

(B) The purchase of a share of ownership, including an equity interest, in that development.

(C) The entry into a contract providing for the participation in royalties, earnings, or profits in that development, without regard to the form of the participation.

The term “investment” does not include the entry into, performance, or financing of a contract to sell or purchase goods, services, or technology.

(10) Iran.—The term “Iran” includes any agency or instrumentality of Iran.

(11) Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran.—The term “Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran” includes employees, representatives, or affiliates of Iran’s—

(A) Foreign Ministry;

(B) Ministry of Intelligence and Security;

(C) Revolutionary Guard Corps;

(D) Crusade for Reconstruction;

- (E) Qods (Jerusalem) Forces;
 - (F) Interior Ministry;
 - (G) Foundation for the Oppressed and Disabled;
 - (H) Prophet's Foundation;
 - (I) June 5th Foundation;
 - (J) Martyr's Foundation;
 - (K) Islamic Propagation Organization; and
 - (L) Ministry of Islamic Guidance.
- (12) Libya.—The term “Libya” includes any agency or instrumentality of Libya.
- (13) Nuclear explosive device.—The term “nuclear explosive device” means any device, whether assembled or disassembled, that is designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material (as defined in section 11(aa) of the Atomic Energy Act of 1954) that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT).
- (14) Person.—The term “person” means—
- (A) a natural person;
 - (B) a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and
 - (C) any successor to any entity described in subparagraph (B).
- (15) Petroleum resources.—The term “petroleum resources” includes petroleum and natural gas resources.
- (16) United states or state.—The term “United States” or “State” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other territory or possession of the United States.
- (17) United states person.—The term “United States person” means—
- (A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States; and
 - (B) a corporation or other legal entity which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia, if natural persons described in subparagraph (A) own, directly or indirectly, more than 50 percent of the outstanding capital stock or other beneficial interest in such legal entity.

Approved August 5, 1996.

The Foreign Assistance Act

The Foreign Assistance Act of 1961 (P.L. 87-195) continues to represent the primary governing instrument for banning U.S. foreign assistance to states on the U.S. terrorism list. The most relevant section of the Act is Section 620A, which was first added to the Act in 1976, before the terrorism list was officially established by the Export Administration Act of 1979. Section 620A prohibits the United States from furnishing any assistance under the Act itself, the Agricultural Trade Development and Assistance Act of 1954, the Peace Corps Act, or the Export-Import Bank Act of 1945, to any country determined to be providing repeated support for acts of international terrorism. However, Section 620A allowed for some loopholes that have largely been closed by subsequent legislation. Certain sections of the Act pertaining to foreign assistance or lending to Iran were added by the Antiterrorism and Effective Death Penalty Act (See §3.1). Other loopholes have been closed by successive provisions of foreign aid appropriations laws (See §2.4). Under Section 620A, the President may waive the restriction if he determines that doing so is in the national interest of the United States.

Another section of the Act (Section 307), added by the International Security and Development Cooperation Act of 1985, names Iran (and other countries) as unable to benefit from U.S. contributions to international organizations, such as U.N. development programs. The U.S. government interpretation of this provision is that the United States is required to reduce its contribution to an international program in proportion to the size of the program in the target country. An international organization can still conduct its programs in Iran and other named countries, but doing so results in a reduction of the U.S. contribution to that organization. Monies unused because of the mandated cut remain available for expenditure on other programs. In accordance with a provision of the Foreign Relations Authorization Act for Fiscal Year 1994 and 1995, U.S. contributions to UNICEF and the International Atomic Energy Agency are exempt from this restriction. In addition, in accordance with legislative history and the tradition of congressional intent, the United States does not interpret this provision as applying to international disaster relief aid. The United States did give Iran \$125,000 in earthquake relief aid, furnished through international programs, to help relieve suffering from two earthquakes in 1997.

§2.3 - Foreign Assistance Act of 1961 (P.L. 87-195)

Sec. 620A.^{801, 802} Prohibition on Assistance to Governments Supporting International Terrorism.

(a)⁸⁰³ PROHIBITION.-The United States shall not provide any assistance under this Act, the Agricultural Trade Development and Assistance Act of 1954, the Peace Corps Act, or the Export-Import Bank Act of 1945 to any country if the Secretary of State determines that

⁸⁰¹ 22 U.S.C. 2371

⁸⁰² Section 620A was added by sec. 303 of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94-329; 90 Stat. 753). It was amended and restated by sec. 503(a) of the International Security and Development Cooperation Act of 1985 (Public Law 99-83; 99 Stat. 220). It was further amended and restated by sec. 5 of the Anti-Terrorism and Arms Export Amendments Act of 1989 (Public Law 101-222; 103 Stat. 1897).

Section 10 of the Anti-Terrorism and Arms Export Amendments Act of 1989 (Public Law 101222; 103 Stat. 1900) provided the following in relation to the amendment of sec. 620A:

"SEC. 10. SELF-DEFENSE IN ACCORDANCE WITH INTERNATIONAL LAW.

"The use by any government of armed force in the exercise of individual or collective self-defense in accordance with applicable international agreements and customary international law shall not be considered an act of international terrorism for purposes of the amendments made by this act."

The Foreign Operations, Export Financing and Related Programs Appropriations Act, 1998 (Public Law 105-118; 111 Stat. 2413), provided the following:

"PROHIBITION ON BILATERAL ASSISTANCE TO TERRORIST COUNTRIES

"SEC. 527. (a) Notwithstanding any other provision of law, funds appropriated for bilateral assistance under any heading of this Act and funds appropriated under any such heading in a provision of law enacted prior to enactment of this Act, shall not be made available to any country which the President determines –

"(1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism; or

"(2) otherwise supports international terrorism.

"(b) The President may waive the application of subsection (a) to a country if the President determines that national security or humanitarian reasons justify such waiver. The President shall publish each waiver in the Federal Register and, at least 15 days before the waiver takes effect, shall notify the Committees on Appropriations of the Waiver (including the justification for the waiver) in accordance with the regular notification procedures of the Committees on Appropriations".

* * * * *

"PROHIBITION ON ASSISTANCE TO FOREIGN GOVERNMENTS THAT EXPORT LETHAL MILITARY EQUIPMENT TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM

"SEC. 550. (a) None of the funds appropriated or otherwise made available by this Act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for purposes of section 40(d) of the Arms Export Control Act. The prohibition under this section with respect a foreign government shall terminate 12 months after that government ceases to provide such. military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after October 1, 1997.

"(b) Assistance restricted by subsection (a) or any other similar provision of law, may be furnished if the President determines that furnishing such assistance is important to the national interests of the United States.

"(c) Whenever the waiver of subsection (b) is exercised, the President shall submit to the appropriate congressional committees a report with respect to the furnishing of such assistance. Any such report shall include a detailed explanation of the assistance estimated to be provided, including the estimated dollar amount of such assistance and an explanation of how the assistance furthers United States national interests.

See also in that Act: sec. 539-Special Authorities; Sec. 542-Eligibility for Assistance; and sect 558-Special Debt Relief for the Poorest.

See also sec. 586 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1991 (Public Law 101-513; 104 Stat. 2047), cited as the "Iraq Sanctions Act of 1990", in *Legislation on Foreign Relations Through 1997*, vol. I-B.

⁸⁰³ See also 18 U.S.C. 2332d , as added by sec. 321 of Public Law 104-132 (110 Stat. 1254), which Provides that U.S. persons engaging in financial transactions with the government of a country designated as supporting international terrorism under sec. 6(j) of the Export Administration Act (50 U.S.C. App. 2405) shall be fined under title 18, imprisoned for not more than 20 years, or both.

the government of that country has repeatedly provided support for acts of international terrorism.

(b) PUBLICATION OF DETERMINATIONS.-Each determination of the Secretary of State under subsection (a), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989, shall be published in the Federal Register.

(c) RESCISSION.-A determination made by the Secretary of State under subsection (a) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate (1) before the proposed rescission would take effect, a report certifying that-

(A) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(B) that government is not supporting acts of international terrorism;

(C) that government has provided assurances that it will not support acts of international terrorism in the future; or

(2) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that

(A) the government concerned has not provided any support for international terrorism during the preceding 6 month period; and

(B) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(d) WAIVER.-Assistance prohibited by subsection (a) may be provided to a country described in that subsection if-

(1) the President determines that national security interests or humanitarian reasons justify a waiver of subsection (a), except that humanitarian reasons may not be used to justify assistance under part II of this Act (including chapter 4, chapter 6, and chapter 8), or the Export-Import Bank Act of 1945; and (2) at least 15 days before the waiver takes effect, the President consults with the Committee on Foreign Affairs 1104 of the House of Representatives⁸⁰⁴ and the Committee on Foreign Relations of the Senate regarding the proposed waiver and submits a report to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate containing-

(A) the name of the recipient country;

(B) a description of the national security interests or humanitarian reasons which require the waiver;

(C) the type and amount of and the justification for the assistance to be provided pursuant to the waiver; and

(D) the period of time during which such waiver will be effective.

The waiver authority granted in this subsection may not be used to provide any assistance under the Foreign Assistance Act of 1961 which is also prohibited by section 40 of the Arms Export Control Act.

⁸⁰⁴ Sec. 1(a)(5) of Public Law., 104-14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

Foreign Assistance Act of 1961 (P.L. 87-195)

Sec. 306.359 Reports on International Organizations.-The annual reports to the Congress under section 2 of the Act of September 21, 1950 (64 Stat. 902, 22 U.S.C. 262a), shall be submitted within nine months after the end of the fiscal year to which they relate.

Sec. 307.360 Withholding of United States Proportionate Share for Certain Programs of International Organizations.-4a) Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this chapter shall be available for the United States proportionate share for programs for Burma, Iraq, North Korea, Syria,³⁶¹ Libya, Iran, Cuba, or the Palestine Liberation Organization or for projects whose purpose is to provide benefits to the Palestine Liberation Organization or entities associated with it³⁶² or at the discretion of the President, Communist countries listed in section 620(f) of this Act.³⁶³

³⁶¹ Sec. 431(a)(1) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236; 108 Stat. 459) struck out "the South-West Africa People's Organization" and inserted "Burma, Iraq, North Korea, Syria".

Sec. 431(b) of Public Law 103-236 (108 Stat. 459) further provided the following:

"(b) UNITED NATIONS DEVELOPMENT PROGRAM.-

"(1) Except as provided in paragraphs (2) and (3), for fiscal years 1994 and 1995 none of the funds made available for United Nations Development Program or United Nations Development Program-Administered Funds shall be available for programs and activities in or for Burma.

"(2) Of the funds made available for United Nations Development Program and United Nations Development Program-Administered Funds for fiscal year 1994, \$11,000,000 may be available only if the President certifies to the Congress that the United Nations Development Program's programs and activities in or for Burma promote the enjoyment of internationally guaranteed human rights in Burma and do not benefit the State Law and Order Restoration Council (SLORC) military regime.

"(3) Of the funds made available for United Nations Development Program and United Nations Development Program-Administered Funds for fiscal year 1995, \$27,600,000 may be available only if the President certifies to the Congress that-

"(A) the United Nations Development Program has approved or initiated no new programs and no new funding for existing programs in or for Burma since the United Nations Development Program Governing Council (Executive Board) meeting of June 1993,

"(B) such programs address unforeseen urgent humanitarian concerns, or

"(C) a democratically elected government in Burma has agreed to such programs."

³⁶² Sec. 3 of the Middle East Peace Facilitation Act of 1993, as amended (Public Law 103125; 107 Stat. 1309), authorized the President to suspend certain provisions of law, including sec. 307 of this Act, as they applied to the P.L.O. or entities associated with it if certain conditions were met and the President so certified and consulted with relevant congressional committees. This authority was continued in the Middle East Peace Facilitation Act of 1994 (part E of Public Law 103-236) and the Middle East Peace Facilitation Act of 1995, (title VI of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996; Public Law 104-107).

The President issued such a certification in Presidential Determination No. 94-13 of January 14, 1994 (59 F.R. 4777), which was extended until January 1, 1995, by Presidential Determination No. 94-30 of June 30, 1994 (59 F.R. 35607); until July 1, 1995, by Presidential Determination No. 95-12 of December 31, 1994 (60 F.R. 2673); until August 15, 1995, by Presidential Determination No. 95-31 of July 2, 1995 (60 F.R. 35827); until October 1, 1995, by Presidential Determination No. 95-36 of August 14, 1995 (60 F.R. 44725); until November 1, 1995, by Presidential Determination No. 95-50 of September 30, 1995 (60 F.R. 53093); until December 31, 1995, by Presidential Determination go. 96-5 of November 13, 1995 (60 F.R. 57821); until March 31, 1996, by Presidential Determination No. 96-8 of January 4, 1996 (61 F.R. 2889); until June 15, 1996, by Presidential Determination No. 96-20 of April 1, 1996 (61 F.R. 26019); until August 12, 1996, by Presidential Determination No. 96-32 of June 14, 1996 (61 F.R. 32629); until February 12, 1997, by Presidential Determination No. 96-41 of August 12, 1996 (61 F.R. 43137); and until August 12, 1997, by Presidential Determination No. 97-17 of February 21, 1997 (62 F.R. 9903).

New authority to waive certain provisions was continued in general provisions of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (division A, sec. 101(d) of Public Law 105-277; 112 Stat. 2681); see secs. 540(c) and (d), 553, 556, and 566. See also, however, sec. 581 of that Act, which prohibits assistance to the Palestinian Broadcasting Corporation.

On December 5, 1997, the President waived the provisions of section 1003 of the Anti-Terrorism Act of 1987 (Public Law 100-204) through June 4, 1998 (Presidential Determination No. 98-8; 62 F.R. 66255).

(b) The Secretary of State

(1) shall review, at least annually, the budgets and accounts of all international organizations receiving payments of any funds authorized to be appropriated by this chapter; and

(2) shall report to the appropriate committees of the Congress the amounts of funds expended by each such organization for the purposes described in subsection (a) and the amount contributed by the United States to each such organization.

(c) ³⁶⁴ (1) Subject to paragraph (2), the limitations³⁶⁵ of subsection (a) shall not apply to contributions to the International Atomic Energy Agency or the United Nations Children's Fund (UNICEF).

(2) ³⁶⁵ (A) Except as provided in subparagraph (B), with respect to funds authorized to be appropriated by this chapter and available for the International Atomic Energy Agency, the limitations of subsection (a) shall apply to programs or projects of such Agency in Cuba.

(B)(i) Subparagraph (A) shall not apply with respect to programs or projects of the International Atomic Energy Agency that provide for the discontinuation, dismantling, or safety inspection of nuclear facilities or related materials, or for inspections and similar activities designed to prevent the development of nuclear weapons by a country described in subsection (a).

(ii) Clause (i) shall not apply with respect to the Juragua Nuclear Power Plant near Cienfuegos, Cuba, or the Pedro Pi Nuclear Research Center unless Cuba-

(I) ratifies the Treaty on the Non-Proliferation of Nuclear Weapons (21 UST 483) or the Treaty for the Prohibition of Nuclear Weapons in Latin America (commonly known as the Treaty of Tlatelolco);

(II) negotiates full-scope safeguards of the International Atomic Energy Agency not later than two years after ratification by Cuba of such Treaty; and

(III) incorporates internationally accepted nuclear safety standards.

³⁶³ Sec. 516 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (division A, sec. 101(d) of Public Law 105-277; 112 Stat. 2681) added ", or at the discretion of the President, Communist countries listed in section 620(f) of this Act."

³⁶⁴ Sec. 431(a)(2) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236; 108 Stat. 459) added subsec. (c).

³⁶⁵ Sec. 2809(a)(1) of the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999 (subdivision B of division G of Public Law 105-277; 112 Stat. 2681) struck out "The limitations" and inserted in lieu thereof "(1) Subject to paragraph (2), the limitations". Sec. 2809(a 2) of that Act added para. (2). See also sec. 2809(b) and (c) of that Act, in *Legislation on Foreign Relations Through 1998*, vol. II.

Foreign Assistance Appropriations

Some restrictions on certain types of U.S. foreign assistance to Iran are a function of annual foreign aid appropriations, and not, as in the case of the Foreign Assistance Act of 1961, permanent law. This means that, in any given year, dropping Iran from a list of named countries could open Iran to these aspects of U.S. foreign assistance.

Attached are the relevant portions of the report issued by a House-Senate conference committee (published in the Congressional Record at pages H11044-11545) on the fiscal year 1999 foreign assistance appropriation signed into law on October 21, 1998 as P.L. 105-277. Section 507 (H 11090) is the provision banning direct assistance to named countries. This provision has been included in -- and named Iran in -- every foreign aid appropriations law since fiscal year 1988. Since 1990, the provision has specified the direct assistance to include direct loans, credits, insurance, and Export-Import bank guarantees. The provision provides no possibility of a waiver.

Another provision (Section 523 at H11092), enacted every year since fiscal year 1989, bans indirect assistance to the named country. Again, Iran has been named every year. Such indirect assistance is interpreted as including U.S. contributions to multilateral development banks or international organizations that loan to or work in Iran. Provision for a presidential waiver on national interest grounds is included. The penalties have been waived every year since their first inclusion on the grounds that it would be contrary to the U.S. national interest to cut off U.S. contributions to these organizations entirely.

An additional provision pertaining to Iran under the subtitle, "Assistance for the New Independent States of the Former Soviet Union" (H11087) continues the secondary sanctions themes established by the Iran-Iraq Arms Non-Proliferation Act (§4.21), the Anti-Terrorism and Effective Death Penalty Act (§3.1), and Executive order 13094 (§4.31). The provision, which has been enacted every year since fiscal year 1997, cuts 50% of U.S. aid to the Russian government if Russia is determined to be assisting Iran's nuclear or ballistic missile programs. The provision in the fiscal year 1997 appropriation did not include assistance to Iran's ballistic missile program as sanctionable, but subsequent versions have. Whether or not ballistic missile assistance is included in the provision, Russia has refused to cancel the Bushehr nuclear reactor project outright. Therefore, the Administration has deemed Russia sanctionable under the provision. The fiscal year 1998 version of the bill provides no option of waiver, forcing the Administration to reallocate half the planned aid to the Russian government to private sector programs in Russia. As noted at H11087, a national interest waiver clause was provided in the fiscal year 1999 version of the provision.

Finally, the conference report contains a provision authorizing the President to withhold aid to Bosnia-Herzegovina if the President determines that Iranian officials or agents are exercising influence in Bosnia (H11087). Earlier versions of the provision mandated an aid cut unless the President could certify that Iran ceased to exercise influence in Bosnia, however, the provided waiver has been exercised in all previous cases.

§2.4 - FOREIGN ASSISTANCE APPROPRIATION

105th CONGRESS
 2D SESSION
 H.R. 4328
 CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4328) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1999, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

DIVISION A OMNIBUS CONSOLIDATED APPROPRIATIONS

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the several departments, agencies, corporations and other organizational units of the Government for the fiscal year 1999, and for other purposes, namely:

.....

(H 11087)
 ASSISTANCE FOR EASTERN EUROPE AND THE BALTIC STATES

.....

(e) The President is authorized to withhold funds appropriated under this heading made available for economic revitalization programs in Bosnia and Herzegovina, if he determines and certifies to the Committees on Appropriations that the Federation of Bosnia and Herzegovina has not complied with article III of annex 10A of the General Framework Agreement for Peace in Bosnia and Herzegovina concerning the withdrawal of foreign forces, and that intelligence cooperation on training, investigations, and related activities between Iranian officials and Bosnian officials has not been terminated.

.....

ASSISTANCE FOR THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION

.....

(c) (1) Of the funds appropriated under this heading that are allocated for assistance for the Government of Russia, 50 percent shall be withheld from obligation until the President determines and certifies in writing to the Committees on Appropriations that the Government of Russia has terminated implementation of arrangements to provide Iran with technical expertise, training, technology, or equipment necessary to develop a nuclear reactor, related nuclear research facilities or programs, or ballistic missile capability.

(2) Notwithstanding paragraph (1) assistance may be provided for the Government of Russia if the President determines and certifies to the Committees on Appropriations that making such funds available:

(A) is vital to the national security interest of the United States; and

(B) that the Government of Russia is taking meaningful steps to limit major supply contracts and to curtail the transfer of technology and technological expertise related to activities referred to in paragraph (1)

.....

(H 11090)
PROHIBITION ON FINANCING NUCLEAR GOODS

SEC. 506. None of the funds appropriated or made available (other than funds for Nonproliferation, Antiterrorism, Demining and Related Programs) pursuant to this Act, for carrying out the Foreign Assistance Act of 1961, may be used, except for purposes of nuclear safety, to finance the export of nuclear equipment, fuel or technology.

PROHIBITION AGAINST DIRECT FUNDING FOR CERTAIN COUNTRIES

SEC. 507. None of the funds appropriated or other-wise made available pursuant to this Act shall be obligated or expended to finance directly any assistance or reparations to Cuba, Iraq, Libya, North Korea, Iran, Sudan, or Syria: Provided, That for purposes of this section, the prohibition on obligations or expenditures shall include direct loans, credits, insurance and guarantees of the Export-Import Bank or its agents.

.....

(H 11092)
PROHIBITION AGAINST INDIRECT FUNDING TO CERTAIN COUNTRIES

SEC. 523. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated to finance indirectly any assistance or reparations to Cuba, Iraq, Libya, Iran, Syria, North Korea, or the People’s Republic of China, unless the President of the United States certifies that the withholding of these funds is contrary to the national interest of the United States.

.....

(H 11099)
SENSE OF CONGRESS REGARDING IRAN

SEC. 586.

- (a) The Congress finds that
 - (1) according to the Department of State, Iran continues to support international terrorism, providing training, financing, and weapons to such terrorist groups as Hizballah, Islamic Jihad and Hamas;
 - (2) Iran continues to oppose the Arab-Israeli peace process and refuses to recognize Israel’s right to exist;
 - (3) Iran continues aggressively to seek weapons of mass destruction and the missiles to deliver them;
 - (4) it is long-standing United States policy to offer official government-to-government dialogue with the Iranian regime, such offers having been repeatedly rebuffed by Tehran;
 - (5) more than a year after the election of President Khatemi, Iranian foreign policy continues to threaten American security and that of our allies in the Middle East; and
 - (6) despite repeated offers and tentative steps toward rapprochement with Iran by the Clinton Administration, including a decision to waive sanctions under the Iran-Libya Sanctions

Act and the President's veto of the Iran Missile Proliferation Sanctions Act, Iran has failed to reciprocate in a meaningful manner.

(b) Therefore it is the sense of the Congress that

(1) the Administration should make no concessions to the Government of Iran unless and until that government moderates its objectionable policies, including taking steps to end its support of international terrorism, opposition to the Middle East peace process, and the development and proliferation of weapons of mass destruction and their means of delivery; and

(2) there should be no change in United States policy toward Iran until there is credible and sustained evidence of a change in Iranian policies.

SEC. 2417. RADIO BROADCASTING TO IRAN IN THE FARSI LANGUAGE.

(a) RADIO FREE IRAN. Not more than \$2,000,000 of the funds made available under section 2401(a)(4) of this division for each of the fiscal years 1998 and 1999 for grants to RFE/RL, Incorporated, shall be available only for surrogate radio broadcasting by RFE/RL, Incorporated, to the Iranian people in the Farsi language, such broadcasts to be designated as Radio Free Iran.

(b) REPORT TO CONGRESS. Not later than 60 days after the date of enactment of this Act, the Broadcasting Board of Governors of the United States Information Agency shall submit a detailed report to Congress describing the costs, implementation, and plans for creation of the surrogate broadcasting service described in subsection (a).

(c) AVAILABILITY OF FUNDS. None of the funds made available under subsection (a) may be made available report required under subsection (b).

Iranian Transactions Regulations

Published at 31 C.F.R. 560, the Iranian Transactions Regulations implement the provisions of the laws and executive orders governing U.S. commerce with Iran.

Of particular note, is Section 560.510 of the regulations. This section allows for specific licenses for U.S.-Iran financial transactions in connection with awards or decisions of the Iran-United States Claims Tribunal. This section was issued to ensure that the May 1995 U.S. trade and investment ban did not interfere with the settlement of claims in that process. Section 560.513 reflects a decision by the Bush Administration to evaluate licenses for the importation of Iranian oil to the United States when that oil import is being used to settle a claim decided at the Iran-United States Claims Tribunal.

Section 560.210 specifies that U.S. citizens are permitted to donate humanitarian items to Iran to relieve humanitarian suffering, and allows for telephone and postal contact between the two countries, as well as exchanges of informational materials (such as newspapers and magazines).

Section 560.528 provides for the issuing of specific licenses for the export to Iran of goods or technology to insure the safe operation of U.S.-origin commercial aircraft.

In late July 1999, the regulations were amended to provide for the consideration of licenses of commercial sales of food and medicine to Iran (and other states under a U.S. trade ban). The amendment is attached.

§2.5.1 - IRANIAN TRANSACTIONS REGULATIONS

TITLE 31--MONEY AND FINANCE: TREASURY
DEPARTMENT OF THE TREASURY
PART 560--IRANIAN TRANSACTIONS REGULATIONS

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

Sec. 560.101 Relation of this part to other laws and regulations.

Subpart B--Prohibitions

- 560.201 Prohibited importation of goods and services from Iran.
- 560.202 [Reserved]
- 560.203 Evasions; attempts.
- 560.204 Prohibited exportation of goods, technology, and services to Iran.
- 560.205 Prohibited reexportation of goods and technology to Iran.
- 560.206 Prohibited transactions related to Iranian-origin goods or services.
- 560.207 Prohibited investment.
- 560.208 Prohibited approval or facilitation.
- 560.209 Prohibited transactions with respect to the development of Iranian petroleum resources.
- 560.210 Exempt transactions.

Subpart C--General Definitions

- 560.301 Effective date.
- 560.302 [Reserved]
- 560.303 Iran; Iranian.
- 560.304 Government of Iran.
- 560.305 Person; entity.
- 560.306 Iranian-origin goods and services.
- 560.307 United States.
- 560.308 Importation.
- 560.309 [Reserved]
- 560.310 License.
- 560.311 General license.
- 560.312 Specific license.
- 560.313 Entity owned or controlled by the Government of Iran.
- 560.314 United States person.
- 560.315 Information or informational materials.
- 560.316 New investment.
- 560.317 Credits or loans.
- 560.318 Technology.
- 560.319 United States depository institution.
- 560.320 Iranian accounts.

Subpart D--Interpretations

- 560.401 Reference to amended sections.
- 560.402 Effect of amendment.
- 560.403-560.405 [Reserved]
- 560.406 Transshipments prohibited.

- 560.407 Transactions related to Iranian-origin goods.
- 560.408 Importation into and release from a bonded warehouse or foreign trade zone.
- 560.409 [Reserved]
- 560.410 Exportation of services.
- 560.411 Offshore transactions in Iranian-origin goods and services.
- 560.412 Extensions of credits or loans to Iran.
- 560.413 Letter of credit payments by Iranian banks in the United States.
- 560.414 Exports to third countries; reexports.

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

- 560.501 Effect of license or authorization.
- 560.502 Exclusion from licenses and authorizations.
- 560.503-560.504 [Reserved]
- 560.505 Certain services relating to participation in various events authorized.
- 560.506 Importation and exportation of certain gifts authorized.
- 560.507 Accompanied baggage authorized.
- 560.508 Telecommunications and mail transactions authorized.
- 560.509 Certain transactions related to patents, trademarks and copyrights authorized.
- 560.510 Transactions related to the resolution of disputes between the United States or United States nationals and the Government of Iran.
- 560.511 [Reserved]
- 560.512 Iranian Government missions in the United States.
- 560.513 Importation of Iranian-origin oil.
- 560.514 [Reserved]
- 560.515 30-day delayed effective date for pre-May 7, 1995 trade contracts involving Iran.
- 560.516 Payment and United States dollar clearing transactions involving Iran.
- 560.517 Exportation of services: Iranian accounts at United States depository institutions.
- 560.518 Transactions in Iranian-origin and Iranian Government property.
- 560.519 Policy governing news organization offices.
- 560.520 Exportation of agricultural commodities.
- 560.521 Diplomatic pouches.
- 560.522 Allowable payments for overflights of Iranian airspace.
- 560.523 Importation of information and informational materials.
- 560.524 Household goods and personal effects.
- 560.525 Exportation of certain legal services.
- 560.526 Commodities trading and related transactions.
- 560.527 Rescheduling existing loans.
- 560.528 Aircraft safety.

Subpart F--Reports

- 560.601 Records and reports.
- 560.602 [Reserved]
- 560.603 Reports on oil transactions engaged in by foreign affiliates.

Subpart G--Penalties

- 560.701 Penalties.
- 560.702 Detention of shipments.
- 560.703 Prepenalty notice.
- 560.704 Presentation responding to prepenalty notice.
- 560.705 Penalty notice.

560.706 Referral for administrative collection measures or to United States Department of Justice.

Subpart H--Procedures

560.801 Procedures.

560.802 Delegation by the Secretary of the Treasury.

560.803 Customs procedures: Goods specified in Sec. 560.201.

Subpart I--Paperwork Reduction Act

560.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 2349aa-9; 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); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356.

Source: 60 FR 47063, Sept. 11, 1995, unless otherwise noted.

IRANIAN TRANSACTIONS REGULATIONS

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

Sec. 560.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter, including part 535 of this chapter, "Iranian Assets Control Regulations," 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. 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 regulations authorizes any transaction prohibited by this part.

(b) 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.[60 FR 47063, Sept. 11, 1995, as amended at 62 FR 45109, Aug. 25, 1997]

Subpart B--Prohibitions

Sec. 560.201 Prohibited importation of goods and services from Iran.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the importation into the United States, or the financing of such importation, of any goods or services of Iranian origin, other than Iranian-origin publications and materials imported for news publications or news broadcast dissemination, is prohibited.

Sec. 560.202 [Reserved]

Sec. 560.203 Evasions; attempts.

Any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions contained in this part is hereby prohibited.

Sec. 560.204 Prohibited exportation of goods, technology, and services to Iran.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the exportation from the United States to Iran or the Government of Iran, or the financing of such exportation, of any goods, technology, or services is prohibited.

Sec. 560.205 Prohibited reexportation of goods and technology to Iran.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the reexportation to Iran or the Government of Iran of any goods or technology exported from the United States, the exportation of which to Iran was subject to export license application requirements under any United States regulations in effect immediately prior to May 6, 1995, is prohibited, unless the reexportation is of goods that have been substantially transformed outside the United States, or incorporated into another product outside the United States and constitute less than 10 percent by value of that product exported from a third country.

Sec. 560.206 Prohibited transactions related to Iranian-origin goods or services.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, any transaction, including purchase, sale, transportation, swap, financing, or brokering transactions, by a United States person relating to goods or services of Iranian origin or owned or controlled by the Government of Iran is prohibited.

Sec. 560.207 Prohibited investment.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, any new investment by a United States person in Iran or in property (including entities) owned or controlled by the Government of Iran is prohibited.

Sec. 560.208 Prohibited approval or facilitation.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the approval or facilitation by a United States person of the entry into or performance by an entity owned or controlled by a United States person of a transaction or contract prohibited as to United States persons by Secs. 560.205, 560.206, and 560.207, or relating to the financing of activities prohibited as to United States persons by those sections, or of a guaranty of another person's performance of such transaction or contract, is prohibited.

Sec. 560.209 Prohibited transactions with respect to the development of Iranian petroleum resources.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to March 16, 1995, the following are prohibited:

(a) The entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of:

(1) A contract that includes overall supervision and management responsibility for the development of petroleum resources located in Iran, or

- (2) A guaranty of another person's performance under such contract; or
- (b) The entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of
 - (1) A contract for the financing of the development of petroleum resources located in Iran, or
 - (2) A guaranty of another person's performance under such a contract.

Sec. 560.210 Exempt transactions.

(a) Personal communications. The prohibitions of Secs. 560.204 and 560.206 do not apply to any postal, telegraphic, telephonic, or other personal communication, which does not involve the transfer of anything of value.

(b) Humanitarian donations. The prohibitions of Secs. 560.204 and 560.206 do not apply to donations by United States persons of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering

(c) Information and informational materials.

(1) The prohibitions of Secs. 560.204 and 560.206 do not apply to the exportation from the United States to Iran of information and informational materials, as defined in Sec. 560.315, whether commercial or otherwise, regardless of format or medium of transmission, or any transaction of common carriers incident to such exportation.

(2) Paragraph (c)(1) of this section does not authorize transactions related to information and informational materials not fully created and in existence at the date of the transaction, or to the substantive or artistic alteration or enhancement of information or informational materials, or the provision of marketing and business consulting services by a United States person. Such prohibited transactions include, without limitation, payment of advances for information or informational materials not yet created and completed, and provision of services to market, produce or co-produce, create or assist in the creation of information or informational materials.

(3) Paragraph (c)(1) does not authorize transactions incident to the exportation of restricted technical data as defined in part 779 of the Export Administration Regulations, 15 CFR part 779, or to the exportation of goods for use in the transmission of any data. The exportation of such goods to Iran is prohibited, as provided in Sec. 560.204.

(d) Travel. The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages. This exemption extends to transactions with Iranian carriers and those involving group tours and payments in Iran made with cash or traveler's checks for transactions incident to personal travel. The use of currency drafts, charge, debit, or credit cards is not permitted.

(e) Letters of Credit. Letters of credit and other financing agreements with respect to trade contracts in force as of May 6, 1995, may be performed pursuant to their terms with respect to underlying trade transactions occurring prior to 12:01 a.m. EDT, June 6, 1995. See Sec. 560.413.

Subpart C--General Definitions

Sec. 560.301 Effective date.

The term effective date means:

(a) 12:01 p.m., Eastern Standard Time, October 29, 1987, for all prohibitions set forth in Sec. 560.201.

(b) 12:01 a.m., Eastern Daylight Time, June 6, 1995, for all prohibitions set forth in Secs. 560.204, 560.205, and 560.206 with respect to trade transactions based on contracts in force as of May 6, 1995, and which were authorized pursuant to federal regulations in force immediately prior to May 6, 1995.

(c) 12:01 a.m., Eastern Standard Time, March 16, 1995, for all prohibitions set forth in Sec. 560.209 and the prohibitions set forth in Sec. 560.203 as they apply to the prohibitions set forth in Sec. 560.209.

(d) 12:01 a.m., Eastern Daylight Time, May 7, 1995, for all other prohibitions contained in this part.

Sec. 560.302 [Reserved]

Sec. 560.303 Iran; Iranian.

The term Iran means the territory of Iran, and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to an international agreement. The term Iranian means pertaining to Iran as defined in this section.

Sec. 560.304 Government of Iran.

The term Government of Iran includes:

(a) The state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof;

(b) Any entity owned or controlled directly or indirectly by the foregoing;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the applicable effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(d) Any person or entity designated by the Secretary of the Treasury as included within paragraphs (a) through (c) of this section.

Sec. 560.305 Person; entity.

(a) The term person means an individual or entity.

(b) The term entity means a partnership, association, trust, joint venture, corporation or other organization.

Sec. 560.306 Iranian-origin goods and services.

(a) The term goods or services of Iranian origin includes:

(1) Goods grown, produced, manufactured, extracted, or processed in Iran;

(2) Goods which have entered into Iranian commerce; and

(3) Services performed in Iran or by the Government of Iran, as defined in Sec. 560.304.

(b) The term services of Iranian origin does not include:

(1) Diplomatic and consular services performed by or on behalf of the Government of Iran;

(2) Diplomatic and consular services performed by or on behalf of the Government of the United States; or

(3) Services provided in the United States by an Iranian national resident in the United States.

Sec. 560.307 United States.

The term United States means the United States, including its territories and possessions.

Sec. 560.308 Importation.

The term importation means the bringing of any goods into the United States, except that in the case of goods transported by vessel, "importation" means the bringing of any goods into the United States with the intent to unlade them.

Sec. 560.309 [Reserved]

Sec. 560.310 License.

Except as otherwise specified, the term license means any license or authorization contained in or issued pursuant to this part.

Sec. 560.311 General license.

The term general license means any license or authorization the terms of which are set forth in this part.

Sec. 560.312 Specific license.

The term specific license means any license or authorization not set forth in this part but issued pursuant to this part.

Sec. 560.313 Entity owned or controlled by the Government of Iran.

The term entity owned or controlled by the Government of Iran includes any corporation, partnership, association, or other entity in which the Government of Iran owns a majority or controlling interest, and any entity which is otherwise controlled by that government.

Sec. 560.314 United States person.

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

Sec. 560.315 Information or informational materials.

(a) The term information or informational materials includes, without limitation:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

(2) To be considered information or informational materials, artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term information and informational materials with respect to United States exports does not include items:

(1) That were, as of April 30, 1994, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401-2420 (the "EAA"), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, including "software" that is not "publicly available" as these terms are defined in 15 CFR parts 779 and 799.1; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

Sec. 560.316 New investment.

The term new investment means a transaction after 12:01 EDT, May 7, 1995, that constitutes:

(a) A commitment or contribution of funds or other assets; or

(b) A loan or other extension of credit, as defined in Sec. 560.317.

Sec. 560.317 Credits or loans.

The term credits or loans means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including but not limited to: overdrafts; currency swaps; purchases of debt securities issued by the Government of Iran; purchases of a loan made by another person; sales of financial assets subject to an agreement to repurchase; renewals or refinancings whereby funds or credits are transferred to or extended to a prohibited borrower or prohibited recipient; the issuance of standby letters of credit; and drawdowns on existing lines of credit.

Sec. 560.318 Technology.

For purposes of Secs. 560.204 and 560.205, the term technology includes technical data or other information subject to the Export Administration Regulations, 15 CFR parts 768-799.

Sec. 560.319 United States depository institution.

The term United States depository institution means:

(a) Any entity organized under the laws of any jurisdiction within the United States (including its foreign branches), and

(b) Any agency, office, or branch located in the United States of a foreign entity; that is engaged primarily in the business of banking, including accepting deposits and making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, or procuring purchasers and sellers thereof, as principal or agent. The term includes, among others, banks, savings banks, savings associations, mortgage companies, credit unions, and trust companies and United States holding companies.

Sec. 560.320 Iranian accounts.

The term Iranian accounts means accounts of persons located in Iran or of the Government of Iran maintained on the books of a United States depository institution.

Subpart D--Interpretations

Sec. 560.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

Sec. 560.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not, unless otherwise specifically provided, affect any act done or omitted to be done, or any civil or criminal suit or 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.

Secs. 560.403-560.405 [Reserved]

Sec. 560.406 Transshipments prohibited.

(a) The prohibitions in Sec. 560.201 apply to the importation into the United States, for transshipment or transit, of Iranian-origin goods which are intended or destined for third countries.

(b) The prohibitions in Sec. 560.204 apply to the exportation from the United States, for transshipment or transit, of goods which are intended or destined for Iran.

(c) The prohibitions in Sec. 560.205 apply to the reexportation of goods described in that section, for transshipment or transit, which are intended or destined for Iran.

(d) The prohibitions in Sec. 560.206 apply to any transaction relating to the transshipment of goods of Iranian origin or owned or controlled by the Government of Iran through any country.

Sec. 560.407 Transactions related to Iranian-origin goods.

(a) Importation into the United States from third countries of goods containing Iranian-origin raw materials or components is not prohibited if those raw materials or components have been incorporated into manufactured products or substantially transformed in a third country by a person other than a United States person.

(b) Transactions relating to Iranian-origin goods that have not been incorporated into manufactured products or substantially transformed in a third country are prohibited.

(c) Transactions relating to goods containing Iranian-origin raw materials or components are not prohibited if those raw materials or components have been incorporated into manufactured products or substantially transformed in a third country by a person other than a United States person.

Sec. 560.408 Importation into and release from a bonded warehouse or foreign trade zone.

The prohibitions in Sec. 560.201 apply to importation into a bonded warehouse or a foreign trade zone of the United States. However, Sec. 560.201 does not prohibit the release from a bonded warehouse or a foreign trade zone of Iranian-origin goods imported into a bonded warehouse or a foreign trade zone prior to October 29, 1987.

Sec. 560.409 [Reserved]

Sec. 560.410 Exportation of services.

(a) The prohibition on the exportation of services from the United States contained in Sec. 560.204 applies only to services performed on behalf of a person in Iran or the Government of Iran or where the benefit of such services is otherwise received in Iran, if such services are performed:

(1) In the United States, or

(2) Outside the United States by an individual United States person ordinarily resident in the United States, or

(3) Outside the United States by an overseas branch of an entity located in the United States.

(b) The benefit of services performed anywhere in the world on behalf of the Government of Iran is presumed to be received in Iran.

(c) Services provided in the United States or by a United States person to a non-Iranian carrier transporting passengers or goods to or from Iran are not considered to be exported to Iran.

(d) Services provided in a third country by a United States person ordinarily resident outside the United States are not considered to be exported from the United States.

Sec. 560.411 Offshore transactions in Iranian-origin goods and services.

The prohibitions contained in Sec. 560.206 apply to, among other things, transactions by United States persons in locations outside the United States with respect to goods or services which the

United States person knows, or has reason to know, are of Iranian origin or owned or controlled by the Government of Iran, including:

- (a) importing into or exporting from such locations; and
- (b) purchasing, selling, financing, swapping, insuring, transporting, lifting, storing, incorporating, or transforming, or brokering any of the foregoing.

Sec. 560.412 Extensions of credits or loans to Iran.

(a) The prohibitions contained in Sec. 560.207 apply, among other things, to the unauthorized renewal or rescheduling of credits or loans in existence as of May 6, 1995.

(b) The prohibitions contained in Sec. 560.209 apply, among other things, to the unauthorized renewal or rescheduling of credits or loans in existence as of March 15, 1995.

(c) The prohibitions contained in Secs. 560.207 and 560.209 apply, among other things, to credits or loans in any currency.

Sec. 560.413 Letter of credit payments by Iranian banks in the United States.

(a) For purposes of the exemption in Sec. 560.210(e), payment of letters of credit and other financing agreements according to their terms includes, in the case of payments made by an Iranian bank's branch or agency located in the United States, payments that such branch or agency is:

(1) Legally obligated to make pursuant to the terms of letters of credit and other financing agreements relating to pre-May 7, 1995 trade contracts; or

(2) Licensed to make by the Office of Foreign Assets Control with respect to pre-May 7, 1995 trade contracts.

(b) Payments that are not binding legal obligations of an Iranian bank's branch or agency pursuant to the terms of the letter of credit or other financing agreement are not covered by this exemption.

Sec. 560.414 Exports to third countries; reexports.

(a) The prohibitions contained in Sec. 560.205 do not apply to the reexportation to Iran by a person who is not a United States person of any item described in that section which was exported from the United States prior to 12:01 a.m. EDT, May 7, 1995, and was not the property of a United States person as of 12:01 a.m. EDT, May 7, 1995, if the reexportation to Iran of such item was not subject to export license application requirements under any United States regulations in effect immediately prior to May 6, 1995.

(b) United States persons are prohibited as of 12:01 a.m. EDT, May 7, 1995, from reexporting any item subject to the prohibitions contained in Sec. 560.205 regardless of when the item was exported from the United States. United States persons are prohibited from approving or facilitating any reexport by an entity owned or controlled by a United States person of any item subject to the prohibitions of Sec. 560.205 of this part regardless of when the item was exported from the United States.

(c) Effective 12:01 a.m. EDT May 7, 1995, the exportation from the United States to any destination of any item that was subject to export license application requirements under any United States regulations in effect immediately prior to May 6, 1995, is subject to the condition that the reexportation to Iran requires a specific license, except as otherwise authorized by this part.

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

Sec. 560.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any

transaction effected prior to the issuance of the license, unless specifically provided in such license or other authorization.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part authorizes any transactions prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

Sec. 560.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action is binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

Secs. 560.503-560.504 [Reserved]

Sec. 560.505 Certain services relating to participation in various events authorized.

The importation of Iranian-origin services into the United States is authorized where such services are performed in the United States by an Iranian national who enters the United States on a visa issued by the State Department for the purpose of participating in a public conference, performance, exhibition or similar event, and such services are consistent with that purpose.

Sec. 560.506 Importation and exportation of certain gifts authorized.

The importation into the United States of Iranian-origin goods, and the exportation from the United States of goods, is authorized for goods sent as gifts to persons provided that the value of the gift is not more than \$100.

Sec. 560.507 Accompanied baggage authorized.

(a) Persons entering the United States directly or indirectly from Iran are authorized to import into the United States Iranian-origin accompanied baggage normally incident to travel.

(b) Persons leaving the United States for Iran are authorized to export from the United States accompanied baggage normally incident to travel.

(c) This authorization applies to accompanied baggage that includes only articles that are necessary for personal use incident to travel, not intended for any other person or for sale, and are not otherwise prohibited from importation or exportation under applicable United States laws.

Sec. 560.508 Telecommunications and mail transactions authorized.

All transactions of common carriers incident to the receipt or transmission of telecommunications and mail between the United States and Iran are authorized. For purposes of this section, the term mail includes parcels only to the extent the parcels contain goods exempted from the prohibitions contained in this part or otherwise eligible for importation from or exportation to Iran under a general or specific license.

Sec. 560.509 Certain transactions related to patents, trademarks and copyrights authorized.

(a) All of the following transactions in connection with patent, trademark, copyright or other intellectual property protection in the United States or Iran are authorized:

(1) The filing and prosecution of any application to obtain a patent, trademark, copyright or other form of intellectual property protection;

(2) The receipt of a patent, trademark, copyright or other form of intellectual property protection;

(3) The renewal or maintenance of a patent, trademark, copyright or other form of intellectual property protection; and

(4) The filing and prosecution of opposition or infringement proceedings with respect to a patent, trademark, copyright or other form of intellectual property protection, or the entrance of a defense to any such proceedings.

(b) Nothing in this section affects obligations under any other provision of law.

Sec. 560.510 Transactions related to the resolution of disputes between the United States or United States nationals and the Government of Iran.

(a) Except as otherwise authorized, specific licenses may be issued on a case-by-case basis to authorize transactions in connection with awards, decisions or orders of the Iran-United States Claims Tribunal in The Hague, the International Court of Justice, or other international tribunals (collectively, “tribunals”); agreements settling claims brought before tribunals; and awards, orders, or decisions of an administrative, judicial or arbitral proceeding in the United States or abroad, where the proceeding involves the enforcement of awards, decisions or orders of tribunals, or is contemplated under an international agreement, or involves claims arising before 12:01 a.m. EDT, May 7, 1995, that resolve disputes between the Government of Iran and the United States or United States nationals, including the following transactions:

(1) Importation into the United States of, or any transaction related to, goods and services of Iranian origin or owned or controlled by the Government of Iran;

(2) Exportation or reexportation to Iran or the Government of Iran of any goods, technology, or services, except to the extent that such exportation or reexportation is also subject to export licensing application requirements of another agency of the United States Government and the granting of such a license by that agency would be prohibited by law;

(3) Financial transactions related to the resolution of disputes at tribunals, including transactions related to the funding of proceedings or of accounts related to proceedings or to a tribunal; participation, representation, or testimony before a tribunal; and the payment of awards of a tribunal; and

(4) Other transactions otherwise prohibited by this part which are necessary to permit implementation of the foregoing awards, decisions, orders, or agreements.

(b) Specific licenses may be issued on a case-by-case basis to authorize payment of costs related to the storage or maintenance of goods in which the Government of Iran has title, and to authorize the transfer of title to such goods, provided that such goods are in the United States and that such goods are the subject of a proceeding pending before a tribunal.

(c)(1) All transactions are authorized with respect to the importation of Iranian-origin goods and services necessary to the initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals.

(2) Specific licenses may be issued on a case-by-case basis to authorize the exportation to Iran or the Government of Iran of goods, and of services not otherwise authorized by Sec. 560.525, necessary to the initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals, except to the extent that the exportation is also subject to export licensing application requirements of another agency of the United States Government and the granting of such a license by that agency would be prohibited by law.

(3) Representation of United States persons or of third country persons in legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals, against Iran or the Government of Iran is not prohibited by this part. The exportation of certain legal services to a person in Iran or the Government of Iran is authorized in Sec. 560.525.

(d) The following are authorized:

(1) All transactions related to payment of awards of the Iran-United States Claims Tribunal in The Hague against Iran.

(2) All transactions necessary to the payment and implementation of awards (other than exports or reexports subject to export license application requirements of other agencies of the United States Government) in a legal proceeding to which the United States Government is a party, or to payments pursuant to settlement agreements entered into by the United States Government in such a legal proceeding. [60 FR 47063, Sept. 11, 1995, as amended at 62 FR 41852, Aug. 4, 1997]

Sec. 560.511 [Reserved]

Sec. 560.512 Iranian Government missions in the United States.

(a) All transactions ordinarily incident to the importation of goods or services into the United States by, the exportation of goods or services from the United States by, or the provision of goods or services in the United States to, the missions of the Government of Iran to international organizations in the United States, and Iranians admitted to the United States under section 101(a)(15)(G) of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1101(a)(15)(G), are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the mission, or for personal use of personnel admitted to the United States under INA section 101(a)(15)(G), and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

(b) All transactions ordinarily incident to the importation of goods or services into the United States by, the exportation of goods or services from the United States by, or the provision of goods or services in the United States to, the Iranian Interests Section of the Embassy of Pakistan (or any successor protecting power) in the United States, are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the Iranian Interests Section, and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

(c) All transactions ordinarily incident to the provision of goods or services in the United States to the employees of Iranian missions to international organizations in the United States, and to employees of the Iranian Interests Section of the Embassy of Pakistan (or any successor protecting power) in the United States, are authorized, provided that the transaction is not otherwise prohibited by law.

Sec. 560.513 Importation of Iranian-origin oil.

(a) Specific licenses will be issued on a case-by-case basis to permit the importation of Iranian-origin oil in connection with the resolution or settlement of cases before the Iran-United States Claims Tribunal in The Hague, established pursuant to the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran of January 19, 1981, or where the proceeds are otherwise to be deposited in the Tribunal's Security Account.

(b) License applications submitted pursuant to this section must contain the importer's certification that the oil is of Iranian origin with all relevant supporting documentation, including specification of the production site at which the oil was extracted, and that the sale or transfer of the oil is by or for the account of the Government of Iran. Licenses will not be issued for importations of

Iranian-origin oil which is not sold or transferred by or for the account of the Government of Iran. In cases where the oil is being imported either in whole or in part in resolution or settlement of a case pending before the Tribunal, applicants are required to identify the case and submit a copy of the settlement agreement and the Award on Agreed Terms issued by the Tribunal. In cases where any proceeds are generated for the account of the Government of Iran from the importation of Iranian-origin oil, the importer must demonstrate that irrevocable arrangements are in place that will ensure that the proceeds will be deposited in the Tribunal's Security Account.

Sec. 560.514 [Reserved]

Sec. 560.515 30-day delayed effective date for pre-May 7, 1995 trade contracts involving Iran.

(a) All transactions necessary to complete performance of a trade contract entered into prior to May 7, 1995, and involving Iran (a "pre-existing trade contract"), including the exportation of goods, services (including financial services), or technology from the United States that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995, or performance under a pre-existing trade contract for transactions in Iranian-origin or Government of Iran owned or controlled goods or services not involving importation into the United States, are authorized without specific licensing by the Office of Foreign Assets Control if the conditions in paragraph (a)(1) or (a)(2) are met:

(1) If the pre-existing trade contract is for exportation of goods or technology from the United States that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995, the goods or technology must be exported from the United States prior to 12:01 a.m. EDT, June 6, 1995, and all other activity by U.S. persons that is necessary and incidental to the performance of the pre-existing trade contract (other than payment under a financing contract) must be completed prior to 12:01 a.m. EDT, August 6, 1995; or

(2) If the pre-existing trade contract is for:

(i) The exportation of services from the United States and benefitting a person in Iran or the Government of Iran; or

(ii) The reexportation of goods or technology to Iran, the Government of Iran, or an entity owned or controlled by the Government of Iran that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995, or

(iii) Transactions relating to goods or services of Iranian origin or owned or controlled by the Government of Iran other than transactions relating to importation into the United States of such goods or services, all obligations under the pre-existing trade contract (other than payment under a financing contract) must be fully completed prior to 12:01 a.m. EDT, June 6, 1995.

(b) In order to complete performance of a pre-existing trade contract, the arrangement or renegotiation of contracts for transactions necessary and incidental to performance of the pre-existing trade contract is authorized. Such incidental transactions may include, for example, financing, shipping and insurance arrangements. Amendments to a pre-existing trade contract for the purpose of accelerating a previously-specified delivery schedule under a contract for a fixed quantity or value of goods, technology or services, or curtailing or canceling required performance, are authorized without specific licensing. Any other alteration of the trade contract must be specifically licensed by the Office of Foreign Assets Control.

(c) The existence of a contract will be determined with reference to the principles contained in Article 2 of the Uniform Commercial Code.

(d) No U.S. person may change its policies or operating procedures in order to enable a foreign entity owned or controlled by U.S. persons to enter into a transaction that could not be entered into directly by a U.S. person located in the United States pursuant to the prohibitions contained in this part.

Sec. 560.516 Payment and United States dollar clearing transactions involving Iran.

(a) United States depository institutions are authorized to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer is covered in full by any of the following conditions and does not involve debiting or crediting an Iranian account:

(1) The transfer is by order of a foreign bank which is not an Iranian entity from its own account in a domestic bank (directly or through a foreign branch or subsidiary of a domestic bank) to an account held by a domestic bank (directly or through a foreign branch or subsidiary of a domestic bank) for a second foreign bank which is not an Iranian entity. For purposes of this section "foreign bank" includes a foreign subsidiary, but not a foreign branch of a domestic bank;

(2) The transfer arises from an underlying transaction that has been authorized by a specific or general license issued pursuant to this part;

(3) The transfer arises from an underlying transaction that is not prohibited or is exempted from regulation pursuant to Section 203(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1702(b), such as an exportation of information or informational materials to Iran, a travel-related remittance, or payment for the shipment of a donation of articles to relieve human suffering or a third country transaction not involving a United States person nor otherwise prohibited by this part; or

(4) The transfer is a non-commercial remittance to or from Iran, such as a family remittance not related to a family-owned enterprise.

(b) Before a United States depository institution initiates a payment subject to the prohibitions contained in this part on behalf of any customer, or credits a transfer subject to such prohibitions to the account on its books of the ultimate beneficiary, the U.S. depository institution must determine that the transfer is not prohibited by this part.

(c) Pursuant to the prohibitions contained in Sec. 560.208, a United States depository institution may not make transfers to or for the benefit of a foreign-organized entity owned or controlled by it if the underlying transaction would be prohibited if engaged in directly by the U.S. depository institution.

(d) This section does not authorize transactions with respect to property blocked pursuant to part 535.

Sec. 560.517 Exportation of services: Iranian accounts at United States depository institutions.

(a) United States depository institutions are prohibited from performing services with respect to Iranian accounts, as defined in Sec. 560.320, at the instruction of the Government of Iran or persons located in Iran, except that United States depository institutions are authorized to provide and be compensated for services and incidental transactions with respect to:

(1) The maintenance of Iranian accounts, including the payment of interest and the debiting of service charges;

(2) The processing of transfers arising from underlying transactions that are exempted from regulation pursuant to section 203(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1702(b), such as an exportation of information or informational materials to Iran, a travel-related remittance, or payment for the shipment of a donation of articles to relieve human suffering; and

(3) At the request of the account party, the closing of Iranian accounts and the lump sum transfer only to the account party of all remaining funds and other assets in the account.

(b) Specific licenses may be issued with respect to the operation of Iranian accounts that constitute accounts of:

(1) Foreign government missions and their personnel in Iran; or

(2) Missions of the Government of Iran in the United States.

Sec. 560.518 Transactions in Iranian-origin and Iranian Government property.

(a) Except for transactions involving the Government of Iran, all domestic transactions with respect to Iranian-origin goods located in the United States are authorized, provided that this paragraph (a) does not affect the status of property blocked pursuant to part 535 or detained or seized, or subject to detention or seizure, pursuant to this part.

(b) All transactions necessary and incidental to a United States person's sale or other disposition of goods or services of Iranian origin or owned or controlled by the Government of Iran that are located or to be performed outside the United States and were acquired by that United States person in transactions not prohibited by part 535 or this part are authorized, provided:

(1) The sale or other disposition does not result in the importation of such goods or services into the United States, and

(2) The sale or other disposition is completed no later than 12:01 a.m. EDT, August 6, 1995.

(c) Except as provided in paragraphs (a) and (b) of this section, United States persons may not deal in goods or services of Iranian origin or owned or controlled by the Government of Iran, except that the following transactions are authorized:

(1) Transactions by a United States person with third-country nationals incidental to the storage and maintenance in third countries of Iranian-origin goods owned prior to May 7, 1995, by that United States person or acquired thereafter by that United States person consistent with the provisions of this part;

(2) Exportation of Iranian-origin household and personal effects from the United States incident to the relocation of United States persons outside the United States; and

(3) Purchase for personal use or consumption in Iran of Iranian-origin goods or services.

(d) In addition to transactions authorized by paragraph (c)(1) of this section, a United States person is authorized after 12:01 a.m. EDT, May 7, 1995, to use or dispose of Iranian-origin household and personal effects that are located outside the United States and that have been acquired by the United States person in transactions not prohibited by part 535 or this part.

Sec. 560.519 Policy governing news organization offices.

(a) Specific licenses may be issued on a case-by-case basis authorizing transactions necessary for the establishment and operation of news bureaus in Iran by United States organizations whose primary purpose is the gathering and dissemination of news to the general public.

(b) Transactions that may be authorized include but are not limited to those incident to the following:

(1) Leasing office space and securing related goods and services;

(2) Hiring support staff;

(3) Purchasing Iranian-origin goods for use in the operation of the office; and

(4) Paying fees related to the operation of the office in Iran.

(c) Specific licenses may be issued on a case-by-case basis authorizing transactions necessary for the establishment and operation of news bureaus in the United States by Iranian organizations whose primary purpose is the gathering and dissemination of news to the general public.

(d) The number assigned to such specific licenses should be referenced in all import and export documents and in all funds transfers and other banking transactions through banking institutions organized or located in the United States in connection with the licensed transactions to avoid disruption of the trade and financial transactions.

Sec. 560.520 Exportation of agricultural commodities.

(a) All transactions by United States persons in connection with the exportation from the United States to Iran of any agricultural commodity under an export sales contract are authorized, provided:

(1) Such contract was entered into prior to 12:01 a.m. EDT, May 7, 1995; and

(2) The terms of such contract require delivery of the commodity prior to February 2, 1996.

(b) The performance of letters of credit and other financing agreements with respect to exports authorized by this section is authorized pursuant to their terms.

(c) For purposes of this section, the term agricultural commodity means feed grains, rice, wheat, cotton, peanuts, tobacco, dairy products, and oilseeds (including vegetable oil).

(d) Specific licenses may be granted on a case-by-case basis for transactions by United States persons in connection with the exportation of other agricultural articles from the United States to Iran that do not fall within the definition of "agricultural commodity" contained in paragraph (c) of this section, provided such exportation is pursuant to an export sales contract and the conditions contained in paragraphs (a)(1) and (a)(2) of this section are met.

Sec. 560.521 Diplomatic pouches.

All transactions in connection with the importation into the United States from Iran, or the exportation from the United States to Iran, of diplomatic pouches and their contents are authorized.

Sec. 560.522 Allowable payments for overflights of Iranian airspace.

Payments to Iran of charges for services rendered by the Government of Iran in connection with the overflight of Iran or emergency landing in Iran of aircraft owned by a United States person or registered in the United States are authorized.

Sec. 560.523 Importation of information and informational materials.

(a) In addition to transactions relating to information or informational materials that are exempted from regulation under Sec. 560.210, the following are authorized:

(1) The importation of information and informational materials of Iranian origin from any location, whether commercial or otherwise, regardless of format or medium of transmission; and

(2) All financial and other transactions related to the importation of information and informational materials.

(b) Specific licenses may be issued on a case-by-case basis for the exportation of equipment necessary for the establishment of news wire feeds or other transmissions of information or informational materials.

Sec. 560.524 Household goods and personal effects.

(a) The exportation from the United States to Iran of household and personal effects, including baggage and articles for family use, of persons departing the United States to relocate in Iran is authorized provided the articles included in such effects have been actually used by such persons or by family members accompanying them, are not intended for any other person or for sale, and are not otherwise prohibited from exportation. See also, Sec. 560.518(c)(2).

(b) The importation of Iranian-origin household and personal effects, including baggage and articles for family use, of persons arriving in the United States is authorized; to qualify, articles included in such effects must have been actually used abroad by such persons or by other family members arriving from the same foreign household, must not be intended for any other person or for sale, and must not be otherwise prohibited from importation.

Sec. 560.525 Exportation of certain legal services.

(a) The provision of the following legal services to the Government of Iran or to a person in Iran, and receipt of payment of professional fees and reimbursement of incurred expenses, are authorized:

(1) Provision of legal advice and counselling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counselling is not provided to facilitate transactions that would violate any of the prohibitions contained in this part;

(2) Representation when a person in Iran or the Government of Iran has been named as a defendant in or otherwise made a party to domestic United States legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic United States legal, arbitration, or administrative proceedings on behalf of the Government of Iran or a person in Iran;

(4) Representation before any federal or state agency with respect to the imposition, administration, or enforcement of United States sanctions against Iran;

(5) Initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before international tribunals (including the Iran-United States Claims Tribunal in The Hague and the International Court of Justice):

(i) To resolve disputes between the Government of Iran or an Iranian national and the United States or a United States national;

(ii) Where the proceeding is contemplated under an international agreement; or

(iii) Where the proceeding involves the enforcement of awards, decisions, or orders resulting from legal proceedings within the scope of paragraph (a)(5)(i) or (a)(5)(ii) of this section, provided that any transaction, unrelated to the provision of legal services or the payment therefor, that is necessary or related to the execution of an award, decision or order resulting from such legal proceeding, or otherwise necessary for the conduct of such proceeding, and which would otherwise be prohibited by this part requires a specific license in accordance with Secs. 560.510 and 560.801;

(6) Provision of legal advice and counseling in connection with settlement or other resolution of matters described in paragraph (a)(5) of this section; and

(7) Provision of legal services in any other context in which prevailing United States law requires access to legal counsel at public expense.

(b) The provision of any other legal services to a person in Iran or the Government of Iran, not otherwise authorized in or exempted by this part, requires the issuance of a specific license. [60 FR 47063, Sept. 11, 1995, as amended at 62 FR 41852, Aug. 4, 1997]

Sec. 560.526 Commodities trading and related transactions.

(a) Trading in Iranian-origin commodities. With respect to Sec. 560.206, specific licenses may be issued on a case-by-case basis to authorize certain commodities trading by a United States person in Iranian-origin goods, or transactions incidental to such trading, where:

(1) No party to the transaction with the United States person is a person in Iran or the Government of Iran, and

(2) It was impossible for the United States person to determine at the time of entry into the transaction, given all circumstances of the transaction, that the goods would be of Iranian origin or would be owned or controlled by the Government of Iran.

(b) Trading in commodities destined for Iran or the Government of Iran. With respect to Sec. 560.204, specific licenses may be issued on a case-by-case basis to authorize certain trading by United States persons in commodities of U.S. or third-country origin destined for Iran or the Government of Iran, or transactions incidental to such trading, where:

(1) It was impossible for the United States person to determine at the time of entry into the transaction, given all circumstances of the transaction, that the goods would be for delivery to Iran or to the Government of Iran;

(2) The United States person did not contract with a person in Iran or the Government of Iran; and

(3) The United States person did not initiate the nomination of the commodity's destination as Iran or the Government of Iran.

Sec. 560.527 Rescheduling existing loans.

Specific licenses may be issued on a case-by-case basis for rescheduling loans or otherwise extending the maturities of existing loans, and for charging fees or interest at commercially reasonable rates, in connection therewith, provided that no new funds or credits are thereby transferred or extended to Iran or the Government of Iran.

Sec. 560.528 Aircraft safety.

Specific licenses may be issued on a case-by-case basis for the exportation and reexportation of goods, services, and technology to insure the safety of civil aviation and safe operation of U.S.-origin commercial passenger aircraft.

Subpart F--Reports

Sec. 560.601 Records and reports.

For provisions relating to records and reports, see subpart C of part 501 of this chapter.[62 FR 45109, Aug. 25, 1997]

Sec. 560.602 [Reserved]

Sec. 560.603 Reports on oil transactions engaged in by foreign affiliates.

(a) Requirement for reports. A report must be filed with the Office of Foreign Assets Control with respect to each foreign affiliate of a United States person that engaged in a reportable transaction, as defined in paragraph (b), during the calendar quarter. Reports are due within 60 days after the end of each calendar quarter.

(b) Definitions. For purposes of this section:

(1) The term reportable transaction means a transaction of the following type:

(i) Any purchase, sale, or swap of Iranian-origin crude oil, natural gas, or petrochemicals;

(ii) The sale of services (including insurance or financing) or goods (including oilfield supplies or equipment) to the Government of Iran or an entity in Iran for use in the exploration, development, production, processing, pumping, lifting, transporting, or refining of crude oil, natural gas, or petrochemicals. For these purposes, the term petrochemicals means first-stage materials produced directly from a petroleum-based or a natural gas-based feedstock.

(iii) For purposes of paragraph (b)(1)(i) of this section, a purchase, sale or swap is deemed to have occurred as of the date of the bill of lading used in connection with such transaction. For purposes of paragraph (b)(1)(ii) of this section, the sale of services is deemed to have occurred as of the date of loan or commitment, in the case of financial or insurance services, or the date on which services are invoiced, in other cases. The sale of goods is deemed to have occurred as of the date of shipment to Iran.

(2) The term foreign affiliate means a person or entity other than a United States person (see Sec. 560.314) which is organized or located outside the United States and which is owned or controlled by a United States person or persons.

(c) Who must report. A United States person must file a report with respect to each foreign affiliate owned or controlled by it which engaged in a reportable transaction or transactions during the prior calendar quarter. For the calendar quarter beginning October 1, 1996, and all subsequent quarters, a United States person must file a report only as to each foreign affiliate owned or controlled by it which engaged in a reportable transaction or transactions totaling \$1,000,000 or more during the prior calendar quarter. A single United States entity within a consolidated or affiliated group may be designated to report on each foreign affiliate of the United States members of the group. Such centralized reporting may be done by the United States person who owns or controls, or has been delegated authority to file on behalf of, the remaining United States persons in the group.

(d) What must be reported. (1) Part I of the report must provide the name, address, and principal place of business of the United States person; its place of incorporation or organization if an entity; and the name, title, and telephone number of the individual to contact concerning the report.

(2) Part II of the report must provide, with respect to the foreign affiliate, its name and address; the type entity, e.g., corporation, partnership, limited liability company; the country of its incorporation or organization; and its principal place of business.

(3) Part III of the report must include the following information with respect to each reportable transaction (a separate Part III must be submitted for each reportable transaction):

(i) The nature of the transaction, e.g., purchase, sale, swap.

(ii) A description of the product, technology, or service involved;

(iii) The name of the Iranian or third-country party or parties involved in the transaction;

(iv) The currency and amount of the transaction, and corresponding United States dollar value of the transaction if not denominated in United States dollars.

(e) Where to report. Reports must be filed with the Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW--Annex, Washington, DC 20220. Reports may be submitted by facsimile transmission at 202/622-1657. A copy must be retained for the reporter's records.

(f) Whom to contact. Blocked Assets Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW--Annex, Washington, DC 20220; telephone: 202/622-2440.[62 FR 19671, Apr. 23, 1997]

Subpart G--Penalties

Sec. 560.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the "Act") (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act. Section 206 of the Act, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty of not to exceed \$11,000 per violation may be imposed on any person who violates any license, order, or regulation issued under the Act;

(2) Whoever willfully violates any license, order, or regulation issued under the Act shall, upon conviction be fined not more than \$50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment or both.

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

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

(d) Attention is directed to 18 U.S.C. 2332d, as added by Public Law 104-132, section 321, which provides that, except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, a U.S. person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act, 50 U.S.C. App. 2405, as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under title 18, United States Code, or imprisoned for not more than 10 years, or both.

(e) Violations of this part may also be subject to relevant provisions of the Customs laws and other applicable laws.[60 FR 47063, Sept. 11, 1995, as amended at 61 FR 43461, Aug. 23, 1996; 61 FR 54939, Oct. 23, 1996; 62 FR 45109, Aug. 25, 1997]

Sec. 560.702 Detention of shipments.

Import shipments into the United States of Iranian-origin goods in violation of Sec. 560.201 and export shipments from the United States of goods destined for Iran in violation of Sec. 560.202 or 560.204 shall be detained. No such import, export, or reexport will be permitted to proceed, except as specifically authorized by the Secretary of the Treasury. Unless licensed, such shipments are subject to penalty or seizure and forfeiture action, under the Customs laws or other applicable provisions of law, depending on the circumstances.

Sec. 560.703 Prepenalty notice.

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

(b) Contents--(1) Facts of violation. The prepenalty notice will describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) Right to make presentations. The prepenalty notice also shall inform the person of his right to make a written presentation within 30 days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

Sec. 560.704 Presentation responding to prepenalty notice.

(a) Time within which to respond. The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) Form and contents of the written presentation. The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

Sec. 560.705 Penalty notice.

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

(b) Violation. If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he may issue a written notice of the imposition of the monetary penalty to that person.

Sec. 560.706 Referral for administrative collection measures or to United States Department of Justice.

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

Subpart H--Procedures

Sec. 560.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.[62 FR 45109, Aug. 25, 1997]

Sec. 560.802 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12613, Executive Order 12957, Executive Order 12959, and any further Executive orders relating to the national emergency declared in Executive Order 12957 may be taken by the Director, Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.[60 FR 47063, Sept. 11, 1995. Redesignated at 62 FR 45109, Aug. 25, 1997]

Sec. 560.803 Customs procedures: Goods specified in Sec. 560.201.

(a) With respect to goods specified in Sec. 560.201, and not otherwise licensed or excepted from the scope of that section, appropriate Customs officers shall not accept or allow any:

(1) Entry for consumption or warehouse (including any appraisement entry, any entry of goods imported in the mails, regardless of value, and any informal entries);

(2) Entry for immediate exportation;

(3) Entry for transportation and exportation;

(4) Withdrawal from warehouse;

(5) Admission, entry, transfer or withdrawal to or from a foreign trade zone; or

(6) Manipulation or manufacture in a warehouse or in a foreign trade zone.

(b) Customs officers may accept or allow the importation of Iranian-origin goods under the procedures listed in paragraph (a) if:

(1) A specific license pursuant to this part is presented; or

(2) Instructions authorizing the transaction are received from the Office of Foreign Assets Control.

(c) Whenever a specific license is presented to an appropriate Customs officer in accordance with this section, one additional legible copy of the entry, withdrawal or other appropriate document with respect to the merchandise involved must be filed with the appropriate Customs officers at the port where the transaction is to take place. Each copy of any such entry, withdrawal or other appropriate document, including the additional copy, must bear plainly on its face the number of the license pursuant to which it is filed. The original copy of the specific license must be presented to the appropriate Customs officers in respect of each such transaction and must bear a notation in ink by the licensee or person presenting the license showing the description, quantity and value of the merchandise to be entered, withdrawn or otherwise dealt with. This notation must be so placed and so written that there will exist no possibility of confusing it with anything placed on the license at the time of its issuance. If the license in fact authorizes the entry, withdrawal, or other transaction with regard to the merchandise, the appropriate Customs officer, or other authorized Customs employee, shall verify the notation by signing or initialing it after first assuring himself that it accurately describes the merchandise it purports to represent. The license shall thereafter be returned to the person

presenting it and the additional copy of the entry, withdrawal or other appropriate document shall be forwarded by the appropriate Customs officer to the Office of Foreign Assets Control.

(d) If it is unclear whether an entry, withdrawal or other action affected by this section requires a specific license from the Office of Foreign Assets Control, the appropriate Customs officer may withhold any action thereon and shall advise such person to communicate directly with the Office of Foreign Assets Control to request that instructions be sent to the Customs officer to authorize him to take action with regard thereto. [60 FR 47063, Sept. 11, 1995. Redesignated at 62 FR 45109, Aug. 25, 1997]

§2.5.2 - Iranian Transactions Regulations: Implementation of Executive Order 13059

[Federal Register: April 26, 1999 (Volume 64, Number 79)]
[Rules and Regulations]
[Page 20168-20176]

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations: Implementation of Executive Order 13059

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending the Iranian Transactions Regulations to implement Executive Order 13059, which clarifies the steps taken in Executive Orders 12957 and 12959 with respect to the declaration of national emergency and imposition of new and additional sanctions against Iran.

EFFECTIVE DATE: April 26, 1999.

FOR FURTHER INFORMATION CONTACT: Regarding the issuance of licenses, Steven I. Pinter, Chief, Licensing Division (tel.: 202/622-2480); regarding banking and compliance questions, Dennis P. Wood, Chief, Compliance Programs Division (tel.: 202/622-2490); regarding Iranian government entities, J. Robert McBrien, Chief, International Programs Division (tel.: 202/622-2420); regarding legal questions, William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

Background

In Executive Order 12957 of March 15, 1995 (60 FR 14615, March 17, 1995), President Clinton declared a national emergency with respect to the actions and policies of the Government of Iran and imposed sanctions against Iran supplementing those imposed in 1987, invoking the authority, inter alia, of the International Emergency Economic Powers Act, 50 U.S.C. 1701-06 ("IEEPA"). The President substantially supplemented and amended those sanctions in Executive Order 12959 of May 6, 1995 (60 FR 24757, May 9, 1995). In implementation of these orders, the Office of Foreign Assets Control ("OFAC") amended the Iranian Transactions Regulations in September 1995 (the "Regulations") (60 FR 47061, September 11, 1995).

In Executive Order 13059 of August 19, 1997 (62 FR 44531, August 21, 1997), the President clarified the steps taken with respect to the national emergency declared in Executive Order 12957 and expanded in Executive Order 12959. In implementation of these orders, OFAC is amending the Regulations.

Section 560.201 continues the prohibition on the importation into the United States of goods or services of Iranian origin but indicates that this includes goods or services owned or controlled by the Government of Iran. Section 560.201 also conforms the exemption for information and informational materials for import purposes to that applicable under IEEPA for all other purposes.

Section 560.204 is revised to provide that any exportation, reexportation, sale or supply of goods to Iran or the Government of Iran from the United States, or by a U.S. person wherever located, is prohibited. This includes any exportation, reexportation, sale or supply of goods, services or technology from the United States or by a U.S. person in a third country undertaken with knowledge or reason to know that such goods, services or technology are intended specifically for supply, transshipment or reexportation, directly or indirectly, to Iran or the Government of Iran. Similarly, Sec. 560.204 prohibits any exportation, reexportation, sale or supply of goods, services or technology

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intended specifically for use in the production of, for commingling with, or for incorporation into goods, technology or services to be supplied, transshipped or reexported exclusively or predominantly to Iran or the Government of Iran.

Section 560.205 is amended to clarify that a person other than a U.S. person is prohibited from knowingly reexporting U.S.-origin goods, technology and services to Iran or the Government of Iran if those goods, services or technology are subject to written license application requirements by any U.S. Government agency imposed independently of part 560, unless such U.S.-origin items have been substantially transformed into a foreign-made product or the U.S.-origin content meets the de minimis standard in that section. U.S. persons remain subject to the prohibitions in Sec. 560.204, regardless of the origin or type of item or the country from which it is shipped.

Section 560.206 amends the rules relating to dealings in goods or services of Iranian origin or owned or controlled by the Government in Iran and concerning dealings in goods, technology or services for exportation, reexportation, sale or supply to Iran or the Government of Iran. Section 560.208 is amended to provide that the approval, facilitation, financing or guarantee by a U.S. person of any Iran-related transaction by a foreign person is not permitted if the transaction by the foreign person would be prohibited by this part if performed by a U.S. person or within the United States. In addition, Secs. 560.210(c) and (d) are amended to clarify rules relating to informational materials and travel.

The effective dates of the prohibitions in this part are set out in Sec. 560.301. Section 560.306 is revised to clarify the definitions of the terms goods of Iranian origin and goods or services owned or controlled by the Government of Iran. The definition of United States depository institution in Sec. 560.319 is revised to remove reference to certain activities of banks that might draw into the definition non-banking businesses that are not subject to federal or state regulation as banks. Certain other revisions to existing definitions are made to subpart C.

In subpart D, certain existing interpretive provisions are revised and new interpretive sections are added. Section 560.403 is added to make clear that the prohibitions in Secs. 560.204, 560.206 and 560.208 apply to export, reexport or supply transactions which require a transshipment or transit of goods or technology through Iran to third countries. Section 560.406 is revised to indicate that the prohibition on importation in Sec. 560.201 includes, among other things, importation into the United States, for transshipment or transit, of goods owned or controlled by the Government of Iran destined for third countries, and the prohibition on exportation in Sec. 560.204 includes, among other things, the exportation from the United States, for transshipment or transit, of goods intended or destined for the Government of Iran, including entities owned or controlled by the Government of Iran. Section 560.410 is revised to clarify the term exportation or supply of services. Section 560.412 on extensions of credit to Iran is amended to add a reference to standby letters of credit. Section 560.414, which relates to reexportation of U.S.-origin goods or technology, is amended to provide interpretation with respect to Sec. 560.205.

Section 560.416 is added to provide examples of prohibited brokering services. Section 560.417 on facilitation of transactions is added to replace Sec. 560.516(d), which is removed. Section 560.418 is added to deal with the release of technology to Iran or the Government of Iran that may violate this part, and transfers of technology to foreign nationals, including Iranian nationals, that may implicate rules administered by the U.S. Department of State, the U.S. Department of Commerce, or other agencies of the U.S. Government. Section 560.419 is added to deal with issues related to the U.S. employment of persons normally located in Iran. Section 560.420 is added to interpret the de minimis content rules contained in Sec. 560.205, which apply to reexportations by foreign persons.

In subpart E, Sec. 560.501(d) is added to explain that specific licenses issued pursuant to Executive Orders 12613, 12957 or 12959 continue in effect in accordance with their terms except to the extent revoked, amended, or modified by the Office of Foreign Assets Control. Section 560.501(e) provides that certain exports, reexports or transfers of goods, technology, or services, or the direct products of technology, which are not prohibited by this part and which do not require authorization by OFAC, may nonetheless require authorization by the U.S. Department of Commerce, the U.S. Department of State or other agencies of the U.S. Government. Section 560.505 is amended to deal with activities taken in connection with certain visa categories.

Section 560.509 is amended to clarify that the general license relating to protection of patents, trademarks and copyrights extends to the importation of Iranian-origin services, payment for such services, and payment to persons in Iran in connection with such intellectual property protection.

Section 560.511 is added to create an "insubstantial content" exception to the prohibitions in Sec. 560.204. As noted, Sec. 560.204 prohibits the knowing exportation, reexportation, sale or supply of goods, services or technology from the United States, or by U.S. persons wherever located, to third countries for incorporation or substantial transformation into items destined for Iran or the Government of Iran. Section 560.511 creates an exception to this rule, authorizing such "knowing" supply by U.S. persons or from the United States under certain circumstances: Such "knowing" supply is authorized under Sec. 560.511 when (1) the items being exported, reexported or supplied for substantial transformation or incorporation abroad do not require authorization for exportation or reexportation by another agency of the U.S. Government; (2) the U.S.-origin items do not exceed the content levels specified in Sec. 560.511(a)(2); (3) the foreign-made end product is not destined to end uses or end users prohibited under regulations administered by other U.S. Government agencies (Sec. 560.511(d)); and (4) the foreign-made end product is not intended for use in the Iranian petroleum or petrochemical industry (Sec. 560.511(e)). The authorization in Sec. 560.511(a) is not available if the foreign-made end product is of a type which other U.S. Government agencies make ineligible for de minimis U.S.-origin content. More generally, export control rules administered by other agencies of the U.S. Government may prohibit an exportation or supply otherwise authorized by Sec. 560.511.

A general license is added in Sec. 560.529 to authorize the provision of goods or services in the United States to a non-Iranian carrier transporting passengers or goods to or from Iran if they are bunkers or bunkering services, are supplied in the course of emergency repairs, or are supplied under circumstances which could not be anticipated prior to the carrier's departure for the United States.

Technical changes or new text also appear at the following sections, among others: Secs. 560.207, 560.308, 560.315, 560.412, 560.506, 560.515, 560.516, and 560.523. The prior Sec. 560.411 concerning offshore transactions in Iranian-origin goods and services has been removed and reserved because its content, as modified to accord with Executive Order 13059, is covered in Sec. 560.206.

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Section 560.318 is removed and reserved.

An appendix is added to provide the names of financial institutions deemed by OFAC to be entities owned or controlled by the Government of Iran. This list, with minor modifications, duplicates the list promulgated as an annex to General License No. 3 on June 6, 1995 (see 60 FR 40883, August 10, 1995).

Because the Regulations 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.

List of Subjects in 31 CFR Part 560

Administrative practice and procedure, Agricultural commodities, Banks, banking, Exports, Foreign trade, Imports, Information, Investments, Iran, Loans, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

For the reasons set forth in the preamble, 31 CFR part 560 is amended as follows:

PART 560--IRANIAN TRANSACTIONS REGULATIONS

1. The authority citation continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 2349aa-9; 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); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart B--Prohibitions

2. Section 560.201 is revised to read as follows:

Sec. 560.201 Prohibited importation of goods or services from Iran.

Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the importation into the United States of any goods or services of Iranian origin or owned or controlled by the Government of Iran, other than information and informational materials within the meaning of section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)), is prohibited.

3. Section 560.204 is revised to read as follows:

Sec. 560.204 Prohibited exportation, reexportation, sale or supply of goods, technology, or services to Iran.

Except as otherwise authorized pursuant to this part, including Sec. 560.511, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran is prohibited, including the exportation, reexportation, sale, or supply of any goods, technology, or services to a person in a third country undertaken with knowledge or reason to know that:

(a) Such goods, technology, or services are intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran or the Government of Iran; or

(b) Such goods, technology, or services are intended specifically for use in the production of, for commingling with, or for incorporation into goods, technology, or services to be directly or indirectly supplied, transshipped, or reexported exclusively or predominantly to Iran or the Government of Iran.

4. Section 560.205 is revised to read as follows:

Sec. 560.205 Prohibited reexportation of goods, technology or services to Iran or the Government of Iran by persons other than United States persons; exceptions.

(a) Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the reexportation from a third country, directly or indirectly, by a person other than a United States person, of any goods, technology or services that have been exported from the United States is prohibited, if:

(1) Undertaken with knowledge or reason to know that the reexportation is intended specifically for Iran or the Government of Iran; and

(2) The exportation of such goods, technology, or services from the United States to Iran was subject to export license application requirements under any United States regulations in effect on May 6, 1995, or thereafter is made subject to such requirements imposed independently of this part (see Sec. 560.414).

(b) The prohibitions of paragraph (a) of this section shall not apply to those goods or that technology subject to export license application requirements if such goods or technology have been:

(1) Substantially transformed into a foreign-made product outside the United States; or

(2) Incorporated into a foreign-made product outside the United States if the aggregate value of such goods and technology described in paragraph (a)(2) of this section constitutes less than 10 percent of the total value of the foreign-made product to be exported from a third country (see Sec. 560.420).

(c) Reexportation by United States persons or from the United States is governed by other sections in this part, including Secs. 560.204 and 560.206.

Note to Sec. 560.205. The reexportation of U.S.-origin goods or technology, including U.S.-origin goods or technology that have been incorporated or substantially transformed into a foreign-made product, not prohibited by this section, may require authorization by the U.S. Department of Commerce under the Export Administration Regulations (15 CFR parts 740-774) or by the U.S. State Department under the International Traffic in Arms Regulations (22 CFR 123.9).

5. Section 560.206 is revised to read as follows:

Sec. 560.206 Prohibited trade-related transactions with Iran; goods, technology, or services.

(a) Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, no United States person, wherever located, may engage in any transaction or dealing in or related to: (1) Goods or services of Iranian origin or owned or controlled by the Government of Iran; or

(2) Goods, technology, or services for exportation, reexportation, sale or supply, directly or indirectly, to Iran or the Government of Iran.

(b) For purposes of paragraph (a) of this section, the term transaction or dealing includes but is not limited to purchasing, selling, transporting, swapping, brokering, approving, financing, facilitating, or guaranteeing.

6. Section 560.207 is revised to read as follows:

Sec. 560.207 Prohibited investment.

Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, any new

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investment by a United States person in Iran or in property (including entities) owned or controlled by the Government of Iran is prohibited.

7. Section 560.208 is revised to read as follows:

Sec. 560.208 Prohibited facilitation by United States persons of transactions by foreign persons.

Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, no United States person, wherever located, may approve, finance, facilitate, or guarantee any transaction by a foreign person where the transaction by that foreign person would be prohibited by this part if performed by a United States person or within the United States.

8. Paragraphs (c) and (d) of Sec. 560.210 are revised to read as follows:

Sec. 560.210 Exempt transactions.

(c) Information and informational materials. (1) The importation from any country and the exportation to any country of information and informational materials as defined in Sec. 560.315, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part.

(2) This section does not exempt from regulation or authorize transactions related to information and informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Transactions that are prohibited notwithstanding this section include, but are not limited to, payment of advances for information and informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications), provision of services to market, produce or co-produce, create or assist in the creation of information and informational materials, and payment of royalties to persons in Iran or to the Government of Iran.

(3) This section does not exempt from regulation or authorize transactions incident to the exportation of software subject to the Export Administration Regulations (15 CFR parts 730-774).

(4) This section does not exempt from regulation or authorize the exportation of goods (including software) or technology or the sale or leasing of telecommunications transmission facilities (such as satellite links or dedicated lines) where such exportation, sale or leasing is for use in the transmission of any data.

(d) Travel. The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages. This exemption extends to transactions with Iranian carriers and those involving group tours and payments in Iran made for transactions directly incident to travel. * * * * *

Subpart C--Definitions

9. Section 560.301 is revised to read as follows:

Sec. 560.301 Effective date.

The effective date of the prohibitions and directives contained in subpart B of this part is 12:01 a.m., Eastern Daylight Time, August 20, 1997. For the effective date of pre-existing regulations and directives, see the Executive orders in the Authority citation for this part and implementing regulations.

10. Section 560.306 is revised to read as follows:

Sec. 560.306 Iranian-origin goods or services; Goods or services owned or controlled by the Government of Iran.

(a) The terms goods of Iranian origin and Iranian-origin goods include:

- (1) Goods grown, produced, manufactured, extracted, or processed in Iran; and
- (2) Goods which have entered into Iranian commerce.

(b) The terms services of Iranian origin and Iranian-origin services include:

(1) Services performed in Iran or by an entity organized under the laws of Iran, or a person residing in Iran; and

(2) Services performed outside Iran by a citizen, national or permanent resident of Iran who is ordinarily resident in Iran, or by an entity organized under the laws of Iran.

(c) The term goods or services owned or controlled by the Government of Iran includes:

(1) Goods grown, produced, manufactured, extracted or processed by the Government of Iran or goods in its possession or control; and

(2) Services performed by the Government of Iran.

(d) The terms services of Iranian-origin, Iranian-origin services, and services owned or controlled by the Government of Iran do not include:

(1) Diplomatic and consular services performed by or on behalf of the Government of Iran;

(2) Diplomatic and consular services performed by or on behalf of the Government of the United States; or

(3) Services performed outside Iran by an Iranian citizen or national who is resident in the United States or a third country, provided such services are not performed by or on behalf of the Government of Iran (other than diplomatic and consular services), an entity organized under the laws of Iran, or a person located in Iran.

11. Section 560.308 is revised to read as follows:

Sec. 560.308 Importation of goods.

With respect to goods (including software), the term importation means the bringing of any goods into the United States, except that in the case of goods transported by vessel, importation means the bringing of any goods into the United States with the intent to unlade them.

12. Section 560.315 is amended to revise the section heading and paragraphs (a) introductory text, (b) introductory text, and (b)(1) to read as follows:

Sec. 560.315 Information and informational materials.

(a) The term information and informational materials includes: * * * * *

(b) The term information and informational materials, with respect to exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2401-2420, the "EAA"), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or* * * * *

Sec. 560.318 [Removed and reserved]

13. Section 560.318 is removed and reserved.

14. Section 559.319 is revised to read as follows:

Sec. 560.319 United States depository institution.

The term United States depository institution means any entity (including

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its foreign branches) organized under the laws of any jurisdiction within the United States, or any agency, office or branch located in the United States of a foreign entity, that is engaged primarily in the business of banking (for example, banks, savings banks, savings associations, credit unions, trust companies and United States bank holding companies).

Subpart D--Interpretations

15. Section 560.403 is added to subpart D to read as follows:

Sec. 560.403 Transshipment through Iran.

The prohibitions in Secs. 560.204, 560.206 and 560.208 apply to export, reexport or supply transactions which require a transshipment or transit of goods or technology through Iran to third countries.

16. Section 560.406 is revised to read as follows:

Sec. 560.406 Transshipment or transit through United States prohibited.

(a) The prohibitions in Sec. 560.201 apply to the importation into the United States, for transshipment or transit, of Iranian-origin goods or goods owned or controlled by the Government of Iran which are intended or destined for third countries.

(b) The prohibitions in Sec. 560.204 apply to the transshipment or transit of foreign goods through the United States which are intended or destined for Iran or the Government of Iran, including entities owned or controlled by the Government of Iran.

17. Section 560.410 is revised to read as follows:

Sec. 560.410 Exportation, reexportation, sale or supply of services.

(a) The prohibition on the exportation, reexportation, sale or supply of services contained in Sec. 560.204 applies to services performed on behalf of a person in Iran or the Government of Iran

or where the benefit of such services is otherwise received in Iran, if such services are performed

(1) In the United States, or

(2) Outside the United States by a United States person, including by an overseas branch of an entity located in the United States.

(b) The benefit of services performed anywhere in the world on behalf of the Government of Iran is presumed to be received in Iran.

(c) Example. A United States person is engaged in a prohibited exportation of services to Iran when it extends credit to a third-country firm specifically to enable that firm to manufacture goods for sale to Iran or for an entity of the Government of Iran. See also Sec. 560.416.

Sec. 560.411 [Removed and reserved]

18. Section 560.411 is removed and reserved.

19. Section 560.412 is revised to read as follows:

Sec. 560.412 Extensions of credit or loans to Iran.

(a) The prohibitions contained in Secs. 560.204 and 560.207 apply to but are not limited to the unauthorized renewal or rescheduling of credits or loans in existence as of May 6, 1995, such as the extension of a standby letter of credit.

(b) The prohibitions contained in Sec. 560.209 apply, among other things, to the unauthorized renewal or rescheduling of credits or loans in existence as of March 15, 1995.

(c) The prohibitions contained in Secs. 560.204, 560.207 and 560.209 apply to, among other things, credits or loans in any currency.

20. Section 560.414 is revised to read as follows:

Sec. 560.414 Reexportation of certain U.S.-origin goods exported prior to May 7, 1995.

The prohibitions on reexportation in Sec. 560.205 do not apply to United States-origin goods or technology that were exported from the United States prior to 12:01 a.m., Eastern Daylight Time, May 7, 1995, if:

(a) Such goods or technology were not the property of a United States person as of 12:01 a.m. Eastern Daylight Time, May 7, 1995; and

(b) The reexportation of the U.S.-origin goods or technology to Iran or the Government of Iran was not subject to reexport (as opposed to export) license application requirements under U.S. regulations in effect prior to May 6, 1995. Notes to Sec. 560.414.

1. The exclusion in this section applies, among other things, to goods that were as of May 6, 1995, classified under the U.S. Department of Commerce's Export Administration Regulations (15 CFR parts 730-774) as ECCNs 2A994; 3A993; 5A992; 5A995; 6A990; 6A994; 7A994; 8A992; 8A994; 9A990; 9A992; and 9A994, that were exported from the United States prior to 12:01 a.m. Eastern Daylight Time, May 7, 1995, and were not the property of a United States person as of 12:01 a.m. Eastern Daylight Time, May 7, 1995. As of April 26, 1999, items covered by this note are classified under ECCNs 2A994; 3A992.a; 5A991.f; 5A992; 6A991; 6A998; 7A994; 8A992.d, .e, .f and .g; 9A990.a and .b; and 9A991.d and .e.

2. A reexportation of U.S.-origin goods or technology which meets the conditions of paragraph (a) of this section, or which is not within the scope of Sec. 560.205, nevertheless may require specific authorization by other agencies of the U.S. Government for reexportation to Iran or the Government of Iran. For example, items which meet the conditions of paragraph (a) may nevertheless require an

export license under the Enhanced Proliferation Control Initiative provisions of the Export Administration Regulations (15 CFR part 744).

21. Section 560.416 is added to subpart D to read as follows:

Sec. 560.416. Brokering services.

(a) For purposes of the prohibitions in Secs. 560.201, 560.204, 560.205, 560.206 and 560.208, the term services includes performing a brokering function.

(b) Examples. A person within the United States, or a United States person, wherever located, may not:

(1) Act as broker for the provision of goods, services or technology, from whatever source, to or from Iran or the Government of Iran;

(2) Act as broker for the purchase or swap of crude oil of Iranian origin or owned or controlled by the Government of Iran;

(3) Act as broker for the provision of financing, a financial guarantee or an extension of credit by any person to Iran or the Government of Iran;

(4) Act as a broker for the provision of financing, a financial guarantee or an extension of credit to any person specifically to enable that person to construct or operate a facility in Iran or owned or controlled by the Government of Iran; or

(5) Act as a broker for the provision of financing, a financial guarantee, or an extension of credit to any person specifically to enable that person to provide goods, services, or technology intended for Iran or the Government of Iran.

22. Section 560.417 is added to subpart D to read as follows:

Sec. 560.417 Facilitation; change of policies and procedures; referral of business opportunities offshore.

With respect to Sec. 560.208, a prohibited facilitation or approval of a transaction by a foreign person occurs, among other instances, when a United States person:

(a) Alters its operating policies or procedures, or those of a foreign affiliate, to permit a foreign affiliate to accept or perform a specific contract, engagement or transaction involving Iran or the Government of Iran without the approval of the United States person, where such transaction previously required approval by the United States person and such transaction by the foreign affiliate would be prohibited by this part if

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performed directly by a United States person or from the United States; (b) Refers to a foreign person purchase orders, requests for bids, or similar business opportunities involving Iran or the Government of Iran to which the United States person could not directly respond as a result of the prohibitions contained in this part; or

(c) Changes the operating policies and procedures of a particular affiliate with the specific purpose of facilitating transactions that would be prohibited by this part if performed by a United States person or from the United States.

23. Section 560.418 is added to subpart D to read as follows:

Sec. 560.418 Release of technology or software in the United States or a third country.

The release of technology or software in the United States, or by a United States person wherever located, to any person violates the prohibitions of this part if made with knowledge or reason to know the technology is intended for Iran or the Government of Iran, unless that technology or software meets the definition of information and informational materials in Sec. 560.315. See Sec. 560.511. Notes to Sec. 560.418.

1. The U.S. Department of Commerce's Bureau of Export Administration requires a license for the release in the United States (or in a third country) to a foreign national of technology if both of the following conditions are met:

(a) That technology would require a license for exportation (or reexportation) to the home country of the foreign national; and

(b) The foreign national is not a citizen or permanent resident of the United States (or of the third country) or is not a protected individual under the Immigration and Naturalization Act (8 U.S.C. Sec. 1324(b)(a)(3)). See 15 CFR 734.2(b)(2)(ii) and 734.2(b)(5).

2. The transfer to a foreign national of technology subject to regulations administered by the U.S. Department of State or other agencies of the U.S. Government may require authorization by those agencies.

24. Section 560.419 is added to subpart D to read as follows:

Sec. 560.419 U.S. employment of persons normally located in Iran.

The prohibitions in Sec. 560.201 make it unlawful to hire an Iranian national normally located in Iran to come to the United States solely or for the principal purpose of engaging in employment on behalf of an entity in Iran or as the employee of a U.S. person, unless that employment is authorized pursuant to a visa issued by the U.S. State Department or by Sec. 560.505. See also Sec. 560.418 with respect to the release of technology and software.

25. Section 560.420 is added to subpart D to read as follows:

Sec. 560.420 Reexportation by non-U.S. persons of certain foreign-made products containing U.S.-origin goods or technology.

For purposes of satisfying the de minimis content rule in Sec. 560.205(b)(2):

(a) U.S.-origin goods (excluding software) falling within the definition in Sec. 560.205 must comprise less than 10 percent of the foreign-made good (excluding software);

(b) U.S.-origin software falling within the definition in Sec. 560.205 must comprise less than 10 percent of the foreign-made software;

(c) U.S.-origin technology falling within the definition in Sec. 560.205 must comprise less than 10 percent of the foreign-made technology; and,

(d) In cases involving a complex product made of a combination of U.S.-origin goods (including software) and technology falling within the definition in Sec. 560.205, the aggregate value of all such U.S.-origin goods (including software) and such technology contained in the foreign-made product must be less than 10 percent of the total value of the foreign-made product.

Notes to Sec. 560.420.

1. Notwithstanding the exceptions contained in Sec. 560.205(b)(1) and (b)(2) and this section, a reexportation to Iran or the Government of Iran of U.S.-origin items falling within the definition in Sec. 560.205 is prohibited if those U.S.-origin goods (including software) or that technology have been substantially transformed or incorporated into a foreign-made end product which is destined to end uses or end users prohibited under regulations administered by other U.S. Government agencies. See,

e.g., the Export Administration Regulations (31 CFR 736.2(b)(5), 744.2, 744.3, 744.4, 744.7, and 744.10); International Traffic in Arms Regulations (22 CFR 123.9).

2. A reexportation not prohibited by Sec. 560.205 may nevertheless require authorization by the U.S. Department of Commerce, the U.S. Department of State or other agencies of the U.S. Government.

3. The provisions of Sec. 560.205 and this section apply only to persons other than United States persons.

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

26. Section 560.501 is amended by adding paragraphs (d) and (e) to read as follows:

Sec. 560.501 Effect of license or authorization.

(d) Specific licenses issued prior to 12:01 a.m., Eastern Daylight Time, August 20, 1997, continue in effect in accordance with their terms except to the extent specifically revoked, amended, or modified by the Office of Foreign Assets Control.

(e) Nothing contained in this part shall be construed to supersede the requirements established under any other provision of law or to relieve a person from any requirement to obtain a license or other authorization from another department or agency of the U.S. Government in compliance with applicable laws and regulations subject to the jurisdiction of that department or agency. For example, exports of goods, services, or technical data which are not prohibited by this part or which do not require a license by the Office of Foreign Assets Control, nevertheless may require authorization by the U.S. Department of Commerce, the U.S. Department of State or other agencies of the U.S. Government. See also Sec. 560.701(d).

27. Section 560.505 is revised to read as follows:

Sec. 560.505 Importation of certain Iranian-origin services authorized; activities related to certain visa categories authorized.

(a) The importation of Iranian-origin services into the United States or other dealing in such services is authorized where such services are performed in the United States by an Iranian citizen or national for the purpose of, or which directly relate to, participating in a public conference, performance, exhibition or similar event, and such services are consistent with that purpose.

(b) Persons otherwise qualified for a non-immigrant visa under categories A-3 and G-5 (attendants, servants and personal employees of aliens in the United States on diplomatic status), D (crewmen), F (students), I (information media representatives), J (exchange visitors), M (non-academic students), O and P (aliens with extraordinary ability, athletes, artists and entertainers), Q (international cultural exchange visitors), R (religious workers), or S (witnesses) are authorized to carry out in the United States those activities for which such a visa has been granted by the U.S. State Department.

(c) Persons otherwise qualified for a visa under categories E-2 (treaty investor), H-1b (temporary worker), or L (intra-company transferee) and all immigrant visa categories are authorized to carry out in the United States those activities for which such a visa has been granted by the U.S. State Department, provided that the persons are not coming to the United States to work as an agent, employee or contractor of the Government of Iran or a business entity or other organization in Iran.

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28. Section 560.506 is revised to read as follows:

Sec. 560.506 Importation and exportation of certain gifts authorized.

The importation into the United States of Iranian-origin goods from Iran or a third country, and the exportation from the United States to Iran of goods, are authorized for goods sent as gifts to persons provided that the value of the gift is not more than \$100; the goods are of a type and in quantities normally given as gifts between individuals; and the goods are not controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), or nuclear proliferation (NP). See Commerce Control List, Export Administration Regulations (15 CFR part 774).

29. Section 560.509 is amended by revising paragraph (a)(1) as follows:

Sec. 560.509 Certain transactions related to patents, trademarks and copyrights authorized.

(a) * * * (1) The filing and prosecution of any application to obtain a patent, trademark, copyright or other form of intellectual property protection, including importation of or dealing in Iranian-origin services, payment for such services, and payment to persons in Iran directly connected to such intellectual property protection;* * * * *

30. Section 560.511 is added to read as follows:

Sec. 560.511 Exportation or supply of insubstantial United States content for use in foreign-made products or technology.

(a) Except as provided in paragraph (b) of this section and notwithstanding the prohibitions in Sec. 560.204, the exportation or supply of goods or technology from the United States, or by a United States person wherever located, for substantial transformation or incorporation into a foreign-made end product in a country other than the United States or Iran, intended specifically or predominantly for Iran or the Government of Iran, is permitted under this part where the exporter has ascertained that all of the following are the case:

(1) The U.S.-origin goods or technology being exported for substantial transformation or incorporation abroad were not subject to export license application requirements under any United States regulations in effect on May 6, 1995, or were not thereafter made subject to such regulations imposed independently of this part;

(2) With respect to the foreign-made end product:

(i) U.S.-origin goods (excluding software) comprise less than 10 percent of the foreign-made good (excluding software);

(ii) U.S.-origin software comprises less than 10 percent of the foreign-made software;

(iii) U.S.-origin technology comprises less than 10 percent of the foreign-made technology; and

(iv) In cases involving a complex product made of a combination of goods (including software) and technology, the aggregate value of all U.S.-origin goods (including software) and technology contained in the foreign-made end product is less than 10 percent of the total value of the foreign-made product;

(3) The foreign-made end product is not destined to end uses or end users prohibited under regulations administered by other U.S. Government agencies. See, e.g., the Export Administration Regulations (31 CFR 736.2(b)(5), 744.2, 744.3, 744.4, 744.7, and 744.10); International Traffic in Arms Regulations (22 CFR 123.9);

(4) The foreign-made end product is not intended for use in the Iranian petroleum or petrochemical industry. For this purpose, products intended for use in the Iranian petroleum or petrochemical industry include not only products uniquely suited for use in those industries, such as oilfield services equipment, but also goods and technology for use in products, such as computers,

office equipment, construction equipment, or building materials, which are suitable for use in other industries but which are intended specifically for use in the petroleum or petrochemical industries. (b) The authorization contained in this section is not available if the foreign-made end product is of a type which other U.S. Government agencies make ineligible for de minimis U.S.-origin content. See, e.g., the Export Administration Regulations (15 CFR 734.4(a) and (b)); International Traffic in Arms Regulations (22 CFR 123.9).

Note to Sec. 560.511. An exportation authorized by this section may nevertheless require authorization by the U.S. Department of Commerce, the U.S. Department of State or other agencies of the U.S. Government.

31. Paragraph (d) of Sec. 560.515 removed, and paragraph (a) is revised to read as follows:

Sec. 560.515 30-day delayed effective date for pre-May 7, 1995 trade contracts involving Iran.

(a) All transactions necessary to complete performance of a trade contract entered into prior to May 7, 1995, and involving Iran (a pre-existing trade contract), including the exportation of goods, services (including financial services), or technology from the United States that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995, or performance under a pre-existing trade contract for transactions in Iranian-origin or Government of Iran-owned or controlled goods or services that do not involve importation into the United States, are authorized without specific licensing by the Office of Foreign Assets Control if the conditions in paragraph (a)(1) or (a)(2) of this section are met:

(1) If the pre-existing trade contract is for an exportation of goods or technology from the United States that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995, the goods or technology must be exported from the United States prior to 12:01 a.m. Eastern Daylight Time, June 6, 1995, and all other activity by U.S. persons that is necessary and incidental to the performance of the pre-existing trade contract (other than payment under a financing contract) must be completed prior to 12:01 a.m. Eastern Daylight Time, August 6, 1995; or

(2) All obligations under a pre-existing trade contract (other than payment under a financing contract) must be fully completed prior to 12:01 a.m. Eastern Daylight Time, June 6, 1995, if the pre-existing trade contract is for one of the following:

(i) The exportation of services from the United States benefitting a person in Iran or the Government of Iran;

(ii) The reexportation of goods or technology to Iran, the Government of Iran, or an entity owned or controlled by the Government of Iran that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995; or

(iii) Transactions relating to goods or services of Iranian origin or owned or controlled by the Government of Iran other than transactions relating to importation into the United States of such goods or services. * * * * *

32. Section 560.516 is amended by revising paragraphs (a)(3), (a)(4), and (b) to read as follows:

Sec. 560.516 Payment and United States dollar clearing transactions involving Iran.

(a) * * *

(3) The transfer arises from an underlying transaction that is not prohibited by this part, such as a non-commercial remittance to or from Iran (e.g., a family remittance not related to a family-owned enterprise); a U.S.-

related commercial transfer not prohibited by this part (see, e.g., Sec. 560.515(b)); or a third-country transaction not prohibited by this part; or

(4) The transfer arises from an underlying transaction that is exempted from regulation pursuant to Sec. 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)), such as an exportation to Iran or importation from Iran of information and informational materials, a travel-related remittance, or payment for the shipment of a donation of articles to relieve human suffering.

(b) Before a United States depository 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 depository institution must determine that the underlying transaction is not prohibited by this part. * * * * *

33. Section 560.523 is revised to read as follows:

Sec. 560.523 Exportation of equipment and services relating to information and informational materials.

Specific licenses may be issued on a case-by-case basis for the exportation of equipment and services necessary for the establishment of news wire feeds or other transmissions of information and informational materials.

34. Section 560.529 is added to subpart E to read as follows:

Sec. 560.529 Bunkering and emergency repairs.

Goods or services provided in the United States to a non-Iranian carrier transporting passengers or goods to or from Iran are permissible if they are:

- (a) Bunkers or bunkering services;
- (b) Supplied or performed in the course of emergency repairs; or
- (c) Supplied or performed under circumstances which could not be anticipated prior to the carrier's departure for the United States.

35. An appendix to this part is added at the end thereof to read as follows:

Appendix to Part 560--Financial Institutions Determined to be Owned or Controlled by the Government of Iran

This appendix lists financial institutions determined by the Office of Foreign Assets Control to be entities owned or controlled by the Government of Iran within the meaning of Sec. 560.313. The names and addresses represent the most complete list available at this time. Unless otherwise indicated, the financial institutions listed below are considered to be entities owned or controlled by the Government of Iran when they operate, not only from the locations listed below, but also from any other location. The names and addresses are subject to change, and the Office of Foreign Assets Control will update the list as needed.

1. AGRICULTURAL COOPERATIVE BANK OF IRAN (a.k.a. BANK TAAVON KESHAVARZI IRAN), No. 129 Patrice Lumumba Street, Jalal-Al-Ahmad Expressway, P.O. Box 14155/6395, Tehran, Iran
2. AGRICULTURAL DEVELOPMENT BANK OF IRAN (a.k.a. BANK JOSIAIYI KESHAHVARZI), Farahzad Expressway, Tehran, Iran
3. BANK JOSIAIYI KESHAHVARZI (a.k.a. AGRICULTURAL DEVELOPMENT BANK OF IRAN), Farahzad Expressway, Tehran, Iran

4. BANK MARKAZI JOMHOURI ISLAMI IRAN (a.k.a. THE CENTRAL BANK OF IRAN), Ferdowsi Avenue, P.O. Box 11365-8551, Tehran, Iran
5. BANK MASKAN (a.k.a. HOUSING BANK (of Iran)), Ferdowsi St., Tehran, Iran
6. BANK MELLAT, Park Shahr, Varzesh Avenue, P.O. Box 11365/5964, Tehran, Iran, and all offices worldwide, including, but not limited to:
 - a. BANK MELLAT (Branch), Ziya Gokalp Bulvari No. 12, Kizilay, Ankara, Turkey
 - b. BANK MELLAT (Branch), Binbir Cicek Sokak, Buyukdere Caddesi, P.O. Box 67, Levant, Istanbul, Turkey
 - c. BANK MELLAT (Branch), 48 Gresham Street, London EC2V 7AX, England
7. BANK MELLI, P.O. Box 11365-171, Ferdowsi Avenue, Tehran, Iran, and all offices worldwide, including, but not limited to:
 - a. BANK MELLI (Branch), 4 Moorgate, London EC2R 6AL, England
 - b. BANK MELLI (Branch), Schadowplatz 12, 4000 Dusseldorf 1, Germany
 - c. BANK MELLI (Branch), Friedenstrasse 4, P.O. Box 160 154, 6000 Frankfurt am Main, Germany
 - d. BANK MELLI (Branch), P.O. Box 112129, Holzbruecke 2, 2000 Hamburg 11, Germany
 - e. BANK MELLI (Branch), Odeonsplatz 18, 8000 Munich 22, Germany
 - f. BANK MELLI (Branch), 43 Avenue Montaigne, 75008 Paris, France
 - g. BANK MELLI (Branch), 601 Gloucester Tower, The Landmark, 11 Pedder Street, P.O. Box 720, Hong Kong
 - h. BANK MELLI (Representative Office), 333 New Tokyo Building, 3-1 Marunouchi, 3-chome, Chiyoda-ku, Tokyo, Japan
 - i. BANK MELLI (Representative Office), 818 Wilshire Boulevard, Los Angeles, California 90017, U.S.A
 - j. BANK MELLI (Representative Office), 767 Fifth Avenue, 44th Floor, New York, New York 10153, U.S.A
 - k. BANK MELLI (Representative Office), Smolensky Boulevard 22/14, Kv. S., Moscow, Russia
 - l. BANK MELLI (Branch), Flat No. 1, First Floor, 8 Al Sad El-Aaly, Dokki, P.O. Box 2654, Cairo, Egypt
 - m. BANK MELLI (Branch), Ben Yas Street, P.O. Box No. 1894, Riga Deira, Dubai, U.A.E
 - n. BANK MELLI (Branch), P.O. Box 2656, Shaikha Maryam Building, Liwa Street, Abu Dhabi, U.A.E
 - o. BANK MELLI (Branch), B.P.O. Box 1888, Clock Tower, Industrial Road, Al-Ain Club Building in from Emertel Al Ain, Al Ain, Abu Dhabi, U.A.E
 - p. BANK MELLI (Branch), P.O. Box 1894, Riqa, Ban Yas Street, Deira, Dubai, U.A.E
 - q. BANK MELLI (Branch), Mohd-Habib Building, Al-Fahidi Street, P.O. Box 3093, Bur Dubai, Dubai, U.A.E
 - r. BANK MELLI (Branch), P.O. Box 248, Fujairah, U.A.E
 - s. BANK MELLI (Branch), Sami Sagar Building Oman Street Al-Nakheel, P.O. Box 5270, Ras-Al Khaimah, U.A.E
 - t. BANK MELLI (Branch), P.O. Box 459, Al Bory Street, Sharjah, U.A.E.
 - u. BANK MELLI (Branch), P.O. Box 785, Government Road, Shaikh Mubarak Building, Manama, Bahrain
 - v. BANK MELLI (Branch), P.O. Box 23309, Shaikh Salman Street, Road No. 1129, Muharraq 211, Bahrain
 - w. BANK MELLI (Branch), P.O. Box 5643, Mossa Abdul Rehman Hassan Building, 238 Al Burj St., Ruwi, Muscat, Oman
8. BANK OF INDUSTRY AND MINE (of Iran) (a.k.a. BANK SANAT VA MADAN), Hafez Avenue, P.O. Box 11365/4978, Tehran, Iran
9. BANK REFAH KARGARAN (a.k.a. WORKERS WELFARE BANK (of Iran)), Moffettah No. 125, P.O. Box 15815 1866, Tehran, Iran
10. BANK SADERAT IRAN, Bank Saderat Tower, P.O. Box 15745-631, Somayeh Street, Tehran, Iran, and all offices worldwide, including, but not limited to:

- a. BANK SADERAT IRAN (Branch), Hamdam Street, Airport Road Intersection, P.O. Box 700, Abu Dhabi, U.A.E
- b. BANK SADERAT IRAN (Branch), Al-Am Road, P.O. Box 1140, Al Ein, Abu Dhabi, U.A.E
- c. BANK SADERAT IRAN (Branch), Liwara Street, P.O. Box 16, Ajman, U.A.E
- d. BANK SADERAT IRAN (Branch), 3rd Floor Dom Dasaf Building, Mejloka Street 7A, Ashkhabad, Turkmenistan
- e. BANK SADERAT IRAN (Branch), 25-29 Panepistimiou Street, P.O. Box 4308, GR-10210, Athens 10672, Greece
- f. BANK SADERAT IRAN (Branch), Imam Ali Street, Sahat Yaghi, Ras Elain-Alektisad Building 2nd Floor, Baalbeck, Lebanon
- g. BANK SADERAT IRAN (Branch and Offshore Banking Unit), 106 Government Road, P.O. Box 825, Manama Town 316, Bahrain
- h. BANK SADERAT IRAN (Branch), Hamra Pavillion Street, Savvagh and Daaboul Building 1st Floor, P.O. Box 113-6717, Beirut, Lebanon
- i. BANK SADERAT IRAN (Branch), Alghobairi Boulevard, Beirut, Lebanon
- j. BANK SADERAT IRAN (Branch), 28 Sherif Street, P.O. Box 462, Cairo, Egypt
- k. BANK SADERAT IRAN (Branch), Old Ben-Ghanem Street (next to God Market), P.O. Box 2256, Doha, Qatar
- l. BANK SADERAT IRAN (Branch), Almaktoum Road, P.O. Box 4182, Deira, Dubai, U.A.E

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- m. BANK SADERAT IRAN (Branch), Bazar Murshid, P.O. Box 4182, Deira, Dubai, U.A.E
- n. BANK SADERAT IRAN (Branch), Alfahid Road, P.O. Box 4182, Bur Dubai, Dubai, U.A.E
- o. BANK SADERAT IRAN (Branch), Sherea Shekikh Zayad Street, P.O. Box 55, Fujairah, U.A.E
- p. BANK SADERAT IRAN (Branch), Wilhelm Leuschner Strasse 41, P.O. Box 160151, W-6000 Frankfurt am Main, Germany
- q. BANK SADERAT IRAN (Branch), P.O. Box 112227, Hopfenhof Passage, Kleiner Bustah 6-10, W-2000 Hamburg 11, Germany
- r. BANK SADERAT IRAN (Branch), Lothbury, London EC2R 7HD, England
- s. BANK SADERAT IRAN (Representative Office), 707 Wilshire Boulevard, Suite 4880, Los Angeles, California 90017, U.S.A
- t. BANK SADERAT IRAN (Representative Office), 55 East 59th Street, 16th Floor, New York, New York 10022, U.S.A.
- u. BANK SADERAT IRAN (Branch), P.O. Box 4269, Mutrah, Muscat, Oman
- v. BANK SADERAT IRAN (Branch), 16 Rue de la Paix, Paris 2eme, 75002 Paris, France
- w. BANK SADERAT IRAN (Branch), Alaroba Road, P.O. Box 316, Sharjah, U.A.E
11. BANK SANAT VA MADAN (a.k.a. BANK OF INDUSTRY AND MINE (of Iran)), Hafez Avenue, P.O. Box 11365/4978, Tehran, Iran
12. BANK SEPAH, Emam Khomeini Square, P.O. Box 11364, Tehran, Iran, and all offices worldwide, including, but not limited to:
 - a. BANK SEPAH (Branch), Muenchener Strasse 49, P.O. Box 10 03 47, W-6000 Frankfurt am Main 1, Germany
 - b. BANK SEPAH (Branch), 5/7 Eastcheap, EC3M 1JT London, England
 - c. BANK SEPAH (Representative Office), 650 Fifth Avenue, New York, New York 10019, U.S.A
 - d. BANK SEPAH (Branch), 17 Place Vendome, 75001 Paris, France.
 - e. BANK SEPAH (Branch), Via Barberini 50, 00187 Rome, Italy
 - f. BANK SEPAH (Representative Office), Ufficio di Rappresentan Za, Via Ugo Foscolo 1, 20121 Milan, Italy
13. BANK TAAVON KESHAVARZI IRAN (a.k.a. AGRICULTURAL COOPERATIVE BANK OF IRAN) No. 129 Patrice Lumumba Street, Jalal-Al-Ahmad Expressway, P.O. Box 14155/6395, Tehran, Iran

14. BANK TEJARAT, 130 Taleghani Avenue, Nejatollahie, P.O. Box 11365-5416, Tehran, Iran, and all offices worldwide, including, but not limited to:
- a. BANK TEJARAT (Branch), 6/8 Clements Lane, London EC4N 7AP, England
 - b. BANK TEJARAT (Branch), 44 Avenue des Champs Elysees, 75008 Paris, France
15. DEUTSCH-IRANISCHE HANDELSBANK AG (n.k.a. EUROPAEISCH-IRANISCHE HANDELSBANK AG) Depenau 2, W-2000 Hamburg 1, Germany, and all offices worldwide, including, but not limited to:
- a. DEUTSCH-IRANISCHE HANDELSBANK AG (n.k.a. EUROPAEISCH-IRANISCHE HANDELSBANK AG) (Representative Office), 23 Argentine Square, Beihaghi Bulvard, P.O. Box 15815/1787, Tehran 15148, Iran
16. EUROPAEISCH-IRANISCHE HANDELSBANK AG (f.k.a. DEUTSCH-IRANISCHE HANDELSBANK AG) Depenau 2, W-2000 Hamburg 1, Germany, and all offices worldwide, including, but not limited to:
- a. EUROPAEISCH-IRANISCHE HANDELSBANK AG (f.k.a. DEUTSCH-IRANISCHE HANDELSBANK AG) (Representative Office), 23 Argentine Square, Beihaghi Bulvard, P.O. Box 15815/1787, Tehran 15148, Iran
17. HOUSING BANK (of Iran) (a.k.a. BANK MASKAN), Ferdowsi St., Tehran, Iran
18. IRAN OVERSEAS INVESTMENT BANK LIMITED (f.k.a. IRAN OVERSEAS INVESTMENT CORPORATION LIMITED), 120 Moorgate, London EC2M 6TS, England, and all offices worldwide, including, but not limited to:
- a. IRAN OVERSEAS INVESTMENT BANK LIMITED (Representative Office), 1137 Avenue Vali Asr off Park-e-Saai, P.O. Box 15115/531, Tehran, Iran
 - b. IRAN OVERSEAS INVESTMENT BANK LIMITED (Agency), Suite 3c Olympia House, 61/63 Dame Street, Dublin 2, Ireland
 - c. IRAN OVERSEAS INVESTMENT BANK LIMITED (Agency), Improgetti, Via Germanico 24, 00192 Rome, Italy
 - d. IRAN OVERSEAS TRADING COMPANY LIMITED (Subsidiary), 120 Moorgate, London EC2M 6TS, England
 - e. IRAN OVERSEAS INVESTMENT CORPORATION LIMITED (n.k.a. IRAN OVERSEAS INVESTMENT BANK LIMITED), 120 Moorgate, London EC2M 6TS, England
19. THE CENTRAL BANK OF IRAN (a.k.a. BANK MARKAZI JOMHOURI ISLAMI IRAN), Ferdowsi Avenue, P.O. Box 11365-8551, Tehran, Iran
20. WORKERS WELFARE BANK (of Iran) (a.k.a. BANK REFAH KARGARAN), Moffettah No. 125, P.O. Box 15815 1866, Tehran, Iran

Dated: March 25, 1999.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Approved: March 31, 1999.

Elisabeth A. Bresee,
Assistant Secretary (Enforcement), Department of the Treasury.

§2.5.3 - Amendment to the Iranian Transactions Regulations

[Federal Register: August 2, 1999 (Volume 64, Number 147)]

[Rules and Regulations]

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 538, 550 and 560

Sudanese Sanctions Regulations; Libyan Sanctions Regulations; Iranian Transactions Regulations: Licensing of Commercial Sales of Agricultural Commodities and Products, Medicine, and Medical Equipment

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Treasury Department is amending the Sudanese Sanctions Regulations, the Libyan Sanctions Regulations, and the Iranian Transactions Regulations to add statements of licensing policy with respect to commercial sales of agricultural commodities and products, medicine, and medical equipment.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480) or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, U.S. Treasury Department, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

On April 28, 1999, President Clinton announced that existing unilateral economic sanctions programs would be amended to modify licensing policies to permit case-by-case review of specific proposals for the commercial sale of agricultural commodities and products, as well as medicine and medical equipment, where the United States Government has the discretion to do so. He further announced that the Administration was developing country-specific licensing criteria to guide the case-by-case review process so that governments subject to sanctions do not gain unjustified or unwarranted benefits from such sales. To implement this policy, the Treasury Department's Office of Foreign Assets Control ("OFAC") is amending the Sudanese Sanctions Regulations, 31 CFR part 538 (the "SSR"), the Libyan Sanctions Regulations, 31 CFR part 550 (the "LSR"), and the Iranian Transactions Regulations, 31 CFR part 560 (the "ITR") (collectively, the "Regulations"), to make available both general and specific licenses governing commercial sales of such goods.

This final rule deals with commercial sales to Sudan, Libya and Iran (the "target countries") of agricultural commodities and products intended for ultimate consumption in a target country as food by humans (including live animals, raw, processed and packaged foods) or animals (including animal feeds); as seeds for food crops; or as reproductive materials (such as live animals, fertilized eggs, embryos and semen) for the production of food animals. It also deals with commercial sales of medicines (including those administered by injection) and medical equipment for use in the target countries, if those medicines and medical equipment are not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified EAR 99), as of the date of exportation or reexportation. Regulations, Secs. 538.523(a), 550.569(a) and 560.530(a).

Licensing of commercial sales. The amendments authorize two tracks for commercial sales of these goods. First, an OFAC general license permits sellers to negotiate and sign executory contracts for commercial sales and exportation or reexportation of any of these agricultural or medical items to the target countries or their governments. Performance under such executory contracts must be contingent upon receipt of an OFAC license. After review of an executory contract, OFAC may authorize its performance by specific license where OFAC finds the contract terms consistent with the licensing policy in this final rule. Regulations, Secs. 538.523, 550.569 and 560.530. Second, persons wishing to make commercial sales of certain bulk agricultural commodities to the target countries or their governments may apply for specific licenses that permit future entry into and performance of contracts for those commodities. OFAC will issue a specific license for the proposed bulk agricultural commodity sales and exportation and reexportation if it finds the proposal set forth in the application consistent with the licensing policy in this final rule. Regulations, Sec. 538.524 and SSR, appendix A; Sec. 550.570 and LSR, appendix A; Sec. 560.531 and ITR, appendix B. In either case, all sales to the target countries must comply with a series of requirements intended to ensure that such sales do not improperly benefit the target countries' governments.

Required contract terms for executory contracts. In addition to the requirements set forth below in Required contract terms in general, executory contracts submitted to OFAC for specific licensing must disclose all parties with an interest in the sales transaction, including identification of a purchasing agent's principals at the wholesale level, if any; set forth all terms of sale (e.g., purchase price, quantity, date of shipment, financing), except that dates for contract performance may be made dependent upon the date OFAC issues a specific license; and ensure that exports and reexports of any goods, technology or services are in compliance with license application requirements of other Federal agencies. Regulations, Secs. 538.523(b), 550.569(b) and 560.530(b).

Required contract terms for bulk agricultural commodities contracts. Contracts entered into pursuant to an OFAC specific license for bulk agricultural commodity sales must meet all of the requirements set forth below in Required contract terms in general, and may only cover commercial

sales of the bulk agricultural commodities listed in the appendices to the Regulations. Regulations, Secs. 538.524(b)(1), 550.570(b)(1) and 560.531(b)(1).

Required contract terms in general. Contracts for commercial sales licensed pursuant to this final rule must, in addition to the applicable requirements noted above, comply with the following conditions. The contracts must disclose the purchasers, including (for sales through persons in third countries) those to whom goods are to be resold, which may only be (1) private individuals in the target countries who are acting for their own accounts, (2) nongovernmental entities in the target countries, (3) target-country governmental procurement bodies identified by OFAC as not being affiliated with the coercive organs of the state, or (4) persons in third countries purchasing specifically for resale to any of the foregoing. (A listing of the procurement bodies identified by OFAC as not being affiliated with the coercive organs of the state can be found on OFAC's Web site at <http://www.treas.gov/ofac> or OFAC's fax-on-demand service at 202/622-0077.) Persons named in OFAC's list of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers (31 CFR chapter V, appendix A) or of financial institutions owned or controlled by the government of Iran (ITR, appendix A) are not eligible purchasers. All contracts must also provide for sales at prevailing market prices and with payment terms and financing consistent with the policies set forth below in Payment and financing terms. Regulations, Secs. 538.523 and 538.524(b); 550.569 and 550.570(b); 560.530 and 560.531(b).

Recordkeeping and reporting requirements. In addition, full records of all transactions pursuant to OFAC licenses must be maintained for a minimum of 5 years after each transaction, and reports relating to the transactions must be provided to OFAC upon demand to ensure compliance with all licensing requirements. Regulations, Secs. 538.523(e), 538.524(c); 550.569(e), 550.570(c); 560.530(e), 560.531(c); 501.601 and 501.602.

Payment and financing terms. Certain payment and financing terms for commercial sales of agricultural or medical items to the target countries or their governments are authorized by general license. These include payment of cash in advance, sales on open account (so long as the seller does not discount or otherwise transfer the account receivable created by the sale), and financing by third-country financial institutions (not U.S. persons nor target-country government banks). U.S. financial institutions are authorized by general license to advise or confirm such third-country financial institution financing. Regulations, Secs. 538.525(a), 550.571(a) and 560.532(a). In addition, specific licenses may be issued for payment terms and trade financing not permitted by general license. Regulations, Secs. 538.525(b), 550.571(b) and 560.532(b). Payments through the U.S. banking system must reference the applicable OFAC license to avoid being stopped or blocked in transit.

Brokering of target country purchases. This final rule permits, by general license, U.S. persons to broker sales of bulk agricultural commodities by U.S. persons destined for the target countries or their governments. For those sales, brokerage is authorized only if the sales meet all applicable requirements of this final rule for bulk agricultural commodity sales. To broker sales of bulk agricultural commodities by non-U.S. persons to the target countries or their governments, the broker must first obtain a specific license from OFAC. Licenses for brokerage are limited to sales of items listed in the bulk agricultural commodities appendices to the Regulations made to target country persons eligible to purchase bulk agricultural commodities from U.S. persons pursuant to paragraphs (b)(2) and (e) of Secs. 538.524, 550.570 and 560.531 of the Regulations. Further, if the brokered sales are subject to Federal licensing requirements, the sales must be made contingent upon prior authorization of the relevant Federal agency. Brokerage fees may not be paid from a blocked account of the Government of Sudan or Libya or from an Iranian account as defined in 31 CFR 560.530. Finally, brokers of any sales subject to this final rule must comply with the OFAC recordkeeping and reporting requirements in Secs. 501.601 and 501.602 of 31 CFR chapter V. Regulations, Secs. 538.526, 550.572 and 560.533.

Incidental transactions. The SSR are interpreted to permit most transactions incidental to licensed transactions. SSR, Sec. 538.405. This final rule amends the LSR and ITR to provide similar interpretations to that of the SSR, and to clarify in all three provisions that OFAC does not interpret the following as permitted incidental transactions: transportation services to or from the target countries except the discharging of licensed or exempt cargo; distribution or leasing of containers in the target countries after performing transportation services; or financing agricultural and medical sales described in this final rule. Regulations, Secs. 538.405, 550.405 and 560.405. (General licenses for certain financing terms and statements of licensing policy with respect to alternative terms are noted above.) Travel-related transactions are not restricted in the SSR or ITR. This final rule amends the LSR to authorize travel-related transactions for the negotiation of executory contracts or bulk agricultural commodity contracts. Specific licensing is required for installation and servicing of medical equipment sold to Libya pursuant to executory contracts. LSR, Sec. 550.573.

Paperwork Reduction Act

As authorized in the Administrative Procedure Act (5 U.S.C. 553)(the "APA"), this final rule is amending the Regulations is being issued without prior notice and public comment procedure. The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting and Procedures 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 ("OMB") 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.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the APA 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.

List of Subjects

31 CFR Part 538

Administrative practice and procedure, Agricultural commodities, Banks, banking, Blocking of assets, Drugs, Exports, Foreign trade, Humanitarian aid, Imports, Medical devices, Penalties, Reporting and recordkeeping requirements, Specially designated nationals, Sudan, Terrorism, Transportation.

31 CFR Part 550

Administrative practice and procedure, Agricultural commodities, Banks, banking, Blocking of assets, Drugs, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Medical devices, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Terrorism, Travel restrictions.

31 CFR Part 560

Administrative practice and procedure, Agricultural commodities, Banks, banking, Drugs, Exports, Foreign trade, Imports, Information, Investments, Iran, Loans, Medical devices, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

For the reasons set forth in the preamble, 31 CFR parts 538, 550 and 560 are amended as set forth below:

PART 560--IRANIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 2349aa-9; 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); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart D--Interpretations

2. Section 560.405 is added to subpart D to read as follows:

Sec. 560.405 Transactions incidental to a licensed transaction authorized.

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

- (a) A transaction by an unlicensed Iranian governmental entity or involving a debit or credit to an Iranian account not explicitly authorized within the terms of the license;
- (b) Provision of any transportation services to or from Iran not explicitly authorized in or pursuant to this part other than discharging licensed or exempt cargo there;
- (c) Distribution or leasing in Iran of any containers or similar goods owned or controlled by United States persons after the performance of transportation services to Iran; and
- (d) Financing of licensed sales for exportation or reexportation of agricultural commodities or products, medicine or medical equipment to Iran or the Government of Iran. See Sec. 560.532.

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

3. Section 560.530 is added to subpart E to read as follows:

Sec. 560.530 Commercial sales of agricultural commodities and products, medicine, and medical equipment.

(a) General license for executory contracts. Entry into executory contracts is authorized for the following transactions with nongovernmental entities in Iran or procurement bodies of the Government of Iran not affiliated with the coercive organs of the state, provided that performance of the executory contracts (including any preparatory activities, payments or deposits related to such executory contracts) is contingent upon the prior authorization of the Office of Foreign Assets Control in or pursuant to this part:

(1) The sale of agricultural commodities and products, if those commodities and products are intended for ultimate consumption in Iran as:

- (i) Food by humans (including live animals, raw, processed and packaged foods) or animals (including animal feeds);
- (ii) Seeds for food crops; and
- (iii) Reproductive materials (such as live animals, fertilized eggs, embryos and semen) for the production of food animals; and

(2) The sale of medicines (including those administered by injection) and medical equipment for use in Iran, if those medicines and medical equipment are not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified EAR99), as of the date of exportation or reexportation. (EAR99 items may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10.)

Note to paragraph (a) of Sec. 560.530. See Sec. 560.531 with respect to the availability of specific licenses for entry into and performance of contracts for sales of certain bulk agricultural commodities.

(b) Required terms of executory contracts. The authorization contained in paragraph (a) of this section applies only to executory contracts that:

(1) Disclose all parties with an interest in the sales transaction. If the goods are being sold to a purchasing agent in Iran, the executory contract must identify the agent's principals at the wholesale level for whom the purchase is being made;

(2) Provide only for sales at prevailing market prices;

(3) Set forth all terms of sale (e.g., purchase price, quantity, date of shipment, financing), except that dates for contract performance may be made dependent upon the date a specific license pursuant to paragraph (d) of this section is obtained from the Office of Foreign Assets Control;

(4) Make any performance involving the exportation or reexportation of any goods, technology (including technical data, software, or other information) or services that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, items classified EAR99 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 Export Administration. 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); and

(5) Provide for payment terms consistent with the provisions of Sec. 560.532.

(c) Ineligible purchasers. Nothing in this section permits entry into or performance of a sales contract with a person specifically named in appendix A to this chapter V or in appendix A to this part 560, other than a procurement body of the Government of Iran identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state.

Note to paragraph (c) of Sec. 560.530. Information on ineligible purchasers and eligible procurement bodies will be published in the Federal Register and may be found on the Office of Foreign Assets Control's Internet site: <http://www.treas.gov/ofac>, or on its fax-on-demand system: 202/622-0077.

(d) Specific licenses for performance under executory contracts. Specific licenses may be issued on a case-by-case basis to permit the performance of executory contracts meeting the requirements of paragraphs (a) and (b) of this section. See Sec. 501.801(b) of this chapter with respect to specific licensing procedures.

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

4. Section 560.531 is added to subpart E to read as follows:

Sec. 560.531 Commercial sales of certain bulk agricultural commodities.

(a) Sales of bulk agricultural commodities by licensed sellers. Specific licenses may be issued on a case-by-case basis to permit the sale and exportation or reexportation to persons in Iran or the Government of Iran of bulk agricultural commodities intended for ultimate consumption in Iran as food by humans or animals (including animal feeds) and seeds for food crops, for sales meeting all requirements of paragraph (b) of this section.

(b) Required contract terms for commercial sales of bulk agricultural commodities. Specific licenses issued pursuant to this section will authorize entry into and performance only of contracts that:

(1) Provide for the sale and exportation or reexportation only of bulk agricultural commodities listed in appendix B to this part 560;

(2) Fully identify the purchasers of the bulk agricultural commodities, including (for sales through persons in third countries) those to whom the commodities are to be resold, and do not include as a purchaser any person in Iran or any person within the definition of the term Government of Iran other than:

- (i) A private individual in Iran acting for his or her own account;
 - (ii) A nongovernmental entity in Iran; or
 - (iii) A procurement body of the Government of Iran identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state;
- (3) Provide only for sales at prevailing market prices;
- (4) Make any performance involving the exportation or reexportation of any goods, technology (including technical data, software, or other information) or services that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, EAR99 items may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. 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); and
- (5) Provide for payment terms consistent with the provisions of Sec. 560.532.
- (c) Recordkeeping and reporting requirements. Attention is drawn to the recordkeeping, retention, and reporting requirements of Secs. 501.601 and 501.602.
- (d) Other commodities and products. Requests may be made to the Office of Foreign Assets Control for specific licenses analogous to those available pursuant to paragraph (a) of this section where the applicant demonstrates to the satisfaction of the Office of Foreign Assets Control that, in light of industry practices, sales of the particular agricultural commodity or product, medicine, or medical equipment are impracticable under the executory contract licensing procedures contained in Sec. 560.530.
- (e) Ineligible purchasers. Nothing in this section permits entry into or performance of a sales contract with a person specifically named in appendix A to this chapter V or in appendix A to this part 560, other than a procurement body of the Government of Iran identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state.

Note to paragraph (e) of Sec. 560.531. Information on ineligible purchasers and eligible procurement bodies will be published in the Federal Register and may be found on the Office of Foreign Assets Control's Internet site: <http://www.treas.gov/ofac>, or on its fax-on-demand system: 202/622-0077.

5. Section 560.532 is added to subpart E to read as follows:

Sec. 560.532 Payment for and financing of commercial sales of agricultural commodities and products, medicine, and medical equipment.

(a) General license for payment terms. The following payment terms for sales of agricultural commodities and products, medicine, and medical equipment pursuant to Secs. 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 Secs. 560.530 and 560.531, except that such financing may not be provided by the Government of Iran. See Sec. 501.801(b) of this chapter for specific licensing procedures.

(c) No use of Iranian accounts. Nothing in this section authorizes payment terms or trade financing involving a debit or credit to an Iranian account.

(d) Transfers through the U.S. financial system. Any payment relating to a transaction authorized in or pursuant to Sec. 560.530, 560.531, or 560.533 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 Sec. 560.516(b).

6. Section 560.533 is added to subpart E to read as follows:

Sec. 560.533 Brokering sales of bulk agricultural commodities.

(a) General license for brokering sales by U.S. persons. United States persons are authorized to broker the sale by United States persons of the bulk agricultural commodities listed in appendix B to this part 560 to individuals in Iran acting for their own account, nongovernmental entities in Iran, procurement bodies of the Government of Iran identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state, or persons in third countries purchasing specifically for resale to any of the foregoing, provided that the brokered sales meet all conditions of Sec. 560.531.

(b) Specific licensing for brokering sales by non-U.S. persons. Specific licenses may be issued on a case-by-case basis to permit United States persons to broker the sale and exportation or reexportation of bulk agricultural commodities by non-United States persons to persons in Iran or the Government of Iran. Specific licenses issued pursuant to this section will authorize the brokerage 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 paragraphs (b)(2) and (e) of Sec. 560.531;

(3) Require that any performance that is subject to license application requirements of another Federal agency be contingent upon the prior authorization of that agency. (For example, items classified EAR99 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 Export Administration. 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 debit to an Iranian account. Payment for any brokerage fee pursuant to this section may not involve a debit or credit to an Iranian account.

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

Appendix A to Part 560 [Redesignated]

7. The appendix to part 560 is redesignated as Appendix A to Part 560.

8. Appendix B to part 560 is added to read as follows:

Appendix B to Part 560--Bulk Agricultural Commodities

Notes:

1. Appendix B sets forth those agricultural commodities eligible for the bulk agricultural commodity sales licensing procedures in Sec. 560.531.

2. Commodities are identified by their classification numbers in the Harmonized Tariff Schedule of the United States (see 19 U.S.C. 1202) ("HTS").

HTS Number	Commodity
1001.10	Durum Wheat
1001.90	Other Wheat and Meslin, including seed, Red Spring Wheat, White Winter Wheat, "Canadian" Western Red Winter Wheat, Soft White Spring Wheat, and Wheat not elsewhere specified

1101.00	Wheat or Meslin Flour
1006.10	Rice in the husk (paddy or rough)
1006.20	Husked (brown) Rice
1006.30	Semi-milled or wholly milled Rice, whether or not polished or glazed
1006.40	Broken Rice
1102.30	Rice Flour
1103.14	Rice Groats, Meal and Pellets
1002.00	Rye
1003.00	Barley
1004.00	Oats
1007.00	Grain Sorghum
1005.00	Corn (Maize)
0713.31	Dried Beans including <i>Vigna mungo</i> (L.), Hepper, and <i>Vigna radiata</i> (L.) Wilczek
0713.32	Small red (adzuki) beans
0713.33	Kidney beans, including white pea beans
0713.39	Beans, other
0713.50	Broad beans and horse beans
0713.10	Dried Peas (<i>Pisum sativum</i>)
0713.20	Chickpeas (garbanzos)
0713.40	Lentils
0713.90	Dried leguminous vegetables, shelled, not elsewhere specified
1201.00	Soybeans, whether or not broken
2304.00	Soybean cake, meal and pellets
1507.10	Soybean oil, crude
1507.90	Soybean oil, other
1514.10	Rapeseed, colza and mustard oil, crude
1514.90	Rapeseed, colza and mustard oil, other
1515.21	Corn (Maize) oil, crude
1515.29	Corn (Maize) oil, other
1512.21	Cottonseed oil, crude
1512.29	Cottonseed oil, other
1517.90	Cottonseed oil, hydrogenated
1508.10	Peanut (ground-nut) oil, crude
1508.90	Peanut (ground-nut) oil, other
1515.50	Sesame oil
1512.11	Sunflower-seed oil, crude
1512.19	Sunflower-seed oil, other
1212.91	Sugar Beets, fresh, chilled, frozen or dried
1212.92	Sugar Cane, fresh, chilled, frozen or dried
1701.11	Cane Sugar, raw, solid form
1701.12	Beet Sugar, raw, solid form
1701.91	Cane or Beet Sugar, solid form, containing added coloring or flavoring
1701.99	Cane or Beet Sugar, other, not elsewhere specified

SECTION 3

ANTI-TERRORISM

The Antiterrorism and Effective Death Penalty Act

Targeted at no specific countries, the Antiterrorism and Effective Death Penalty Act of 1996 (P.L. 104-132) governs U.S. relations with countries currently occupying a spot on the terrorism list including Iran. While some sections are largely symbolic, many set forth substantial penalties including a number of “secondary sanctions” aimed at persons and countries that continue to deal with Iran and other terrorism list countries.

Section 221 of the Act allows the victims of terrorism to sue a country alleged to have provided material support for a terrorist act or for the group that conducted the act. Since the law was passed, the family of Alisa Flatow, who was killed in 1995 by a terrorist act committed by the radical Palestinian group Palestinian Islamic Jihad (PIJ), won a judgment against Iran of nearly \$250 million. The family was able to prove to a U.S. court that Iran provided material support to PIJ, and therefore could be held liable. In August 1998, three former U.S. hostages held in Lebanon won a \$65 million judgement against Iran on the grounds that it gave material support to their captors, the radical Lebanese organization Hizbollah (Party of God). Another former hostage in Lebanon is currently seeking \$100 million from Iran. Despite these “victories”, the Act provides no mechanism for collection of these judgments. Also left unanswered are questions about whether such court judgements might, in some instances, conflict with U.S. foreign policy toward the individual terrorism list country, especially when the United States is trying to improve relations with that country.

Section 302 of the Act authorizes the Secretary of State to designate foreign terrorist organizations, and the Secretary of the Treasury to block the assets in the United States of the designated organizations. Section 303 makes it unlawful for U.S. persons to knowingly provide material support or resources to designated terrorist organizations. In accordance with the provision, on October 8, 1997, the Secretary of State designated twenty organizations as terrorist. Of those, five (Hizbollah, Hamas, Palestinian Islamic Jihad, the Kurdistan Workers’ Party, and the Popular Front for the Liberation of Palestine-General Command) were known¹ to receive at least some assistance from Iran at the time of their designation. Three more (Egypt’s Islamic Group and Jihad, and the Armed Islamic Group, of Algeria) are suspected of receiving some aid from Iran. Although this provision does not materially affect Iran,

¹ According to the State Department report on international terrorism for 1997, entitled *Patterns of Global Terrorism, 1997*.

Iranian leaders have consistently denounced what they perceive as unjust U.S. labeling of Middle Eastern groups as terrorist. Iran has defended its support for Hizbollah, Hamas, and Palestinian Islamic Jihad as humanitarian aid to groups engaged in legitimate resistance against Israeli occupation of Arab lands.

The designations did include the Iranian opposition People's Mojahedin, but not its U.S. affiliate, the National Council of Resistance (NCR). Iran, and many outside observers believe the two are equivalent, and Iran saw the U.S. refusal to specifically name the NCR as a terrorist group as an indication that the United States supports the groups and is seeking to overthrow the Islamic regime.

Section 321 of the Act provides for penalties against U.S. persons that engage in financial transactions with terrorism list states, except as provided for in regulations. As written, the regulations impose penalties for such transactions only if the U.S. person knows that the transaction will further an act of terrorism by the terrorism list country in question. Because Iran is subject to a broad U.S. trade and investment ban, this provision, as applied to Iran, is moot. It would become relevant to transactions with Iran if the U.S. trade ban on Iran were rescinded.

Sections 325 and 326 represent "secondary sanctions." Section 325 amends the Foreign Assistance Act (22 U.S.C. 151 et seq.) by adding a Section 620G, which requires the president to withhold U.S. foreign assistance to the government of any country that provides assistance to a terrorism list country. The provision can be waived if the president determines that doing so is in the national interest of the United States. Providing goods to a terrorism list country at subsidized prices, for example, is considered sanctionable for the purposes of the Act, according to administration officials. Due in large measure to the fact that Iran receives almost no bilateral foreign assistance, there have been no determinations of sanctionable activity under this provision. Countries that have given aid to Iran in the past, such as Japan, do not receive U.S. foreign aid and would therefore not be affected by this law if the assistance to Iran were resumed.

Section 326 adds Section 620H to the Foreign Assistance Act (§2.3), requiring the president to withhold U.S. assistance to any country that provides lethal military equipment to a terrorism list country. This section provides a national interest waiver. There have been no determinations of sanctionable activity with respect to Iran, but, in March 1999, the administration waived sanctions under this provision against the Russian government for sales of military equipment to Syria. Three Russian entities were sanctioned for the transactions, however.

Section 327 of the Act amends the International Financial Institutions Act (22 U.S.C. 262c et seq.) by requiring the administration to vote against loans to terrorism list countries by international financial institutions. The financial institutions named in the provision include the World Bank, the IMF, the International Development

Association, the Inter-American Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the African Development Fund. Unlike the previous section, a waiver is not available. This provision does not sanction any foreign countries that vote in favor of such loans, and it is possible that the United States, despite its substantial weight within some of these institutions, will be outvoted when such loans to Iran or other terrorism list countries are considered.

Section 330 of the Act amends the Arms Export Control Act (22 U.S.C. 2771 et seq.) to prevent U.S. arms sales to countries determined not to be cooperating with U.S. anti-terrorism efforts. In 1999, the countries designated as such included all seven terrorism list countries, plus Afghanistan. A national interest waiver is available under this section. However, U.S. arms sales to Iran are already prohibited by Iran's designation as a terrorism list country, in accordance with the Arms Export Control Act (See §4.1). If Iran were removed from the terrorism list, however, Iran's designation or non-designation under this section might determine whether or not it would qualify for a resumption of U.S. arms sales. This assumes that such sales would become politically feasible at some time in the foreseeable future.

§3.1 - ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996

Public Law 104-132
104th Congress

An Act

To deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes.¹

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,²

SECTION 1.³ SHORT TITLE.

This Act may be cited as the “Antiterrorism and Effective Death Penalty Act of 1996”.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I--HABEAS CORPUS REFORM

Sec. 101. Filing deadlines.

Sec. 102. Appeal.

Sec. 103. Amendment of Federal Rules of Appellate Procedure.

Sec. 104. Section 2254 amendments.

Sec. 105. Section 2255 amendments.

Sec. 106. Limits on second or successive applications.

Sec. 107. Death penalty litigation procedures.

Sec. 108. Technical amendment.

TITLE II--JUSTICE FOR VICTIMS

Subtitle A--Mandatory Victim Restitution

Sec. 201. Short title.

Sec. 202. Order of restitution.

Sec. 203. Conditions of probation.

Sec. 204. Mandatory restitution.

Sec. 205. Order of restitution to victims of other crimes.

Sec. 206. Procedure for issuance of restitution order.

Sec. 207. Procedure for enforcement of fine or restitution order.

¹ Apr. 24, 1996 - [S. 735]

² Antiterrorism and Effective Death Penalty Act of 1996

³ 18 USC 1 note.

- Sec. 208. Instruction to Sentencing Commission.
- Sec. 209. Justice Department regulations.
- Sec. 210. Special assessments on convicted persons.
- Sec. 211. Effective date.

Subtitle B--Jurisdiction for Lawsuits Against Terrorist States

- Sec. 221. Jurisdiction for lawsuits against terrorist states.

Subtitle C--Assistance to Victims of Terrorism

- Sec. 231. Short title.
- Sec. 232. Victims of Terrorism Act.
- Sec. 233. Compensation of victims of terrorism.
- Sec. 234. Crime victims fund.
- Sec. 235. Closed circuit televised court proceedings for victims of crime.
- Sec. 236. Technical correction.

TITLE III--INTERNATIONAL TERRORISM PROHIBITIONS

Subtitle A--Prohibition on International Terrorist Fundraising

- Sec. 301. Findings and purpose.
- Sec. 302. Designation of foreign terrorist organizations.
- Sec. 303. Prohibition on terrorist fundraising.

Subtitle B--Prohibition on Assistance to Terrorist States

- Sec. 321. Financial transactions with terrorists.
- Sec. 322. Foreign air travel safety.
- Sec. 323. Modification of material support provision.
- Sec. 324. Findings.
- Sec. 325. Prohibition on assistance to countries that aid terrorist states.
- Sec. 326. Prohibition on assistance to countries that provide military equipment to terrorist states.
- Sec. 327. Opposition to assistance by international financial institutions to terrorist states.
- Sec. 328. Antiterrorism assistance.
- Sec. 329. Definition of assistance.
- Sec. 330. Prohibition on assistance under Arms Export Control Act for countries not cooperating fully with United States antiterrorism efforts.

TITLE IV--TERRORIST AND CRIMINAL ALIEN REMOVAL AND EXCLUSION

Subtitle A--Removal of Alien Terrorists

- Sec. 401. Alien terrorist removal.

Subtitle B--Exclusion of Members and Representatives of Terrorist Organizations

- Sec. 411. Exclusion of alien terrorists.
- Sec. 412. Waiver authority concerning notice of denial of application for visas.
- Sec. 413. Denial of other relief for alien terrorists.
- Sec. 414. Exclusion of aliens who have not been inspected and admitted.

Subtitle C--Modification to Asylum Procedures

- Sec. 421. Denial of asylum to alien terrorists.
- Sec. 422. Inspection and exclusion by immigration officers.
- Sec. 423. Judicial review.

Subtitle D--Criminal Alien Procedural Improvements

- Sec. 431. Access to certain confidential immigration and naturalization files through court order.
- Sec. 432. Criminal alien identification system.
- Sec. 433. Establishing certain alien smuggling-related crimes as RICO-predicate offenses.
- Sec. 434. Authority for alien smuggling investigations.
- Sec. 435. Expansion of criteria for deportation for crimes of moral turpitude.
- Sec. 436. Miscellaneous provisions.
- Sec. 437. Interior repatriation program.
- Sec. 438. Deportation of nonviolent offenders prior to completion of sentence of imprisonment.
- Sec. 439. Authorizing State and local law enforcement officials to arrest and detain certain illegal aliens.
- Sec. 440. Criminal alien removal.
- Sec. 441. Limitation on collateral attacks on underlying deportation order.
- Sec. 442. Deportation procedures for certain criminal aliens who are not permanent residents.
- Sec. 443. Extradition of aliens.

TITLE V--NUCLEAR, BIOLOGICAL, AND CHEMICAL WEAPONS RESTRICTIONS

Subtitle A--Nuclear Materials

- Sec. 501. Findings and purpose.
- Sec. 502. Expansion of scope and jurisdictional bases of nuclear materials prohibitions.
- Sec. 503. Report to Congress on thefts of explosive materials from armories.

Subtitle B--Biological Weapons Restrictions

- Sec. 511. Enhanced penalties and control of biological agents.

Subtitle C--Chemical Weapons Restrictions

- Sec. 521. Chemical weapons of mass destruction; study of facility for training and evaluation of personnel who respond to use of chemical or biological weapons in urban and suburban areas.

TITLE VI--IMPLEMENTATION OF PLASTIC EXPLOSIVES CONVENTION

- Sec. 601. Findings and purposes.
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- Sec. 806. Commission on the Advancement of Federal Law Enforcement.
- Sec. 807. Combatting international counterfeiting of United States currency.
- Sec. 808. Compilation of statistics relating to intimidation of Government employees.
- Sec. 809. Assessing and reducing the threat to law enforcement officers from the criminal use of firearms and ammunition.
- Sec. 810. Study and report on electronic surveillance.

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- Sec. 811. Federal Bureau of Investigation.
- Sec. 812. United States Customs Service.
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- Sec. 815. Department of Justice.
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- Sec. 817. United States Park Police.
- Sec. 818. The Judiciary.
- Sec. 819. Local firefighter and emergency services training.
- Sec. 820. Assistance to foreign countries to procure explosive detection devices and other counterterrorism technology.
- Sec. 821. Research and development to support counterterrorism technologies.
- Sec. 822. Grants to State and local law enforcement for training and equipment.
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TITLE IX--MISCELLANEOUS

- Sec. 901. Expansion of territorial sea.
- Sec. 902. Proof of citizenship.
- Sec. 903. Representation fees in criminal cases.
- Sec. 904. Severability.

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SEC. 221. JURISDICTION FOR LAWSUITS AGAINST TERRORIST STATES.

(a) Exception to Foreign Sovereign Immunity for Certain Cases.--Section 1605 of title 28, United States Code, is amended--

(1) in subsection (a)--

(A) by striking “or” at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting “; or”; and

(C) by adding at the end the following new paragraph:

“(7) not otherwise covered by paragraph (2), in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency, except that the court shall decline to hear a claim under this paragraph--“(A) if the foreign state was not designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) at the time the act occurred, unless later so designated as a result of such act; and

“(B) even if the foreign state is or was so designated, if--

“(i) the act occurred in the foreign state against which the claim has been brought and the claimant has not afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with accepted international rules of arbitration; or

“(ii) the claimant or victim was not a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act) when the act upon which the claim is based occurred.”; and

(2) by adding at the end the following:

“(e) For purposes of paragraph (7) of subsection (a)--

“(1) the terms ‘torture’ and ‘extrajudicial killing’ have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991;

“(2) the term ‘hostage taking’ has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages; and

“(3) the term ‘aircraft sabotage’ has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.

“(f) No action shall be maintained under subsection (a)(7) unless the action is commenced not later than 10 years after the date on which the cause of action arose. All principles of equitable tolling, including the period during which the foreign state was immune from suit, shall apply in calculating this limitation period.

“(g) Limitation on Discovery.--

“(1) In general.--(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for subsection (a)(7), the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

“(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

“(2) Sunset.--(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

“(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would--“(i) create a serious threat of death or serious bodily injury to any person;

“(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

“(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

“(3) Evaluation of evidence.--The court’s evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

“(4) Bar on motions to dismiss.--A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

“(5) Construction.--Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.”.

(b) Exception to Immunity From Attachment.--

(1) Foreign state.--Section 1610(a) of title 28, United States Code, is amended--

(A) by striking the period at the end of paragraph (6) and inserting “, or”; and

(B) by adding at the end the following new paragraph:

“(7) the judgment relates to a claim for which the foreign state is not immune under section 1605(a)(7), regardless of whether the property is or was involved with the act upon which the claim is based.”.

(2) Agency or instrumentality.--Section 1610(b)(2) of title 28, United States Code, is amended--

(A) by striking “or (5)” and inserting “(5), or (7)”; and

(B) by striking “used for the activity” and inserting “involved in the act”.

(c)⁴ Applicability.--The amendments made by this subtitle shall apply to any cause of action arising before, on, or after the date of the enactment of this Act.

Subtitle C⁵--

⁴ 28 USC 1605 note.

⁵ Justice for Victims of Terrorism Act of 1996.

Assistance to Victims of Terrorism

TITLE III—INTERNATIONAL TERRORISM PROHIBITIONS

SEC. 301. FINDINGS AND PURPOSE.⁶

(a) Findings. – The Congress finds that --

(1) international terrorism is a serious and deadly problem that threatens the vital interests of the United States;

(2) the Constitution confers upon Congress the power to punish crimes against the law of nations and to carry out the treaty obligations of the United States, and therefore Congress may by law impose penalties relating to the provision of material support to foreign organizations engaged in terrorist activity;

(3) the power of the United States over immigration and naturalization permits the exclusion from the United States of persons belonging to international terrorist organizations;

(4) international terrorism affects the interstate and foreign commerce of the United States by harming international trade and market stability, and limiting international travel by United States citizens as well as foreign visitors to the United States;

(5) international cooperation is required for an effective response to terrorism, as demonstrated by the numerous multilateral conventions in force providing universal prosecutive jurisdiction over persons involved in a variety of terrorist acts, including hostage taking, murder of an internationally protected person, and aircraft piracy and sabotage;

(6) some foreign terrorist organizations, acting through affiliated groups or individuals, raise significant funds within the United States, or use the United States as a conduit for the receipt of funds raised in other nations;

(7) foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.

(b) Purpose. – The purpose of this subtitle is to provide the Federal Government the fullest possible basis, consistent with the Constitution, to prevent persons within the United States, or subject to the jurisdiction of the United States, from providing material support or resources of foreign organizations that engage in terrorist activities.

SEC. 302. DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.

(a) In General.--Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by adding at the end the following:

“SEC. 219.⁷ DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.

“(a) Designation.--

“(1) In general.--The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that--

“(A) the organization is a foreign organization;

“(B) the organization engages in terrorist activity as defined in section 212(a)(3)(B)); and

“(C) the terrorist activity of the organization threatens the security of United States nationals or the national security of the United States.

“(2) Procedure.--

“(A) Notice.--Seven days before making a designation under this subsection, the Secretary shall, by classified communication--

⁶ 18 USC 2339B.

⁷ 8 USC 1189.

“(i) notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees, in writing, of the intent to designate a foreign organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor; and

“(ii)⁸ seven days after such notification, publish the designation in the Federal Register.

“(B) Effect of designation.--

“(i) For purposes of section 2339B of title 18, United States Code, a designation under this subsection shall take effect upon publication under subparagraph (A).

“(ii)⁹ Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

“(C) Freezing of assets.--Upon notification under paragraph (2), the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of any foreign organization included in the notification to block all financial transactions involving those assets until further directive from either the Secretary of the Treasury, Act of Congress, or order of court.

“(3) Record.--

“(A) In general.--In making a designation under this subsection, the Secretary shall create an administrative record.

“(B) Classified information.--The Secretary may consider classified information in making a designation under this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).

“(4) Period of designation.--

“(A)¹⁰ In general.--Subject to paragraphs (5) and (6), a designation under this subsection shall be effective for all purposes for a period of 2 years beginning on the effective date of the designation under paragraph (2)(B).

“(B) Redesignation.--The Secretary may redesignate a foreign organization as a foreign terrorist organization for an additional 2-year period at the end of the 2-year period referred to in subparagraph (A) (but not sooner than 60 days prior to the termination of such period) upon a finding that the relevant circumstances described in paragraph (1) still exist. The procedural requirements of paragraphs (2) and (3) shall apply to a redesignation under this subparagraph.

“(5) Revocation by act of congress.--The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

“(6) Revocation based on change in circumstances.--

“(A) In general.--The Secretary may revoke a designation made under paragraph (1) if the Secretary finds that--

“(i) the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation of the designation; or (ii) the national security of the United States warrants a revocation of the designation.

“(B) Procedure.--The procedural requirements of paragraphs (2) through (4) shall apply to a revocation under this paragraph.

“(7) Effect of revocation.--The revocation of a designation under paragraph (5) or (6) shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

“(8) Use of designation in trial or hearing.--If a designation under this subsection has become effective under paragraph (1)(B), a defendant in a criminal action shall not be permitted to

⁸ Federal Register, publication.

⁹ Termination date.

¹⁰ Effective date.

raise any question concerning the validity of the issuance of such designation as a defense or an objection at any trial or hearing.

“(b) Judicial Review of Designation.--

“(1) In general.--Not later than 30 days after publication of the designation in the Federal Register, an organization designated as a foreign terrorist organization may seek judicial review of the designation in the United States Court of Appeals for the District of Columbia Circuit.

“(2) Basis of review.--Review under this subsection shall be based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation.

“(3) Scope of review.--The Court shall hold unlawful and set aside a designation the court finds to be--

“(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

“(B) contrary to constitutional right, power, privilege, or immunity; or

“(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

“(4) Judicial review invoked.--The pendency of an action for judicial review of a designation shall not affect the application of this section, unless the court issues a final order setting aside the designation.

“(c) Definitions.--As used in this section--

“(1) the term ‘classified information’ has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

“(2) the term ‘national security’ means the national defense, foreign relations, or economic interests of the United States;

“(3) the term ‘relevant committees’ means the Committees on the Judiciary, Intelligence, and Foreign Relations of the Senate and the Committees on the Judiciary, Intelligence, and International Relations of the House of Representatives; and

“(4) the term ‘Secretary’ means the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General.”

(b) Clerical Amendment.--The table of contents for the Immigration and Nationality Act, relating to terrorism, is amended by inserting after the item relating to section 218 the following new item:

“Sec. 219. Designation of foreign terrorist organizations.”

SEC. 303. PROHIBITION ON TERRORIST FUNDRAISING.

(a) In General.--Chapter 113B of title 18, United States Code, is amended by adding at the end the following new section:

“Sec. 2339B. Providing material support or resources to designated foreign terrorist organizations

“(a) Prohibited Activities.--

“(1) Unlawful conduct.--Whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

“(2) Financial institutions.--Except as authorized by the Secretary, any financial institution that becomes aware that it has possession of, or control over, any funds in which a foreign terrorist organization, or its agent, has an interest, shall—

“(A) retain possession of, or maintain control over, such funds; and

“(B)¹¹ report to the Secretary the existence of such funds in accordance with regulations issued by the Secretary.

¹¹ Reports. Regulations.

“(b) Civil Penalty.--Any financial institution that knowingly fails to comply with subsection (a)(2) shall be subject to a civil penalty in an amount that is the greater of—

“(A) \$50,000 per violation; or

“(B) twice the amount of which the financial institution was required under subsection (a)(2) to retain possession or control.

“(c) Injunction.--Whenever it appears to the Secretary or the Attorney General that any person is engaged in, or is about to engage in, any act that constitutes, or would constitute, a violation of this section, the Attorney General may initiate civil action in a district court of the United States to enjoin such violation.

“(d) Extraterritorial Jurisdiction.--There is extraterritorial Federal jurisdiction over an offense under this section.

“(e) Investigations.—

“(1) In general.--The Attorney General shall conduct any investigation of a possible violation of this section, or of any license, order, or regulation issued pursuant to this section.

“(2) Coordination with the department of the treasury.--The Attorney General shall work in coordination with the Secretary in investigations relating to—

“(A) the compliance or noncompliance by a financial institution with the requirements of subsection (a)(2); and

“(B) civil penalty proceedings authorized under subsection (b).

“(3) Referral.--Any evidence of a criminal violation of this section arising in the course of an investigation by the Secretary or any other Federal agency shall be referred immediately to the Attorney General for further investigation. The Attorney General shall timely notify the Secretary of any action taken on referrals from the Secretary, and may refer investigations to the Secretary for remedial licensing or civil penalty action.

“(f) Classified Information in Civil Proceedings Brought by the United States.—

“(1) Discovery of classified information by defendants.—

“(A) Request by united states.--In any civil proceeding under this section, upon request made ex parte and in writing by the United States, a court, upon a sufficient showing, may authorize the United States to—

“(i) redact specified items of classified information from documents to be introduced into evidence or made available to the defendant through discovery under the Federal Rules of Civil Procedure;

“(ii) substitute a summary of the information for such classified documents; or

“(iii) substitute a statement admitting relevant facts that the classified information would tend to prove.

“(B)¹² Order granting request.—If the court enters an order granting a request under this paragraph, the entire text of the documents to which the request relates shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

“(C)¹³ Denial of request.--If the court enters an order denying a request of the United States under this paragraph, the United States may take an immediate, interlocutory appeal in accordance with paragraph (5). For purposes of such an appeal, the entire text of the documents to which the request relates, together with any transcripts of arguments made ex parte to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

“(2) Introduction of classified information; precautions by court.—

“(A) Exhibits.--To prevent unnecessary or inadvertent disclosure of classified information in a civil proceeding brought by the United States under this section, the United States may petition the court ex parte to admit, in lieu of classified writings, recordings, or photographs, one or more of the following:

“(i) Copies of items from which classified information has been redacted.

¹² Records.

¹³ Records.

“(ii) Stipulations admitting relevant facts that specific classified information would tend to prove.

“(iii) A declassified summary of the specific classified information.

“(B) Determination by court.--The court shall grant a request under this paragraph if the court finds that the redacted item, stipulation, or summary is sufficient to allow the defendant to prepare a defense.

“(3) Taking of trial testimony.—

“(A) Objection.--During the examination of a witness in any civil proceeding brought by the United States under this subsection, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible.

“(B) Action by court.--In determining whether a response is admissible, the court shall take precautions to guard against the compromise of any classified information, including—

“(i) permitting the United States to provide the court, ex parte, with a proffer of the witness’s response to the question or line of inquiry; and

“(ii) requiring the defendant to provide the court with a proffer of the nature of the information that the defendant seeks to elicit.

“(C) Obligation of defendant.--In any civil proceeding under this section, it shall be the defendant’s obligation to establish the relevance and materiality of any classified information sought to be introduced.

“(4) Appeal.--If the court enters an order denying a request of the United States under this subsection, the United States may take an immediate interlocutory appeal in accordance with paragraph (5).

“(5) Interlocutory appeal.--“(A) Subject of appeal.--An interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of a district court—

“(i) authorizing the disclosure of classified information;

“(ii) imposing sanctions for nondisclosure of classified information; or

“(iii) refusing a protective order sought by the United States to prevent the disclosure of classified information.

“(B) Expedited consideration.—

“(i) In general.--An appeal taken pursuant to this paragraph, either before or during trial, shall be expedited by the court of appeals.

“(ii) Appeals prior to trial.--If an appeal is of an order made prior to trial, an appeal shall be taken not later than 10 days after the decision or order appealed from, and the trial shall not commence until the appeal is resolved.

“(iii) Appeals during trial.--If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals—

“(I) shall hear argument on such appeal not later than 4 days after the adjournment of the trial;

“(II) may dispense with written briefs other than the supporting materials previously submitted to the trial court;

“(III) shall render its decision not later than 4 days after argument on appeal; and

“(IV) may dispense with the issuance of a written opinion in rendering its decision.

“(C) Effect of ruling.--An interlocutory appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a final judgment, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

“(6) Construction.--Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privilege.

“(g) Definitions.--As used in this section—

“(1) the term ‘classified information’ has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

“(2) the term ‘financial institution’ has the same meaning as in section 5312(a)(2) of title 31, United States Code;

“(3) the term ‘funds’ includes coin or currency of the United States or any other country, traveler’s checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing;

“(4) the term ‘material support or resources’ has the same meaning as in section 2339A;

“(5) the term ‘Secretary’ means the Secretary of the Treasury; and

“(6) the term ‘terrorist organization’ means an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act.”.

(b) Clerical Amendment to Table of Sections.--The table of sections at the beginning of chapter 113B of title 18, United States Code, is amended by adding at the end the following new item: “2339B. Providing material support or resources to designated foreign terrorist organizations.”.

(c) Technical Amendment.—

(1) New item.--Chapter 113B of title 18, United States Code, relating to torture, is redesignated as chapter 113C. (2) Table of chapters.--The table of chapters for part I of title 18, United States Code, is amended by striking “113B. Torture” and inserting “113C. Torture”.

Subtitle B--Prohibition on Assistance to Terrorist States

SEC. 321. FINANCIAL TRANSACTIONS WITH TERRORISTS.

(a) In General.--Chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after the section 2332c added by section 521 of this Act the following new section: “Sec. 2332d. Financial transactions

“(a) Offense.--Except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, whoever, being a United States person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act (50 U.S.C. App. 2405) as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under this title, imprisoned for not more than 10 years, or both.

“(b) Definitions.--As used in this section--

“(1) the term ‘financial transaction’ has the same meaning as in section 1956(c)(4); and

“(2) the term ‘United States person’ means any--

“(A) United States citizen or national;

“(B) permanent resident alien;

“(C) juridical person organized under the laws of the United States; or

“(D) any person in the United States.”.

(b) Clerical Amendment.--The table of sections at the beginning of chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after the item added by section 521 of this Act the following new item: “2332d. Financial transactions.”.

(c)¹⁴ Effective Date.--The amendments made by this section shall become effective 120 days after the date of enactment of this Act.

SEC. 323. MODIFICATION OF MATERIAL SUPPORT PROVISION.

Section 2339A of title 18, United States Code, is amended to read as follows:

“Sec. 2339A. Providing material support to terrorists

“(a) Offense.--Whoever, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 351, 831, 842 (m) or (n), 844 (f) or (i), 956, 1114, 1116, 1203, 1361, 1362,

¹⁴ 18 USC 2332d note.

1363, 1366, 1751, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, or 2340A of this title or section 46502 of title 49, or in preparation for, or in carrying out, the concealment from the commission of any such violation, shall be fined under this title, imprisoned not more than 10 years, or both.

“(b) Definition.--In this section, the term ‘material support or resources’ means currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.”.

SEC. 324.¹⁵ FINDINGS.

The Congress finds that—

(1) international terrorism is among the most serious transnational threats faced by the United States and its allies, far eclipsing the dangers posed by population growth or pollution;

(2) the President should continue to make efforts to counter international terrorism a national security priority;

(3) because the United Nations has been an inadequate forum for the discussion of cooperative, multilateral responses to the threat of international terrorism, the President should undertake immediate efforts to develop effective multilateral responses to international terrorism as a complement to national counter terrorist efforts;

(4) the President should use all necessary means, including covert action and military force, to disrupt, dismantle, and destroy international infrastructure used by international terrorists, including overseas terrorist training facilities and safe havens;

(5) the Congress deplores decisions to ease, evade, or end international sanctions on state sponsors of terrorism, including the recent decision by the United Nations Sanctions Committee to allow airline flights to and from Libya despite Libya’s noncompliance with United Nations resolutions; and

(6) the President should continue to undertake efforts to increase the international isolation of state sponsors of international terrorism, including efforts to strengthen international sanctions, and should oppose any future initiatives to ease sanctions on Libya or other state sponsors of terrorism.

SEC. 325. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT AID TERRORIST STATES.

The Foreign Assistance Act of 1961 (22 U.S.C. 151 et seq.) is amended by adding immediately after section 620F the following new section:

“SEC. 620G¹⁶ . PROHIBITION ON ASSISTANCE TO COUNTRIES THAT AID TERRORIST STATES.

“(a) Withholding of Assistance.--The President shall withhold assistance under this Act to the government of any country that provides assistance to the government of any other country for which the Secretary of State has made a determination under section 620A.

“(b) Waiver.--Assistance prohibited by this section may be furnished to a foreign government described in subsection (a) if the President determines that furnishing such assistance is important to the national interests of the United States and, not later than 15 days before obligating such assistance, furnishes a report to the appropriate committees of Congress including--

“(1) a statement of the determination;

“(2) a detailed explanation of the assistance to be provided;

¹⁵ 22 USC 2377 note.

¹⁶ President. 22 USC 2377.

- “(3) the estimated dollar amount of the assistance; and
- “(4) an explanation of how the assistance furthers United States national interests.”.

SEC. 326. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT PROVIDE MILITARY EQUIPMENT TO TERRORIST STATES.

The Foreign Assistance Act of 1961 (22 U.S.C. 151 et seq.) is amended by adding immediately after section 620G the following new section:

“SEC. 620H.¹⁷ PROHIBITION ON ASSISTANCE TO COUNTRIES THAT PROVIDE MILITARY EQUIPMENT TO TERRORIST STATES.

“(a) Prohibition.--

“(1) In general.--The President shall withhold assistance under this Act to the government of any country that provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for the purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), or 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

“(2) Applicability.--The prohibition under this section with respect to a foreign government shall terminate 1 year after that government ceases to provide lethal military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after the date of enactment of this Act.

“(b) Waiver.--Notwithstanding any other provision of law, assistance may be furnished to a foreign government described in subsection (a) if the President determines that furnishing such assistance is important to the national interests of the United States and, not later than 15 days before obligating such assistance, furnishes a report to the appropriate committees of Congress including--

- “(1) a statement of the determination;
- “(2) a detailed explanation of the assistance to be provided;
- “(3) the estimated dollar amount of the assistance; and
- “(4) an explanation of how the assistance furthers United States national interests.”.

SEC. 327. OPPOSITION TO ASSISTANCE BY INTERNATIONAL FINANCIAL INSTITUTIONS TO TERRORIST STATES.

The International Financial Institutions Act (22 U.S.C. 262c et seq.) is amended by inserting after section 1620 the following new section:

“SEC. 1621.¹⁸ OPPOSITION TO ASSISTANCE BY INTERNATIONAL FINANCIAL INSTITUTIONS TO TERRORIST STATES.

“(a) In General.--The Secretary of the Treasury shall instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose any loan or other use of the funds of the respective institution to or for a country for which the Secretary of State has made a determination under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

“(b) Definition.--For purposes of this section, the term ‘international financial institution’ includes--

“(1) the International Bank for Reconstruction and Development, the International Development Association, and the International Monetary Fund;

¹⁷ President. 22 USC 2378.

¹⁸ 22 USC 262p-4q.

“(2) wherever applicable, the Inter-American Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the African Development Bank, and the African Development Fund; and

“(3) any similar institution established after the date of enactment of this section.”.

SEC. 328.¹⁹ ANTITERRORISM ASSISTANCE.

(a) Foreign Assistance Act.--Section 573 of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa-2) is amended--

(1) in subsection (c), by striking “development and implementation of the antiterrorism assistance program under this chapter, including”;

(2) by amending subsection (d) to read as follows:

“(d)(1) Arms and ammunition may be provided under this chapter only if they are directly related to antiterrorism assistance.

“(2) The value (in terms of original acquisition cost) of all equipment and commodities provided under this chapter in any fiscal year shall not exceed 30 percent of the funds made available to carry out this chapter for that fiscal year.”; and

(3) by striking subsection (f).

(b) Assistance to Foreign Countries To Procure Explosives Detection Devices and Other Counterterrorism Technology.--(1) Subject to section 575(b), up to \$3,000,000 in any fiscal year may be made available--

(A) to procure explosives detection devices and other counterterrorism technology; and

(B) for joint counterterrorism research and development projects on such technology conducted with NATO and major non-NATO allies under the auspices of the Technical Support Working Group of the Department of State.

(2) As used in this subsection, the term “major non-NATO allies” means those countries designated as major non-NATO allies for purposes of section 2350a(i)(3) of title 10, United States Code.

(c) Assistance to Foreign Countries.--Notwithstanding any other provision of law (except section 620A of the Foreign Assistance Act of 1961) up to \$1,000,000 in assistance may be provided to a foreign country for counterterrorism efforts in any fiscal year if--

(1) such assistance is provided for the purpose of protecting the property of the United States Government or the life and property of any United States citizen, or furthering the apprehension of any individual involved in any act of terrorism against such property or persons; and

(2) the appropriate committees of Congress are notified not later than 15 days prior to the provision of such assistance.

SEC. 329.²⁰ DEFINITION OF ASSISTANCE.

For purposes of this title--

(1) the term “assistance” means assistance to or for the benefit of a government of any country that is provided by grant, concessional sale, guaranty, insurance, or by any other means on terms more favorable than generally available in the applicable market, whether in the form of a loan, lease, credit, debt relief, or otherwise, including subsidies for exports to such country and favorable tariff treatment of articles that are the growth, product, or manufacture of such country; and

(2) the term “assistance” does not include assistance of the type authorized under chapter 9 of part 1 of the Foreign Assistance Act of 1961 (relating to international disaster assistance).

¹⁹ 22 USC 2349aa-10.

²⁰ 22 USC 2349aa-10 note.

SEC. 330. PROHIBITION ON ASSISTANCE UNDER ARMS EXPORT CONTROL ACT FOR COUNTRIES NOT COOPERATING FULLY WITH UNITED STATES ANTITERRORISM EFFORTS.

Chapter 3 of the Arms Export Control Act (22 U.S.C. 2771 et seq.) is amended by adding at the end the following:

“Sec. 40A.²¹ Transactions With Countries Not Fully Cooperating With United States Antiterrorism Efforts.--

“(a) Prohibited Transactions.--No defense article or defense service may be sold or licensed for export under this Act in a fiscal year to a foreign country that the President determines and certifies to Congress, by May 15 of the calendar year in which that fiscal year begins, is not cooperating fully with United States antiterrorism efforts.

“(b) Waiver.--The President may waive the prohibition set forth in subsection (a) with respect to a specific transaction if the President determines that the transaction is important to the national interests of the United States.”.

²¹ President. 22 USC 2781.

SECTION 4

ARMS EXPORT CONTROL AND NON-PROLIFERATION

The Arms Export Control Act

From the time of the Islamic revolution in 1979 until the addition of Section 40 to the Arms Export Control Act in 1986, there was no statutory prohibition on sales of U.S. military equipment to Iran. However, such a ban was in force as a matter of U.S. policy. As a result of the deterioration of U.S.-Iran relations following the fall of the Shah, the United States halted further deliveries of military equipment and services that Iran (under the Shah) had already purchased and paid for. In September 1980, the United States declared itself neutral in the Iran-Iraq war, a policy decision that implied that no U.S. arms would be sold to either Iran or Iraq. The United States apparently made a temporary exception to the “no arms sales to Iran” policy in the context of the 1985-86 arms dealings with Iran that became known as the “Iran-Contra Affair.” In those dealings, the United States sold Iran TOW anti-tank weapons and air defense equipment.

The key provision of the Arms Export Control Act that applies to Iran is Section 40 (22 U.S.C. 2780), which was added to the Act by Section 509(a) of P.L. 99-399, the Omnibus Diplomatic Security Act of 1986. The provision prohibits U.S. export (by sale, lease, loan, grant, or other means), of any item on the U.S. Munitions List to countries on the terrorism list. U.S. credits, guarantees, or financial assistance for terrorism list country arms purchases, as well as U.S. licensing or co-production agreements for or with that country, also are prohibited. The Act provides for a presidential waiver if the president deems an arms transfer to a terrorism list country to be in the national interest of the United States. To a large extent, the Iran-related provisions of the Act have been superseded by the U.S. trade and investment ban, which prohibits almost all U.S. exports to Iran, military or civilian. However, the provisions of the Act would become paramount again if the U.S. trade and investment ban on Iran were rescinded.

Section 40 of the Arms Export Control Act also delineates criteria for removing countries from the terrorism list. However, the Congress can block a decision to remove a country from the list through a joint resolution. Like any piece of legislation, a resolution of this type is subject to presidential veto.

As noted previously, the Antiterrorism and Effective Death Penalty Act of 1996 added Section 40A to the Arms Export Control Act. Sales of U.S. military equipment and services are prohibited to countries failing to cooperate with U.S.

anti-terrorism acts. A waiver of this prohibition is available should such a sale be deemed in the national interest. Thus, conceivably, Iran could still be barred from purchasing U.S. arms by law if Iran is removed from the terrorism list but remains on the “non-cooperative” list.

§4.1 - Arms Export Control Act (P.L. 90-629)

Sec. 40.²⁰⁸ Transactions With Countries Supporting Acts of International Terrorism.

(a) PROHIBITED TRANSACTIONS BY THE UNITED STATES GOVERNMENT.-The following transactions by the United States Government are prohibited:

(1) Exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a country described in subsection (d) under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)). In implementing this paragraph, the United States Government-

(A) shall suspend delivery to such country of any such item pursuant to any such transaction which has not been completed at the time the Secretary of State makes the determination described in subsection (d), and

(B) shall terminate any lease or loan to such country of any such item which is in effect at the time the Secretary of State makes that determination.

(2) Providing credits, guarantees, or other financial assistance under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)), with respect to the acquisition of any munitions item by a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend expenditures pursuant to any such assistance obligated before the Secretary of States makes the determination described in subsection (d). The President may authorize expenditures otherwise required to be suspended pursuant to the preceding sentence if the President has determined, and reported to the Congress, that suspension of those expenditures causes undue financial hardship to a supplier, shipper, or similar person and allowing the expenditure will not result in any munitions item being made available for use by such country.

(3) Consenting under section 3(a) of this Act, under section 505(a) of the Foreign Assistance Act of 1961, under the regulations issued to carry out section 38 of this Act, or under any other law (except as provided in subsection (h)), to any transfer of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government, it shall withdraw any such consent, which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been transferred to such country.

²⁰⁸ 22 U S C 2780. See also 22 CFR Part 120-130. Sec. 40 was added by sec. 509(a) of Public Law 99-399 (100 Stat. 874). Sec. 40 was amended and restated by the Anti-Terrorism and Arms Export Amendments Act of 1989 (Public Law 101-222; 103 Stat. 1892). It previously read as follows:

“ Sec. 40. Exports to Countries Supporting Acts of terrorism.

“(a) PROHIBITION.-Except as provided in subsection (b), items on the United States Munitions List may not be exported to any country which the Secretary of State has determined, for purposes of section 6(j)(1)(a) of the Export Administration Act of 1979 (50 U.S.C. App.2405(j)(1)(a) has repeatedly provided support for acts of international terrorism.

“(b) WAIVER – The President may waive the prohibition contained in subsection (a) in the case of a particular export if the President determines that the export is important to the national interests of the United States and submits to the Congress a report justifying that determination and describing the proposed export. Any such waiver shall expire at the end of 90 days after it is granted unless the Congress enacts a law extending the waiver.”.

(4) Providing any license or other approval under section 38 of this Act for any export or other transfer (including by means of a technical assistance agreement, manufacturing licensing agreement, or coproduction agreement) of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend any such license or other approval which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been exported or otherwise transferred to such country.

(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d). This paragraph applies with respect to activities undertaken-

(A) by any department, agency, or other instrumentality of the Government,

(B) by any officer or employee of the Government (including members of the United States Armed Forces), or

(C) by any other person at the request or on behalf of the Government.

The Secretary of State may waive the requirements of the second sentence of paragraph (1), the second sentence of paragraph (3), and the second sentence of paragraph (4) to the extent that the Secretary determines, after consultation with the Congress, that unusual and compelling circumstances require that the United States Government not take the actions specified in that sentence.

(b) PROHIBITED TRANSACTIONS BY UNITED STATES PERSONS.-

(1) IN GENERAL.-A United States person may not take any of the following actions:

(A) Exporting any munitions item to any country described in subsection (d).

(B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d).

(C) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any recipient which is not the government of or a person in a country described in subsection (d) if the United States person has reason to know that the munitions item will be made available to any country described in subsection (d).

(D) Taking any other action which would facilitate the acquisition, directly or indirectly, of any munitions item by the government of any country described in subsection (d), or any person acting on behalf of that government, if the United States person has reason to know that that action will facilitate the acquisition of that item by such a government or person.

(2) LIABILITY FOR ACTIONS OF FOREIGN SUBSIDIARIES, ETC.A United States person violates this subsection if a corporation or other person that is controlled in fact by that United States person (as determined under regulations, which the President shall issue), takes an action described in paragraph (1) outside the United States.

(3) APPLICABILITY TO ACTIONS OUTSIDE THE UNITED STATES. Paragraph (1) applies with respect to actions described in that paragraph which are taken either within or outside the United States by a United States person described in subsection (1)(3)(A) or (B). To the extent provided in regulations issued under subsection (1)(3)(D), paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United State by a person designated as a United States person in those regulations.

(c) TRANSFERS TO GOVERNMENTS AND PERSONS COVERED.-This section applies with respect to-

(1) the acquisition of munitions items by the government of a country described in subsection (d); and

(2) the acquisition of munitions items by any individual, group, or other person within a country described in subsection (d), except to the extent that subparagraph (D) of subsection (b)(1) provides otherwise.

(d)²⁰⁹ COUNTRIES COVERED BY PROHIBITION.-The prohibitions contained in this section apply with respect to a country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism. For purposes of this subsection, such acts shall include all activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups or willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material.²¹⁰

(e) PUBLICATION OF DETERMINATIONS.-Each determination of the Secretary of State under subsection (d) shall be published in the Federal Register.

(f) RESCISSION.²¹¹ A determination made by the Secretary of State under subsection (d) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate-

(A)²¹² before the proposed rescission would take effect, a report certifying that-

(i)²¹³ there has been a fundamental change in the leadership and policies of the government of the country concerned;

²⁰⁹ "Sec. 550 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105-118; 111 Stat. 2421), provided the following:

"PROHIBITION ON ASSISTANCE TO FOREIGN GOVERNMENTS THAT EXPORT LETHAL MILITARY EQUIPMENT TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM

"SEC. 550. (a) None of the funds appropriated or otherwise made available by this Act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for purposes of section 40(d) of the Arms Export Control Act. The prohibition under this section with respect to a foreign government shall terminate 12 months after that government ceases to provide such military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after October 1, 1997.

"(b) Assistance restricted by subsection (a) or any other similar provision of law, may be furnished if the President determines that furnishing such assistance is important to the national interests of the United States,

"(c) Whenever the waiver of subsection (b) is exercised, the President shall submit to the appropriate congressional committees a report with respect to the furnishing of such assistance. Any such report shall include a detailed explanation of the assistance estimated to be provided, including the estimated dollar amount of such assistance, and an explanation of how the assistance furthers United States national interests."

²¹⁰ Sec. 822(a)(2)(A) of the Nuclear Proliferation Prevention Act of 1994 (title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; Public Law 103-236; 108 Stat. 511), added the sentence that begins "For purposes of this subsection, * * *".

²¹¹ Sec. 321(3) of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102-138; 105 Stat. 710), inserted new designation for par. (1), and sec. 321(4) added a new par. (2).

²¹² Sec. 321(2) of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102-138; 105 Stat. 710), redesignated pars. (1) and (2), as subpars. (A) and (B), respectively.

²¹³ Sec. 321(l) of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102-138; 105 Stat. 710), redesignated "subparagraphs (A), (B), and (C) of each of paragraphs (1) and (2) as clauses (i), (ii), and (iii), respectively." Clause (2), redesignated here as subpar. (B), however, has only two subpars., redesignated here as (i) and (ii), from (A) and (B), respectively.

- (ii) ²¹³ that government is not supporting acts of international terrorism; and
- (iii) ²¹³ that government has provided assurances that it will not support acts of international terrorism in the future; or
- (B) ²¹² at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that-
 - (i) ²¹³ the government concerned has not provided any support for international terrorism during the preceding 6 month period; and
 - (ii) ²¹³ the government concerned has provided assurances that it will not support acts of international terrorism in the future.
- (2)²¹¹ (A) No rescission under paragraph (1)(B) of a determination under subsection (d) may be made if the Congress, within 45 days after receipt of a report under paragraph (1)(B), enacts a joint resolution the matter after the resolving clause of which is as follows: "That the proposed rescission of the determination under section 40(d) of the Arms Export Control Act pursuant to the report submitted to the Congress on _____ is hereby prohibited", the blank to be completed with the appropriate date.
- (B) A joint resolution described in subparagraph (A) and introduced within the appropriate 45-day period shall be considered in the Senate and the House of Representatives in accordance with paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in Public Law 98-473),

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²¹⁴ Sec. 8066 of the Department of Defense Appropriations Act (title VIII of the Continuing Appropriations 1985; Public Law 98-473; 98 Stat. 1837 at 1935), placed restrictions on fiscal year 1985 made available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities, which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual. Subsec. (b) of that section allowed for the lifting of the prohibition (1) if the President reported on certain criteria;

and (2) if a joint resolution approving assistance for military or paramilitary operations in Nicaragua were to be enacted.

In particular subsec. (c), pars. (1) and (3) through (7), provided the following [par. (1) included here because of repeated references to it throughout pars. (3)-(7)]:

"(c)(1) For the purpose of subsection (b)(2), 'joint resolution' means only a joint resolution introduced after the date on which the report of the President under subsection (b)(1) is received by the Congress, the matter after the resolving clause of which is as follows; "That the Congress approved the obligation and expenditure of funds available for fiscal year 1985 for supporting, directly or indirectly, military or paramilitary operations in Nicaragua.".

* * * * *

"(3) A resolution described in paragraph (1) introduced in the House of Representatives shall be referred to the Committee on Appropriations of the House of Representatives. A resolution described in paragraph (1) introduced in the Senate shall be referred to the Committee on Appropriations of the Senate. Such a resolution may not be reported before the eighth day after its introduction.

"(4) If the committee to which is referred a resolution described in paragraph (1) has not reported such resolution (or an identical resolution) at the end of fifteen calendar days after its introduction, such committee shall be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

"(5)(A) When the committee to which a resolution is referred has reported, or has been deemed to be discharged (under paragraph (4)) from further consideration of, a resolution described in paragraph (1), notwithstanding any rule or precedent of the Senate, including Rule 22, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

"(C) Immediately following the conclusion of the debate on a resolution described in paragraph (1), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

except that references in such paragraphs to the Committees on Appropriations of the House of Representatives and the Senate shall be deemed to be references to the Committee on Foreign Affairs ²¹⁵ of the House of Representatives and the Committee on Foreign Relations of the Senate, respectively.

(g) WAIVER –The President may waive the prohibitions with respect to a specific transaction if

(1) the President determines that the transaction is essential to the national security interests of the United States; and

(2) not less than 15 days prior to the proposed transaction, the President-

(A) consults with the Committee on Foreign Affairs ²¹⁵ of the House of Representatives and the Committee on Foreign Relations of the Senate; and

(B) submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing

(i) the name of any country involved in the proposed transaction, the identity of any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

(ii) a description of the munitions items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction (or if the items are transferred by other than sale, the manner in which they will be provided);

(iii) the reasons why the proposed transaction is essential to the national security interests of the United States and the justification for such proposed transaction;

(iv) the date on which the proposed transaction is expected to occur; and

(v) the name of every United States Government department, agency, or other entity involved in the proposed transaction, every foreign government involved in the proposed transaction, and every private party with significant participation in the proposed transaction.

To the extent possible, the information specified in subparagraph (B) of paragraph (2) shall be provided in unclassified form, with any classified information provided in an addendum to the report.

“(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in paragraph (1) shall be decided without debate.

“(6) If, before the passage by the Senate of a resolution of the Senate described in paragraph (1), the Senate receives from the House of Representatives a resolution described in paragraph (1), then the following procedures shall apply:

“(A) The resolution of the House of Representatives shall not be referred to a committee.

“(B) With respect to a resolution described in paragraph (1) of the Senate-

“(i) the procedure in the Senate shall be the same as if no resolution had been received from the House; but

“(ii) the vote on final passage shall be on the resolution of the House.

“(C) Upon disposition of the resolution received from the House, it shall no longer be in order to consider the resolution originated in the Senate.

“(7) If the Senate receives from the House of Representatives a resolution described in paragraph (1) after the Senate has disposed of a Senate originated resolution, the action of the Senate with regard to the disposition of the Senate originated resolution shall be deemed to be the action of the Senate with regard to the House originated resolution.”.

²¹⁵ Sec.1(a)(5) of Public Law 104-14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

(h) EXEMPTION FOR TRANSACTIONS SUBJECT TO NATIONAL SECURITY ACT REPORTING REQUIREMENTS – The prohibitions contained in this section do not apply with respect to any transaction subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities).

(i) RELATION TO OTHER LAWS –

(1) IN GENERAL.-With regard to munitions items controlled pursuant to this Act, the provisions of this section shall apply notwithstanding any other provisions of law, other than section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)).

(2) SECTION 614(A) WAIVER AUTHORITY.-If the authority of section 614(a) of the Foreign Assistance Act of 1961 is used to permit a transaction under that Act or the Arms Export Control Act which is otherwise prohibited by this section, the written policy justification required by that section shall include the information specified in subsection (g)(2)(B) of this section.

(j) CRIMINAL PENALTY.-Any person who willfully violates this section shall be fined for each violation not more than \$1,000,000, imprisoned not more than 10 years, or both.

(k) CIVIL PENALTIES; ENFORCEMENT.-In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies, and officials by sections 11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979 (216) (subject to the same terms and conditions as are applicable to such powers under that Act), except that, notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed \$500,000.

(1) DEFINITIONS.-As used in this section –

(1) the term "munitions item" means any item enumerated on the United States Munitions list (without regard to whether the item is imported into or exported from the United States);

(2) the term "United States", when used geographically means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States;²¹⁷

(3) the term "United States person" means-

(A) any citizen or permanent resident alien of the United States;

(B) any sole proprietorship, partnership, company, association, or corporation having its principal place of business within the United States or organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

(C) any other person with respect to that person's actions while in the United States; and

(D) to the extent provided in regulations issued by the Secretary of state, any person that is not described in subparagraph (A), (B), or (C) but-

(i) is a foreign subsidiary or affiliate of a United States person described in subparagraph (B) and is controlled in fact by that United States person (as determined in accordance with those regulations), or

(ii) is otherwise subject to the jurisdiction of the United States with respect to that person's actions while outside the United States;

(4) ²¹⁷ the term "nuclear explosive device" has the meaning given that term in section 830(4) of the Nuclear Proliferation Prevention Act of 1994; and

(5) ²¹⁷ the term "unsafeguarded special nuclear material" has the meaning given that term in section 830(8) of the Nuclear Proliferation Prevention Act of 1994.

SEC. 40A. ²¹⁸ TRANSACTIONS WITH COUNTRIES NOT FULLY COOPERATING WITH UNITED STATES ANTITERRORISM EFFORTS –

(a) PROHIBITED TRANSACTIONS.-No defense article or defense service may be sold or licensed for export under this Act in a fiscal year to a foreign country that the President determines and certifies to Congress, by May 15 of the calendar year in which that fiscal year begins, is not cooperating fully with United States antiterrorism efforts.

(b) WAIVER.-The President may waive the prohibition set forth in subsection (a) with respect to a specific transaction if the President determines that the transaction is important to the national interests of the United States.

²¹⁷ See *Legislation on Foreign Relations Through 1997*, vol. III, sec. J.

²¹⁷ Sec. 822(a)(2)(B) of the Nuclear Proliferation Prevention Act of 1994 (title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; Public Law 103-236; 108 Stat.511), struck out "and" at the end of para. (2); struck out a period at the end of para. (3), and inserted in lieu thereof a semicolon; and added new paras. (4) and (5).

²¹⁸ 22 U.S.C. 2781. Sec. 330 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132; 110 Stat. 1258) added this sec. 40A. Sec. 150(a) of Public Law 104-164 (110 Stat. 1436) also added a sec. 40A, relating to end-use monitoring of defense articles and defense services.

On May 9, 1997, the Acting Secretary of State determined and certified "that the following countries are not cooperating fully with United States antiterrorism efforts: Afghanistan; Cuba; Iran; Iraq; Libya; North Korea; Sudan; and Syria" (Department of State Public Notice No. 2543; 62 F.R. 28097).

The Iran-Iraq Arms Non-Proliferation Act

The Iran-Iraq Arms Non-Proliferation Act (P.L. 102-484, 50 U.S.C. 1701), signed by President Bush in October 1992, foreshadowed the Clinton Administration's policy of dual containment (see speech by Martin Indyk). By imposing identical prohibitions on the transfer of dual use technologies and destabilizing conventional weaponry to Iran and Iraq, the Act essentially equated Iran and Iraq as pariah states. The act was also the forerunner of attempts by the successor Clinton Administration and Congress to impose "secondary sanctions" — sanctions against countries or persons that materially assist Iran's economy or strategic capabilities. Because the Act is specific to Iran (and Iraq), it would still apply even if Iran were removed from the terrorism list.

The act became law before the U.S. trade and investment ban was imposed on Iran meaning that, prior to the act, U.S. suppliers could apply for licenses to export dual use items to Iran. The licensing policy was in accordance with Section 6(j) of the Export Administration Act of 1979 (P.L. 99-72, as amended, 50 U.S.C. 2405), which established the terrorism list itself and instituted the requirement that exports of dual use items to terrorism list countries be licensed. Under the Export Administration Act, (which expired in 1994 but was continued by Executive Order 12924 of August 19, 1994), there was a *presumption* of denial for such licenses. Section 1603 of the Iran-Iraq Arms Non-Proliferation *required* that such licenses for exports of dual use items to Iran be denied. This provision of the Iran-Iraq Arms Non-Proliferation Act was later superseded by the U.S. trade and investment ban, which prevented exports of dual use as well as purely civilian goods to Iran.

The most widely debated provision of the Act, Section 1605, centered on the issue of "secondary sanctions," the requirement that the President impose sanctions on foreign countries that transfer goods that help Iran (or Iraq) acquire "destabilizing numbers and types of advanced conventional weapons." The Act made the imposition of some sanctions mandatory while others are left to the discretion of the president. Again, required sanctions may be waived if they be determined to conflict with the national interest. Although the Act specified systems that would be considered "advanced conventional weapons", the definition of "destabilizing numbers and types" was left quite vague. This ambiguity was the source of significant congressional discord when the Clinton administration decided not to classify China's transfer of C-802 (sea and coast launched) and C-801K (air launched) cruise missiles as sanctionable under the Act. Those opposing the Administration decision pointed to the Defense Department determination that the missiles gave Iran the ability to hit U.S. targets in the Gulf with little advanced warning, as proof that these transfers met the definition of a destabilizing type of weapon.

Another test of the Act arose when Russia announced in January 1995 that it would complete a nuclear power reactor at Bushehr, begun by German firms in the 1970s but abandoned after the Islamic revolution. Section 1602 requires sanctions against any U.S. or foreign person or country that helps Iran (or Iraq) acquire weapons of mass destruction. However, the provision states that those sanctions would be imposed in accordance with other laws, including the Foreign Assistance Act, the Nuclear Non-Proliferation Act of 1978, the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, chapter 7 of the Arms Export Control Act, and “other relevant statutes.” Iran and Russia maintained that the Bushehr project was only for peaceful purposes and was in accord with commitments under the Nuclear Non-Proliferation Treaty (NPT), including safeguards imposed by the International Atomic Energy Agency. Because the project did not appear to violate international non-proliferation agreements, the administration did not impose any sanctions on Russia for the Bushehr contract. Work is proceeding on the project, although at a slower than expected pace.

In an effort to close this “loophole”, a provision of the Fiscal Year 1996 Defense Authorization Act added transfers of goods that contribute to Iran’s chemical, biological, or nuclear weapons programs as sanctionable under Section 1605 of the Iran-Iraq Arms Non-Proliferation Act. However, because Iran and Russia would likely have argued that Bushehr is not a part a of nuclear *weapons* program, it is not certain that this amendment would have covered Bushehr had it been included in the original version of the act.

§4.2.1 - IRAN-IRAQ ARMS NONPROLIFERATION ACT OF 1993

PUBLIC LAW 102-484 [H.R. 5006]; October 23, 1992

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993

An Act to authorize appropriations for fiscal year 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to provide for defense conversion, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 1993'.

TITLE XVI – IRAN-IRAQ ARMS NON-PROLIFERATION ACT OF 1992

SEC. 1601. SHORT TITLE.

This title may be cited as the "Iran-Iraq Arms Non-Proliferation Act of 1992".

SEC. 1602. UNITED STATES POLICY.

(a) IN GENERAL.- It shall be the policy of the United States to oppose, and urgently to seek the agreement of other nations also to oppose, any transfer to Iran or Iraq of any goods or technology, including dual-use goods or technology, wherever that transfer could materially contribute to either country's acquiring chemical, biological, nuclear, or destabilizing numbers and types of advanced conventional weapons.

(b) SANCTIONS.-41) In the furtherance of this policy, the President shall apply sanctions and controls with respect to Iran, Iraq, and those nations and persons who assist them in acquiring weapons of mass destruction in accordance with the Foreign Assistance Act of 1961, the Nuclear Non-Proliferation Act of 1978, the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, chapter 7 of the Arms Export Control Act, and other relevant statutes, regarding the nonproliferation of weapons of mass destruction and the means of their delivery.

(2) The President should also urgently seek the agreement of other nations to adopt and institute, at the earliest practicable date, sanctions and controls comparable to those the United States is obligated to apply under this subsection.

(c) PUBLIC IDENTIFICATION.-The Congress calls on the President to identify publicly (in the report required by section 1607) any country or person that transfers goods or technology to Iran or Iraq contrary to the policy set forth in subsection (a).

SEC. 1603. APPLICATION TO IRAN OF CERTAIN IRAQ SANCTIONS.

The sanctions against Iraq specified in paragraphs (1) through (4) of section 586G(a) of the Iraq Sanctions Act of 1990 (as contained in Public Law 101-513), including denial of export licenses for United States persons and prohibitions on United States Government sales, should be applied to the same extent and in the same manner with respect to Iran.

SEC. 1604 SANCTIONS AGAINST CERTAIN PERSONS.

(a) PROHIBITION.-If any person transfers or retransfers good or technology so as to contribute knowingly and materially to the efforts by Iran or Iraq (or any agency or instrumentality of either such country) to acquire destabilizing numbers and types of advanced conventional weapons, then the sanctions described in subsection (b) shall be imposed.

(b) MANDATORY SANCTIONS.-The sanctions to be imposed pursuant to subsection (a) are as follows:

(1) PROCUREMENT SANCTION.-For a period of two years the United States Government shall not procure, or enter in any contract for the procurement of, any goods or -services from the sanctioned person

(2) EXPORT SANCTION.-For a period of two years, the United States Government shall not issue any license for an export by or to the sanctioned person.

SEC. 1605. SANCTIONS AGAINST CERTAIN FOREIGN COUNTRIES.

(a) PROHIBITION.-If the President determines that the government of any foreign country transfers or retransfers goods or technology so as to contribute knowingly and materially to the efforts by Iran or Iraq (or any agency or instrumentality of either such country) to acquire destabilizing numbers and types of advanced conventional weapons, then -

(1) the sanctions described in subsection (b) shall be imposed on such country; and

(2) in addition, the President may apply, in the discretion of the President, the sanction described in subsection (c).

(b) MANDATORY SANCTIONS.-Except as provided in paragraph (2), the sanctions to be imposed pursuant to subsection (a)(1) are as follows:

(1) SUSPENSION OF UNITED STATES ASSISTANCE.-The United States Government shall suspend, for a period of one year, United States assistance to the sanctioned country.

(2) MULTILATERAL DEVELOPMENT BANK ASSISTANCE.-The Secretary of the Treasury shall instruct the United States Executive Director to each appropriate international financial institution to oppose, and vote against, for a period of one year, the extension by such institution of any loan or financial or technical assistance to the sanctioned country.

(3) SUSPENSION OF CODEVELOPMENT OR COPRODUCTION AGREEMENTS.-The United States shall suspend, for a period of one year, compliance with its obligations under any memorandum of understanding with the sanctioned country for the codevelopment or coproduction of any item on the United States Munitions List (established under section 38 of the Arms Export Control Act), including any obligation for implementation of the memorandum of understanding through the sale to the sanctioned country of technical data or assistance or the licensing for export to the sanctioned country of any component part

(4) SUSPENSION OF MILITARY AND DUAL-USE TECHNICAL EXCHANGE AGREEMENTS - a period of one year, compliance with its obligations under any technical exchange agreement involving military and dual use technology between the United States and the sanctions country that does not directly contribute to the security of the United States, and no military or dual-use technology may be exported from the United States to the sanctioned country pursuant to that agreement during that period.

(5) UNITED STATES MUNITIONS LIST.-No item on the United States Munitions List (established pursuant to section 38 of the Arms Export Control Act) may be exported to the sanctions country for a period of one year.

(c) DISCRETIONARY SANCTIONS.-The sanction referred to in subsection (a)(2) is as follows:

(1) USE OF AUTHORITIES OF INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.-Except as provided in paragraph (2), the President may exercise, in accordance with the provision of that Act, the authorities of the International Emergency Economic Powers Act with respect to the sanctioned country

(2) EXCEPTION.-Paragraph (1) does not apply with respect to urgent humanitarian assistance.

SEC. 1606. WAIVER.

The President may waive the requirement to impose a sanction described in section 1603, in the case of Iran, or a sanction describe in section 1604(b) or 1605(b), in the case of Iraq and Iran, 15 days after the President determines and so reports to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives that it is essential to the national interest of the United States to exercise such waiver authority. Any such report shall provide a specific and, detailed rationale for such determination.

SEC. 1607. REPORTING REQUIREMENT

(a) ANNUAL REPORT- Beginning one year after the date of enactment of this Act, and every 12 months thereafter, the President shall submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives a report detailing -

(1) all transfers or retransfers made by any person or foreign government during the preceding 12-month period which are subject to any sanction under this title; and

(2) the actions the President intends to undertake or has undertaken pursuant to this title with respect to each such transfer.

(b) REPORT ON INDIVIDUAL TRANSFERS.-Whenever the President determines that a person or foreign government has made a transfer which is subject to any sanction under this title, the President shall, within 50 days after such transfer, submit to the committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives a report-

(1) identifying the person or government and providing the details of the transfer; and

(2) describing the actions the President intends to under take or has undertaken under the provisions of this title with respect to each such transfer.

(c) FORM OF TRANSMITTAL - Reports required by this section may be submitted in classified as well as in unclassified form.

SEC. 1608. DEFINITIONS.

For purposes of this title:

(1) The term advanced conventional weapons includes -

(A) such long-range precision-guided munitions, fuel air explosives, cruise missiles, low observability aircraft, other radar evading aircraft, advanced military aircraft, military satellites, electromagnetic weapons, and laser weapons as the President determines destabilize the military balance or enhance offensive capabilities in destabilizing ways;

(B) such advanced command, control, and communications systems, electronic warfare systems, or intelligence collection systems as the President determines destabilize the military balance or enhance offensive capabilities in destabilizing ways; and -

(C) such other items or systems as the President may, by regulation, determine necessary for purposes of this title.

(2) The term "cruise missile" means guided missiles that use aerodynamic lift to offset gravity and propulsion to counteract drag.

(3) The term "goods or technology" means-

(A) any article, natural or manmade substance, material, supply, or manufactured product, including inspection and test equipment; and

(B) any information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data.

(4) The term "Person" means any United States or foreign individual, partnership, corporation, or other form of association, or any of their successor entities, parents, or subsidiaries.

(5) The term "sanctioned country" means a country against which sanctions are required to be imposed pursuant to section 1605.

(6) The term "sanctioned person" means a person that makes a transfer described in section 1604(a).

(7) The term "United States assistance" means-

(A) any assistance under the Foreign Assistance Act of 1961, other than

(i) urgent humanitarian assistance or medicine,

(ii) assistance under chapter 11 of part I (as enacted by the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act Of 1992);

(B) sales and assistance under, the Arms Export Control Act;

(C) financing by the Commodity Credit Corporation for export sales of agricultural commodities; and

(D) financing under the Export-Import Bank Act.

§4.2.2 - AMENDMENT TO THE IRAN-IRAQ NONPROLIFERATION ACT OF 1996

PUBLIC LAW 104-106 [S. 1124]; February 10, 1996

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1996

An Act to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to reform acquisition laws and information technology management of the Federal government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 1996".

SEC. 1408. IRAN AND IRAQ ARMS NONPROLIFERATION.

(a) SANCTIONS AGAINST TRANSFERS OF PERSONS.-Section 1604(a) of the Iran-Iraq Arms Non-Proliferation Act of 1992 (title XVI of Public Law 102-484; 50 U.S.C. 1701 note) is amended by inserting "to acquire chemical, biological, or nuclear weapons or" before "to acquire".

(b) SANCTIONS AGAINST TRANSFERS OF FOREIGN COUNTRIES Section 1605(a) of such Act is amended by inserting "to acquire chemical, biological, or nuclear weapons or" before "to acquire".

(c) CLARIFICATION OF UNITED STATES ASSISTANCE - Subparagraph (A) of section 1608(7) of such Act is amended to read as follows:

"(A) any assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), other than urgent humanitarian assistance or medicine;"

(d) NOTIFICATION OF CERTAIN WAIVERS UNDER MTCR PROCEDURES - section 73(e)(2) of the Arms Export Control Act (22 U.S.C. 2797b(e)(2)) is amended-

(1) by striking out "the Congress" and inserting in lieu thereof "the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on

National Security and the Committee on International Relations of the House of Representatives";
and

(2) by striking out "20 working days" and inserting in lieu thereof "45 working days".

Executive Order 13094 and 12938

Although not specifically directed at Iran, these executive orders are aimed broadly at preventing the proliferation of chemical, biological, and other weapons of mass destruction (WMD) and thus form an important piece of the regulations that govern U.S.-Iranian relations.

Executive Order 13094 of July 28, 1998 amended Executive Order 12938 (November 14, 1994) which provided for a ban on U.S. government procurement from foreign entities that knowingly and materially contributed to the efforts of any foreign country to use or acquire chemical or biological weapons. The 1994 executive order also provided for several sanctions on foreign countries that contribute to such proliferation. Executive Order 13094 expanded the definition of sanctionable activity to assisting foreign efforts to develop *any* weapons of mass destruction and delivery while also significantly increasing the sanctions to be imposed. The new order added to the procurement sanction included in the predecessor executive order, a ban on U.S. government assistance and a ban on importation into the United States of any goods, technology, or services produced by foreign entities contributing to the development of WMD.

Following by one week Iran's first test of its 800-mile range Shahab (Meteor) - 3 ballistic missile, developed with Russian assistance, Executive Order 13094 was clearly written with Iran in mind. Upon issuing the executive order, the President imposed sanctions on seven Russian entities believed to be assisting Iran's Shahab program including: the INOR Scientific Center, the Grafit research institute, the Polyus research institute, Glavkosmos, the MOSO company, Baltic State Technical University, and Europalace 2000. In January 1999, the President sanctioned three additional Russian entities under the order — two (The Scientific Research and Design Institute of Power Technology (NKIET) and the D. Mendeleev University of Chemical Technology) were believed to be helping Iran's nuclear program and the other one (Moscow Aviation Institute) was missile related. Executive order 13094 also forestalled moves in Congress to override President Clinton's June 1998 veto of the "Iran Missile Proliferation Sanctions Act" (See §9.1) which would have required many of the same sanctions on foreign entities assisting Iran's missile program as Executive Order 13094.

§4.3.1 - EXECUTIVE ORDER 13094 AND FORERUNNER

Executive Order 13094 of July 28, 1998
Proliferation of Weapons of Mass Destruction

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.), the Arms Export Control Act (22 U.S.C. 2751 et seq.) (AECA), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, in order to take additional steps with respect to the proliferation of weapons of mass destruction and means of delivering them and the national emergency described and declared in Executive Order 12938 of November 14, 1994, hereby order:

Section 1. Amendment of Executive Order 12938.

(a) Section 4 of Executive Order 12938 of November 14, 1994, is revised to read as follows:

“Sec. 4. Measures Against Foreign Persons.

(a) Determination by Secretary of State; Imposition of Measures. Except to the extent provided in section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)), where applicable, if the Secretary of State determines that a foreign person, on or after November 16, 1990, the effective date of Executive Order 12735, the predecessor order to Executive Order 12938, has materially contributed or attempted to contribute materially to the efforts of any foreign country, project, or entity of proliferation concern to use, acquire, design, develop, produce, or stockpile weapons of mass destruction or missiles capable of delivering such weapons, the measures set forth in subsections (b), (c), and (d) of this section shall be imposed on that foreign person to the extent determined by the Secretary of State in consultation with the implementing agency and other relevant agencies. Nothing in this section is intended to preclude the imposition on that foreign person of other measures or sanctions available under this order or under other authorities.

(b) Procurement Ban. No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods, technology, or services from any foreign person described in subsection (a) of this section.

(c) Assistance Ban. No department or agency of the United States Government may provide any assistance to any foreign person described in subsection (a) of this section, and no such foreign person shall be eligible to participate in any assistance program of the United States Government.

(d) Import Ban. The Secretary of the Treasury shall prohibit the importation into the United States of goods, technology, or services produced or provided by any foreign person described in subsection (a) of this section, other than information or informational materials within the meaning of section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

(e) Termination. Measures pursuant to this section may be terminated against a foreign person if the Secretary of State determines that there is reliable evidence that such foreign person has ceased all activities referred to in subsection (a) of this section.

(f) Exceptions. Departments and agencies of the United States Government, acting in consultation with the Secretary of State, may, by license, regulation, order, directive, exception, or otherwise, provide for:

(i) Procurement contracts necessary to meet U.S. operational military requirements or requirements under defense production agreements; intelligence requirements; sole source suppliers, spare parts, components, routine servicing and maintenance of products for the United States Government; and medical and humanitarian items; and

(ii) Performance pursuant to contracts in force on the effective date of this order under appropriate circumstances.”

(b) Section 6 of Executive Order 12938 of November 14, 1994, is amended by deleting “4(c)” and inserting “4(e)” in lieu thereof.

Sec. 2. Preservation of Authorities.

Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under the authority of IEEPA, AECA, the Nuclear Non-Proliferation Act of 1978, the Nuclear Proliferation Prevention Act of 1994, the Atomic Energy Act, the Export Administration Act (50 U.S.C. App. 2401 et seq.), Executive Order 12730 of September 30, 1990, Executive Order 12735 of November 16, 1990, Executive Order 12924 of August 18, 1994, Executive Order 12930 of September 29, 1994, or Executive Order 12938 of November 14, 1994.

Sec. 3. Judicial Review.

Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 4. Effective Date.

- (a) This order is effective at 12:01 a.m. eastern daylight time on July 29, 1998.
- (b) This order shall be transmitted to the Congress and published in the Federal Register.

THE WHITE HOUSE,
July 28, 1998.

§4.3.2 - Executive Order 12938 of November 14, 1994

Proliferation of Weapons of Mass Destruction

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.), the National Emergencies Act (50 U.S.C. 1601 et seq.), the Arms Export Control Act, as amended (22 U.S.C. 2751 et seq.), Executive Orders Nos. 12851 and 12924, and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, find that the proliferation of nuclear, biological, and chemical weapons (“weapons of mass destruction”) and of the means of delivering such weapons, constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.

Accordingly, I hereby order:

Section 1. International Negotiations. It is the policy of the United States to lead and seek multilaterally coordinated efforts with other countries to control the proliferation of weapons of mass destruction and the means of delivering such weapons. Accordingly, the Secretary of State shall cooperate in and lead multilateral efforts to stop the proliferation of weapons of mass destruction and their means of delivery.

Sec. 2. Imposition of Controls. As provided herein, the Secretary of State and the Secretary of Commerce shall use their respective authorities, including the Arms Export Control Act and the International Emergency Economic Powers Act, to control any exports, to the extent they are not already controlled by the Department of Energy and the Nuclear Regulatory Commission, that either Secretary determines would assist a country in acquiring the capability to develop, produce, stockpile, deliver, or use weapons of mass destruction or their means of delivery. The Secretary of State shall pursue early negotiations with foreign governments to adopt effective measures comparable to those imposed under this order.

Sec. 3. Department of Commerce Controls. (a) The Secretary of Commerce shall prohibit the export of any goods, technology, or services subject to the Secretary's export jurisdiction that the Secretary of Commerce determines, in consultation with the Secretary of State, the Secretary of Defense, and other appropriate officials, would assist a foreign country in acquiring the capability to develop, produce, stockpile, deliver, or use weapons of mass destruction or their means of delivery. The Secretary of State shall pursue early negotiations with foreign governments to adopt effective measures comparable to those imposed under this section.

(b) Subsection (a) of this section will not apply to exports relating to a particular category of weapons of mass destruction (i.e., nuclear, chemical, or biological weapons) if their destination is a country with whose government the United States has entered into a bilateral or multilateral arrangement for the control of that category of weapons of mass destruction-related goods (including delivery systems) and technology, or maintains domestic export controls comparable to controls that are imposed by the United States with respect to that category of goods and technology, or that are otherwise deemed adequate by the Secretary of State.

(c) The Secretary of Commerce shall require validated licenses to implement this order and shall coordinate any license applications with the Secretary of State and the Secretary of Defense.

(d) The Secretary of Commerce, in consultation with the Secretary of State, shall take such actions, including the promulgation of rules, regulations, and amendments thereto, as may be necessary to continue to regulate the activities of United States persons in order to prevent their participation in activities that could contribute to the proliferation of weapons of mass destruction or their means of delivery, as provided in the Export Administration Regulations, set forth in Title 15, Chapter VII, Subchapter C, of the Code of Federal Regulations, Parts 768 to 799 inclusive.

Sec. 4. Sanctions Against Foreign Persons. (a) In addition to the sanctions imposed on foreign persons as provided in the National Defense Authorization Act for Fiscal Year 1991 and the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, sanctions also shall be imposed on a foreign person with respect to chemical and biological weapons proliferation if the Secretary of State determines that the foreign person on or after the effective date of this order or its predecessor, Executive Order No. 12735 of November 16, 1990, knowingly and materially contributed to the efforts of any foreign country, project, or entity to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(b) No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods or services from any foreign person described in subsection (a) of this section. The Secretary of the Treasury shall prohibit the importation into the United States of products produced by that foreign person.

(c) Sanctions pursuant to this section may be terminated or not imposed against foreign persons if the Secretary of State determines that there is reliable evidence that the foreign person concerned has ceased all activities referred to in subsection (a).

(d) The Secretary of State and the Secretary of the Treasury may provide appropriate exemptions for procurement contracts necessary to meet U.S. operational military requirements or requirements under defense production agreements, sole source suppliers, spare parts, components, routine servicing and maintenance of products, and medical and humanitarian items. They may provide exemptions for contracts in existence on the date of this order under appropriate circumstances.

Sec. 5. Sanctions Against Foreign Countries.

(a) In addition to the sanctions imposed on foreign countries as provided in the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, sanctions also shall be imposed on a foreign country as specified in subsection (b) of this section, if the Secretary of State determines that the foreign country has, on or after the effective date of this order or its predecessor, Executive Order No. 12735 of November 16, 1990, (1) used chemical or biological weapons in violation of international law; (2) made substantial preparations to use chemical or biological weapons in violation of international law; or (3) developed, produced, stockpiled, or otherwise acquired chemical or biological weapons in violation of international law.

(b) The following sanctions shall be imposed on any foreign country identified in subsection (a)(1) of this section unless the Secretary of State determines, on grounds of significant foreign policy or national security, that any individual sanction should not be applied. The sanctions specified in this section may be made applicable to the countries identified in subsections (a)(2) or (a)(3) when the Secretary of State determines that such action will further the objectives of this order pertaining to proliferation. The sanctions specified in subsection (b)(2) below shall be imposed with the concurrence of the Secretary of the Treasury.

(1) Foreign Assistance. No assistance shall be provided to that country under the Foreign Assistance Act of 1961, or any successor act, or the Arms Export Control Act, other than assistance that is intended to benefit the people of that country directly and that is not channeled through governmental agencies or entities of that country.

(2) Multilateral Development Bank Assistance. The United States shall oppose any loan or financial or technical assistance to that country by international financial institutions in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d).

(3) Denial of Credit or Other Financial Assistance. The United States shall deny to that country any credit or financial assistance by any department, agency, or instrumentality of the United States Government.

(4) Prohibition of Arms Sales. The United States Government shall not, under the Arms Export Control Act, sell to that country any defense articles or defense services or issue any license for the export of items on the United States Munitions List.

(5) Exports of National Security-Sensitive Goods and Technology. No exports shall be permitted of any goods or technologies controlled for national security reasons under the Export Administration Regulations.

(6) Further Export Restrictions. The Secretary of Commerce shall prohibit or otherwise substantially restrict exports to that country of goods, technology, and services (excluding agricultural commodities and products otherwise subject to control).

(7) Import Restrictions. Restrictions shall be imposed on the importation into the United States of articles (that may include petroleum or any petroleum product) that are the growth, product, or manufacture of that country.

(8) Landing Rights. At the earliest practicable date, the Secretary of State shall terminate, in a manner consistent with international law, the authority of any air carrier that is controlled in fact by the government of that country to engage in air transportation (as defined in section 101(10) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(10))).

Sec. 6. Duration. Any sanctions imposed pursuant to sections 4 or 5 of this order shall remain in force until the Secretary of State determines that lifting any sanction is in the foreign policy or national security interests of the United States or, as to sanctions under section 4 of this order, until the Secretary has made the determination under section 4(c).

Sec. 7. Implementation. The Secretary of State, the Secretary of the Treasury, and the Secretary of Commerce are hereby authorized and directed to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this order. These actions, and in particular those in sections 4 and 5 of this order, shall be made in consultation with the Secretary of Defense and, as appropriate, other agency heads and shall be implemented in accordance with procedures established pursuant to Executive Order No. 12851. The Secretary concerned may redelegate any of these functions to other officers in agencies of the Federal Government. All heads of departments and agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of this order, including the suspension or termination of licenses or other authorizations.

Sec. 8. Preservation of Authorities. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under the authority of the International Economic Emergency Powers Act, the Export Administration Act, the Arms Export Control Act, the Nuclear Non-proliferation Act, Executive Order No. 12730 of September 30, 1990, Executive Order No. 12735 of November 16, 1990, Executive Order No. 12924 of August 18, 1994, and Executive Order No. 12930 of September 29, 1994.

Sec. 9. Judicial Review. This order is not intended to create, nor does it create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or any other person.

Sec. 10. Revocation of Executive Orders Nos. 12735 and 12930. Executive Order No. 12735 of November 16, 1990, and Executive Order No. 12930 of September 29, 1994, are hereby revoked.

Sec. 11. Effective Date. This order is effective immediately.

This order shall be transmitted to the Congress and published in the Federal Register.

THE WHITE HOUSE,
November 14, 1994.

SECTION 5

FOREIGN BROADCASTING

Radio Free Iran

The report of a House-Senate conference committee on the Fiscal Year 1998 appropriation for the Commerce, State, and Justice Departments and related agencies contained a provision that established a Farsi-language surrogate broadcasting service to Iran. The provision, on page 179 of the conference report, appropriated an initial \$4 million for the service. The radio broadcasting service was established under the auspices of Radio Free Europe/Radio Liberty, and began operations from Prague, Czech Republic on October 31, 1998.

The Farsi language service has been controversial since its inception. The idea for the station originated long before President Khatami's May 1997 election, but was enacted after he took office. The legislative language establishes a "surrogate broadcasting service," which would seem to suggest that the purpose of the service is to undermine the Iranian regime. However, the Clinton Administration apparently sought, through informal influence over Radio Free Europe/Radio Liberty, to ensure that the service did not antagonize Khatami or his pragmatic allies. Despite these efforts, numerous Iranian officials have cited the radio service as an indication that the United States seeks to continue its legacy of interference in Iran's internal affairs. They say the radio service contradicts the spirit of the Algiers Declaration that ended the hostage crisis (See §6.1), in which the United States pledges not to intervene directly or indirectly in Iran's internal affairs.

§5.1 - RADIO FREE IRAN

HOUSE OF REPRESENTATIVES

1st Session

105 405

MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1998, AND FOR OTHER PURPOSES

November 13, 1997.--Ordered to be printed

Mr. Rogers , from the committee on conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2267]

INTERNATIONAL BROADCASTING OPERATIONS

The conference agreement includes \$364,415,000 for International Broadcasting Operations, instead of \$391,550,000 as proposed in the House bill, and instead of \$339,655,000 as proposed in the Senate bill. The conference agreement adopts the approach proposed in the Senate bill for broadcasting to Cuba.

No funds for broadcasting to Cuba are included under this account, as proposed by the House, but rather, all funding for broadcasting to Cuba as included under a separate account, as proposed by the Senate, consistent with the fiscal year 1997 appropriations Act.

The conference agreement includes \$24,960,000 for the expansion of broadcasting to China by Radio Free Asia and the Voice of America. The conference agreement includes bill language making \$12,100,000 of this amount available until expended for one-time capital costs associated with this initiative. The conference agreement does not include the Senate report language earmarking \$20,000,000 for Radio Free Asia. USIA and the Broadcasting Board of Governors shall provide the Committees with a detailed plan for expenditure of funds for the expansion of broadcasting to China for consideration under usual reprogramming procedures.

Within the total amount provided for international broadcasting operations, the conferees agree that \$4,000,000 shall be for the development of a **Farsi-language surrogate broadcasting service to Iran.**

The conference agreement does not include language in the Senate bill making not to exceed \$10,000,000 available only on a dollar-for-dollar basis when matched with the proceeds of sales of advertising air time. The conference agreement includes bill language providing not to exceed \$2,000,000 from advertising receipts and revenue from business ventures; not to exceed \$500,000 in receipts from cooperating international organizations; and not to exceed \$1,000,000 in receipts from privatization efforts of the Voice of America and the International Broadcasting Bureau, as proposed in the House bill. The conference agreement includes a modification to the House bill language to ensure that receipts may be credited to this appropriation in the absence of an authorization.

The conferees expect that the Committees will be notified of the final distribution of funding among the activities under this account pursuant to the normal reprogramming procedures. To the extent

that reductions are necessary, the conferees urge that priority be given to reductions to administrative costs and functions which do not have direct impacts on language service broadcast hours.

SECTION 6

RESOLUTION OF THE HOSTAGE CRISIS

The Algiers Declaration

The January 19, 1981 Algiers Declaration ended the 444 day hostage crisis begun on November 4, 1979, when radical “students” seized the U.S. Embassy in Tehran and held U.S. diplomats hostage. The official title of the document is the “Declaration of the Government of the Democratic and Popular Republic of Algeria,” a title that reflects Algeria’s mediation between Iran and the United States but downplays the notion that it represents a negotiated agreement between the United States and Iran.

The Algiers Declaration is presented here because many of its provisions were incorporated into the Iranian Transactions Regulations and the Iranian Assets Control Regulations issued by the Treasury Department. (See full text of these regulations at §2.5 and §6.2.)

In exchange for the release of the hostages, the Declaration required the United States to unblock Iranian assets in the United States that were frozen, by executive order, when the U.S. Embassy was seized. These were lifted although, as noted in the sections above, most of these sanctions were subsequently reimposed due to continued hostility in U.S.-Iran relations.

Much of the Declaration is devoted to establishing a mechanism to arbitrate claims of U.S. and Iranian nationals against each others’ governments. The mechanism, called the Iran-United States Claims Tribunal, meets in The Hague and consists of nine members — three Iranians, three Americans, and three mutually agreed third country nationals. The declaration requires Iran to maintain a \$500 million balance in an escrow account (“the Security Account”) to secure the payment of successful U.S. claimants.

The declaration did not resolve all outstanding issues to Iran’s satisfaction leading to Iran’s contention that the United States continues to hold “frozen” Iranian assets. The declaration also did not provide for the return of Iran’s diplomatic property and related bank accounts amounting to about \$22 million in value.

The declaration also specifically prohibited the transfer to Iran any assets under the control of the estate of the former Shah or his close relatives, provided those assets are the subject of Iranian litigation to obtain their return.

Iran’s recent assertions that the United States refuses to return its “frozen assets” could also refer to the hundreds of Foreign Military Sales cases suspended at the time

of the Iranian revolution. These cases represent the bulk of the cases yet to be decided by the United States-Iran Claims Tribunal. Some press reports suggest that the United States might be liable for billions of dollars worth of undelivered equipment and uncompleted services paid for during the Shah's reign. The military equipment in dispute has long ago been resold to other buyers or integrated into the U.S. arsenal. One possible resolution of this particular dispute would involve a negotiated lump sum settlement determined outside the arbitration. This issue is likely to be resolved in the context of an overall improvement in U.S.-Iran relations.

§6.1 - Agreement on the Release of the American Hostages

Following are announcements by President Carter and Secretary Muskie on the release of the 52 American hostages from Iran two declarations of the Algerian Government initialed in Algiers by Deputy Secretary Christopher concerning the commitments made by the Governments of Iran and the United States and the settlement of claims; undertakings of the Governments of Iran and the United States with respect to the declaration; the escrow agreement; two statements of adherence by President Carter; ten Executive orders; President Carter's message to the Congress; the technical arrangement between the Central Bank of Algeria and the Bank of England and the Federal Reserve Bank of New York, a special briefing by former Secretary Muskie, former Treasury Secretary G. William Miller, and former Attorney General Benjamin Civiletti; and remarks by President Reagan and L. Bruce Laingen.

PRESIDENT CARTER'S ANNOUNCEMENT,
JAN. 19, 1981, 4:56 AM (EST), THE WHITE HOUSE

The President: I know you've been up all night with me and I appreciate that very much.

We have now reached an agreement with Iran which will result, I believe, in the freedom of our American hostages. The last documents have now been signed in Algiers following the signing of the documents in Iran which will result in this agreement. We still have a few documents to sign before the money is actually transferred and the hostages are released. The essence of the agreement is that following the release of our hostages then we will unfreeze and transfer to the Iranians a major part of the assets which were frozen by me when the Iranians seized our embassy compound and took our hostages.

We have also reached complete agreement on the arbitration procedures between ourselves and Iran with the help of the Algerians which will resolve the claims that exist between residents of our nation and Iran and vice-versa.

I particularly want to express my public thanks, as I have already done privately, to the Algerians, to their President, their Foreign Minister, Ben Yahia, and to the three-man negotiating teams who have done such a superb job in fair and equitable arbitration between ourselves and the officials of Iran. We don't yet know exactly how fast this procedure will go. We are prepared to move as rapidly as possible. All the preparations have been completed pending the final documents being signed.

I will have more to say to you when our American hostages are actually free. In the meantime, Jody Powell will stay in close touch with developments, working with the Secretary of State, the Secretary of the Treasury, my legal counsel, Lloyd Cutler; I'm talking frequently with Warren Christopher in Algiers and Jody Powell will keep you informed about developments. Thank you very much.

Q. How do you feel personally about having the hostages out before you leave office?

The President: I'll wait until the hostages are released and then I'll have another statement to make.

SECRETARY MUSKIE'S ANNOUNCEMENT,
JAN. 19, 1981

7b My Colleagues in the Foreign Service

The long and anguishing ordeal of our colleagues held captive in Iran is almost over.

They will soon be free. They will soon be home.

They will be released on terms entirely consistent with our national honor.

But our celebration of their release is muted by the suffering that has been so bravely endured.

This has been a time of terrible trial – not only for our people held captive and their families, but for their friends and colleagues throughout this building and government.

The unrelenting and selfless efforts of so many of you have finally achieved success. I congratulate and thank you for these efforts. And I commend the Foreign Service as a whole for its dedication and discipline throughout this period. Your caring, your efforts, your wise advice have once again demonstrated the high standards of professionalism in a Service the nation is so fortunate to have.

EDMUND S. MUSKIE

DECLARATIONS, JAN. 19, 1981

DECLARATION OF THE GOVERNMENT OF THE DEMOCRATIC AND POPULAR
REPUBLIC OF ALGERIA

The Government of the Democratic and Popular Republic of Algeria, having been requested by the Governments of the Islamic Republic of Iran and the United States of America to serve as an intermediary in seeking a mutually acceptable resolution of the crisis in their relations arising out of the detention of the 52 United States nationals in Iran, has consulted extensively with the two governments as to the commitments which each is willing to make in order to resolve the crisis within the framework of the four points stated in the resolution of November 2, 1980, of the Islamic Consultative Assembly of Iran. On the basis of formal adherences received from Iran and the United States, the Government of Algeria now declares that the following interdependent commitments have been made by the two governments:

General Principles

The undertakings reflected in this Declaration are based on the following general principles:

A. Within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, the United States will restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979. In this context, the United States commits itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction, as set forth in Paragraphs 4-9.

B. It is the purpose of both parties, within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, to terminate all litigation as between the Government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration. Through the procedures provided in the Declaration, relating to the Claims Settlement Agreement, the United States agrees to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.

Point I: Non-Intervention in Iranian Affairs

1. the United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs.

Points II and III: Return of Iranian Assets and Settlement of U.S. Claims

2. Iran and the United States (hereinafter "the parties") will immediately select a mutually agreeable central bank (hereinafter "the Central Bank") as depositary of the escrow and security funds hereinafter prescribed and will promptly enter into depositary arrangements with the Central Bank in

accordance with the terms of this declaration. All funds placed in escrow with the Central Bank pursuant to this declaration shall be held in an account in the name of the Algerian Central Bank. Certain procedures for implementing the obligations set forth in this Declaration and in the Declaration of the Democratic and Popular Republic of Algeria concerning the settlement of claims by the Government of the United States and the Government of the Islamic Republic of Iran (hereinafter "the Claims Settlement Agreement") are separately set forth in certain Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration of the Democratic and Popular Republic of Algeria.

3. The depository arrangements shall provide that, in the event that the Government of Algeria certifies to the Algerian Central Bank that the 52 U.S. nationals have safely departed from Iran, the Algerian Central Bank will thereupon instruct the Central Bank to transfer immediately all monies or other assets in escrow with the Central Bank pursuant to this declaration, provided that at any time prior to the making of such certification by the Government of Algeria, each of the two parties, Iran and the United States, shall have the right on seventy-two hours notice to terminate its commitments under this declaration.

If such notice is given by the United States and the foregoing certification is made by the Government of Algeria within the seventy-two hour period of notice, the Algerian Central Bank will thereupon instruct the Central Bank to transfer such monies and assets. If the seventy-two hour period of notice by the United States expires without such a certification having been made, or if the notice of termination is delivered by Iran, the Algerian Central Bank will thereupon instruct the Central Bank to return all such monies and assets to the United States, and thereafter the commitments reflected in this declaration shall be of no further force and effect.

ASSETS IN THE FEDERAL RESERVE BANK

4. Commencing upon completion of the requisite escrow arrangements with the Central Bank, the United States will bring about the transfer to the Central Bank of all gold bullion which is owned by Iran and which is in the custody of the Federal Reserve Bank of New York, together with all other Iranian assets (or the cash equivalent thereof) in the custody of the Federal Reserve Bank of New York, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3 above.

ASSETS IN THE FOREIGN BRANCHES OF U.S. BANKS

5. Commencing upon the completion of the requisite escrow arrangements with the Central Bank, the United States will bring about the transfer to the Central Bank, to the account of the Algerian Central Bank, of all Iranian deposits and securities which on or after November 14, 1979, stood upon the books of overseas banking offices of U.S. banks, together with interest thereon through December 31, 1980, to be held by the Central Bank, to the account of the Algerian Central Bank, in escrow until such time as their transfer or return is required in accordance with Paragraph 3 of this Declaration.

ASSETS IN U.S. BRANCHES OF U.S. BANKS

6. Commencing with the adherence by Iran and the United States to this declaration and the claims settlement agreement attached hereto, and following the conclusion of arrangements with the Central Bank for the establishment of the interest-bearing security account specified in that agreement and Paragraph 7 below, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to the Central Bank, within six months from such date, of all Iranian deposits and securities in U.S. banking institutions in the United States, together with interest thereon, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3.

7. As funds are received by the Central Bank pursuant to Paragraph 6 above, the Algerian Central Bank shall direct the Central Bank to (1) transfer one-half of each such receipt to Iran and (2) place the other half in a special interest-bearing security account in the Central Bank, until the balance in the security account has reached the level of \$1 billion. After the \$1 billion balance has been achieved, the Algerian Central Bank shall direct all funds received pursuant to Paragraph 6 to be transferred to Iran. All funds in the security account are to be used for the sole purpose of security the payment of, and paying, claims against Iran in accordance with the claims settlement agreement. Whenever the Central Bank shall thereafter notify Iran that the balance in the security account has fallen below \$500 million, Iran shall promptly make new deposits sufficient to maintain a minimum balance of \$500 million in the account. The account shall be so maintained until the President of the Arbitral Tribunal established pursuant to the claims settlement agreement has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied in accordance with the claims settlement agreement, at which point any amount remaining in the security account shall be transferred to Iran.

OTHER ASSETS IN THE U.S. AND ABROAD

8. Commencing with the adherence of Iran and the United States to this declaration and the attached claims settlement agreement and the conclusion of arrangements for the establishment of the security account, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to the Central Bank of all Iranian financial assets (meaning funds or securities) which are located in the United States and abroad, apart from those assets referred to in Paragraph 5 and 6 above, to be held by the Central Bank in escrow until their transfer or return is required by Paragraph 3 above.

9. Commencing with the adherence by Iran and the United States to this declaration and the attached claims settlement agreement and the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs.

NULLIFICATION OF SANCTIONS AND CLAIMS

10. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will revoke all trade sanctions which were directed against Iran in the period November 4, 1979, to date.

11. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will promptly withdraw all claims now pending against Iran before the International Court of Justice and will thereafter bar and preclude the prosecution against Iran of any pending or future claim of the United States or a United States national arising out of events occurring before the date this declaration related to (A) the seizure of the 52 United States nationals on November 4, 1979, (B) their subsequent detention, (C) injury to United States property or property of the United States nationals within the United States Embassy compound in Tehran after November 3, 1979, and (D) injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran. The United States will also bar and preclude the prosecution against Iran in the courts of the United States of any pending or future claim asserted by persons other than the United States nationals arising out of the events specified in the preceding sentence.

Point IV. Return of the Assets of the Family of the Former Shah

12. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will freeze, and prohibit any transfer of, property and assets in

the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated. Violation of the freeze order shall be subject to the civil and criminal penalties prescribed by U.S. law.

13. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will order all persons within U.S. jurisdiction to report to the U.S. Treasury within 30 days, for transmission to Iran, all information known to them, as of November 3, 1979, and as of the date of the order, with respect to the property and assets referred to in Paragraph 12. Violation of the requirement will be subject to the civil and criminal penalties prescribed by U.S. law.

14. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

15. As to any judgment of a U.S. court which calls for the transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the final judgment to the extent that the property or assets exist within the United States.

16. If an dispute arises between the parties as to whether the United States has fulfilled any obligation imposed upon it by Paragraphs 12-15, inclusive, Iran may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the claims settlement agreement. If the tribunal determines that Iran has suffered a loss as a result of a failure by the United States to fulfill such obligation, it shall make an appropriate award in favor of Iran which may be enforced by Iran in the courts of any nation in accordance with its laws.

SETTLEMENT OF DISPUTES

17. If any other dispute arises between the parties as to the interpretation or performance of any provision of this declaration, either party may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the claims settlement agreement. Any decision of the tribunal with respect to such dispute, including any award of damages to compensate for a loss resulting from a breach of this declaration or the claims settlement agreement, may be enforced by the prevailing party in the courts of any nation in accordance with its laws.

Initialed on January 19, 1981

by Warren M. Christopher

Deputy Secretary of State of the Government of the United States

By virtue of the powers vested in him by his Government as deposited with the Government of Algeria.

DECLARATION OF THE GOVERNMENT OF THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA CONCERNING THE SETTLEMENT OF CLAIMS BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN

The Government of the Democratic and Popular Republic of Algeria, on the basis of formal notice of adherence received from the Government of the Islamic Republic of Iran and the Government of the United States of America, now declares that Iran and the United States have agreed as follows:

ARTICLE I

Iran and the United States will promote the settlement of the claims described in Article 11 by the parties directly concerned. Any such claims not settled within six months from the date of entry into force of this agreement shall be submitted to binding third-party arbitration in accordance with the terms of this agreement. The aforementioned six months' period may be extended once by three months at the request of either party.

ARTICLE II

1. An International Arbitral Tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position.

2. The Tribunal shall also have jurisdiction over official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services.

3. The Tribunal shall have jurisdiction, as specified in Paragraphs 16-17 of the Declaration of the Government of Algeria of January 19, 1981 over any dispute as to the interpretation or performance of any provision of that declaration.

ARTICLE III

1. The Tribunal shall consist of nine members or such larger multiple of three as Iran and the United States may agree are necessary to conduct its business expeditiously. Within ninety days after the entry into force of this agreement, each government shall appoint one-third of the members. Within thirty days after their appointment, the members so appointed shall by mutual agreement select the remaining third of the members and appoint one of the remaining third President of the tribunal. Claims may be decided by the full tribunal or by a panel of three members of the Tribunal as the President shall determine. Each such panel shall be composed by the President and shall consist of one member appointed by each of the three methods set forth above.

2. Members of the Tribunal shall be appointed and the Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the parties or by the Tribunal to ensure that this agreement can be carried out. The UNCITRAL rules for appointing members of three-member Tribunals shall apply *mutatis mutandis* to the appointment of the Tribunal.

3. Claims of nationals of the United States and Iran that are within the scope of this agreement shall be presented to the Tribunal either by claimants themselves, or, in the case of claims of less than \$250,000, by the Government of such national.

4. No claim may be filed with the tribunal more than one year after the entry into force of this agreement or six months after the date the President is appointed, whichever is later. These deadlines do not apply to the procedures contemplated by Paragraphs 16 and 17 of the Declaration of the Government of Algeria of January 19, 1981.

ARTICLE IV

1. All decisions and awards of the Tribunal shall be final and binding.
2. The President of the Tribunal shall certify, as prescribed in Paragraph 7 of the Declaration of the Government of Algeria of January 19, 1981, when all arbitral awards under this agreement have been satisfied.
3. Any award which the Tribunal may render against either government shall be enforceable against such government in the courts of any nation in accordance with its laws.

ARTICLE V

The Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances.

ARTICLE VI

1. The seat of the Tribunal shall be The Hague, The Netherlands, or any other place agreed by Iran and the United States.
2. Each government shall designate an agent at the seat of the Tribunal to represent it to the Tribunal and to receive notices or other communications directed to it or to its nationals, agencies, instrumentalities, or entities in connection with proceedings before the Tribunal.
3. The expenses of the Tribunal shall be borne equally by the two governments.
4. Any question concerning the interpretation or application of this agreement shall be decided by the Tribunal upon the request of either Iran or the United States.

ARTICLE VII

For the purposes of this agreement:

1. A "national" of Iran or of the United States, as the case may be, means (a) a natural person who is a citizen of Iran or the United States; and (b) a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories, the District of Columbia or the Commonwealth of Puerto Rico, if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock.
2. "Claims of nationals" of Iran or the United States, as the case may be, means claims owned continuously, from the date on which the claim arose to the date on which this agreement enters into force, by nationals of that state, including claims that are owned indirectly by such nationals through ownership of capital stock or other proprietary interests in juridical persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this agreement. Claims referred to the Arbitral Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court.
3. "Iran" means the Government of Iran, any political subdivision of Iran, and any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.
4. The "United States" means the Government of the United States, any political subdivision of the United States, any agency, instrumentality or entity controlled by the Government of the United States or any political subdivision thereof.

ARTICLE VIII

This agreement shall enter into force when the Government of Algeria has received from both Iran and the United States a notification of adherence to the agreement.

Initialed on January 19, 1981

by Warren M. Christopher

Deputy Secretary of State of the Government of the United States

By virtue of the powers vested in him by his Government as deposited with the Government of Algeria.

UNDERTAKINGS

JAN. 19, 1981

**UNDERTAKINGS OF THE GOVERNMENT OF THE UNITED STATES
OF AMERICA AND THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN WITH RESPECT TO THE
DECLARATION OF THE GOVERNMENT OF THE
DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA**

1. At such time as the Algerian Central Bank notifies the Governments of Algeria, Iran and the United States that it has been notified by the Central Bank that the Central Bank has received for deposit in dollar, gold bullion, and securities accounts in the name of the Algerian Central Bank, as escrow agent, cash and other funds, 1,632,917.779 ounces of gold (valued by the parties for this purpose at \$0.9397 billion), and securities (at face value) in the aggregate amount of \$7.955 billion, Iran shall immediately bring about the safe departure of the 52 U.S. nationals detained in Iran. Upon making the Government of Algeria of the certification described in Paragraph 3 of the Declaration, the Algerian Central Bank will issue the instructions required by the following paragraph.

2. Iran having affirmed its intention to pay all its debts and those of its controlled institutions, the Algerian Central Bank acting pursuant to Paragraph 1 above will issue the following instructions to the Central Bank:

(A) To transfer \$3.667 billion to the Federal Reserve Bank of New York to pay the unpaid principal of and interest through December 31, 1980 on (1) all loans and credits made by a syndicate of banking institutions, of which a U.S. banking institution is a member, to the Government of Iran, its agencies, instrumentalities or controlled entities, and (2) all loans and credits made by such a syndicate which are guaranteed by the Government of Iran or any of its agencies, instrumentalities or controlled entities.

(B) To retain \$1.418 billion in the escrow account for the purpose of paying the unpaid principal of the interest owing, if any, on the loans and credits referred to in Paragraph (A) after application of the \$3.667 billion and on all other indebtedness held by United States banking institutions of, or guaranteed by, the Government of Iran, its agencies, instrumentalities or controlled entities not previously paid and for the purpose of paying disputed amounts of deposits, assets, and interests, if any, owing on Iranian deposits in U.S. banking institutions. Bank Markazi and the appropriate United States banking institutions shall promptly meet in an effort to agree upon the amounts owing.

In the event of such agreement, the Bank Markazi and the appropriate banking institution shall certify the amount owing to the Central Bank of Algeria which shall instruct the Bank of England to credit such amount to the account, as appropriate, of the Bank Markazi or of the Federal Reserve Bank of New York in order to permit payment to the appropriate banking institution. In the event that within 30 days any U.S. banking institution and the Bank Markazi are unable to agree upon

the amounts owed, either party may refer such dispute to binding arbitration by such international arbitration panel as the parties may agree, or failing such agreement within 30 additional days after such reference, by the Iran-United States Claims Tribunal. The presiding officer of such panel or tribunal shall certify to the Central Bank of Algeria the amount, if any, determined by it to be owed, whereupon the Central Bank of Algeria shall instruct the Bank of England to credit such amount to the account of the Bank Markazi or of the Federal Reserve Bank of New York in order to permit payment to the appropriate banking institution. After all disputes are resolved either by agreement or by arbitration award and appropriate payment has been made, the balance of the funds referred to in this Paragraph (B) shall be paid to Bank Markazi.

(C) To transfer immediately to, or upon the order of, the Bank Markazi all assets in the escrow account in excess of the amounts referred to in Paragraphs (A) and (B).

Initialed on January 19, 1981

by Warren M. Christopher

Deputy Secretary of State of the Government of the United States

By virtue of the powers vested in him by his Government as deposited with the Government of Algeria.

Iranian Assets Control Regulations

The attached regulations implement the decisions and agreements made in the Algiers Declaration, discussed above, as well as some aspects of the U.S. trade and investment ban, also discussed above (§2.1).

§6.2 - IRANIAN ASSETS CONTROL REGULATIONS

Code of Federal Regulations
Title 31, Volume 2, Parts 200 to end
Revised as of July 1, 1998

TITLE 31--MONEY AND FINANCE: TREASURY

DEPARTMENT OF THE TREASURY

PART 535--IRANIAN ASSETS CONTROL REGULATIONS

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

Sec. 535.101 Relation of this part to other laws and regulations.

Subpart B--Prohibitions

- 535.201 Transactions involving property in which Iran or Iranian entities have an interest.
- 535.202 Transactions with respect to securities registered or inscribed in the name of Iran.
- 535.203 Effect of transfers violating the provisions of this part.
- 535.208 Evasions; effective date.
- 535.210 Direction for establishing an escrow agreement.
- 535.211 Direction involving transfers by the Federal Reserve Bank concerning certain Iranian property.
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Authority: 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1701-1706; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12170, 44 FR 65729, 3 CFR, 1979 Comp., p. 457; E.O. 12205, 45 FR 24099, 3 CFR, 1980 Comp., p. 248; E.O. 12211, 45 FR 26685, 3 CFR, 1980 Comp., p. 253; E.O. 12276, 46 FR 7913, 3 CFR 1981 Comp., p. 104; E.O. 12279, 46 FR 7919, 3 CFR, 1981 Comp., p. 109; E.O. 12280, 46 FR 7921, 3 CFR, 1981 Comp., p. 110; E.O. 12281, 46 FR 7923, 3 CFR, 1981 Comp., p. 110; E.O. 12282, 46 FR 7925, 3 CFR, 1981 Comp., p. 113; E.O. 12283, 46 FR 7927, 3 CFR, 1981 Comp., p. 114; and E.O. 12294, 46 FR 14111, 3 CFR, 1981 Comp., p. 139.

Source: 44 FR 65956, Nov. 15, 1979, unless otherwise noted.

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

Sec. 535.101 Relation of this part to other laws and regulations.

(a) 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. No license or authorization contained in or issued pursuant to such parts shall be deemed to authorize any transaction prohibited by this part, nor shall any license or authorization issued pursuant to any other provision of law (except this part) be deemed to authorize any transaction so prohibited.

(b) No license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction to the extent that it is prohibited by reason of the provisions of any law or any statute other than the International Emergency Economic Powers Act, as amended, or any proclamation order or regulation other than those contained in or issued pursuant to this part. [44 FR 65956, Nov. 15, 1979, as amended at 62 FR 45107, Aug. 25, 1997]

Subpart B--Prohibitions

Sec. 535.201 Transactions involving property in which Iran or Iranian entities have an interest.

No property subject to the jurisdiction of the United States or which is in the possession of or control of persons subject to the jurisdiction of the United States in which on or after the effective date Iran

has any interest of any nature whatsoever may be transferred, paid, exported, withdrawn or otherwise dealt in except as authorized. [45 FR 24432, Apr. 9, 1980]

Sec. 535.202 Transactions with respect to securities registered or inscribed in the name of Iran.

Unless authorized by a license expressly referring to this section, the acquisition, transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on or otherwise dealing in any security (or evidence thereof) registered or inscribed in the name of any Iranian entity is prohibited irrespective of the fact that at any time (either prior to, on, or subsequent to the effective date) the registered or inscribed owner thereof may have, or appears to have, assigned, transferred or otherwise disposed of any such security.

Sec. 535.203 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date which is in violation of any provision of this part or of any regulation, ruling, instruction, license, or other direction or authorization thereunder and involves any property in which Iran has or has had an interest since such effective date 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.

(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 interest in, any property in which Iran has or has had an interest since the effective date unless the person with whom such property is held or maintained had written notice of the transfer or by any written evidence had recognized such transfer prior to such effective date.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Secretary of the Treasury before, during or after a transfer shall validate such transfer or render it enforceable to the same extent as it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act and this part and any ruling, order, regulation, direction or instruction issued hereunder.

(d) Transfers of property which 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 pursuant to such provisions, as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish 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 was held or maintained;

(2) The person with whom such property 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 by or pursuant to the provision of 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 or the withholding of material facts or was otherwise fraudulently obtained; and

(3) Promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license or other direction or authorization thereunder, or

(ii) Such transfer was not licensed or authorized by the Secretary of the Treasury, or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation or the withholding of material facts or was otherwise fraudulently obtained; the person with whom such property was held or maintained filed with the Treasury Department, Washington, D.C., a report in triplicate setting forth in full the circumstances relating to such transfer. The filing of a report in accordance with the provisions of this paragraph shall not be deemed to be compliance or evidence of compliance with paragraphs (d) (1) and (2) of this section.

(e) Unless licensed or authorized pursuant to this part any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the effective date there existed an interest of Iran.

(f) For the purpose of this section the term property includes gold, silver, bullion, currency, coin, credit, securities (as that term is defined in section 2(l) of the Securities Act of 1933, as amended), bills of exchange, notes, drafts, acceptances, checks, letters of credit, book credits, debts, claims, contracts, negotiable documents of title, mortgages, liens, annuities, insurance policies, options and futures in commodities, and evidences of any of the foregoing. The term property shall not, except to the extent indicated, be deemed to include chattels or real property. [44 FR 65956, Nov. 15, 1979, as amended at 45 FR 24432, Apr. 9, 1980]

Sec. 535.208 Evasions; effective date.

(a) Any transaction for the purpose of, or which has the effect of, evading or avoiding any of the prohibitions set forth in this subpart is hereby prohibited.

(b) The term effective date means, with respect to transactions prohibited in Sec. 535.201, 8:10 a.m. eastern standard time, November 14, 1979, and with respect to the transactions prohibited in Secs. 535.206 and 535.207, 4:19 p.m. eastern standard time, April 7, 1980.

(c) With respect to any amendments of the foregoing sections or any other amendments to this part the term "effective date" shall mean the date of filing with the Federal Register. [45 FR 24433, Apr. 9, 1980, as amended at 45 FR 26940, Apr. 21, 1980]

Sec. 535.210 Direction for establishing an escrow agreement.

(a) The Federal Reserve Bank of New York, as fiscal agent of the United States, is licensed, authorized, directed and compelled to enter into escrow and related agreements under which certain money and other assets shall be credited to escrow accounts by the Bank of England or the N.V. Settlement Bank of the Netherlands.

(b) The Federal Reserve Bank of New York is licensed, authorized, directed and compelled, as fiscal agent of the United States, to receive certain money and other assets in which Iran or its agencies, instrumentalities or controlled entities have an interest and to hold or transfer such money and other assets, and any earnings or interest payable thereon, in such manner and at such times as the Secretary of the Treasury deems necessary to fulfill the rights and obligations of the United States under the Declaration of the government of the Democratic and Popular Republic of Algeria dated January 19, 1981, and the Undertakings of the Government of the United States of America and the Government of Islamic Republic of Iran with respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, and the escrow and related agreements described in paragraph (a) of this section. Such money and other assets may be invested, or not, at the discretion of the Federal Reserve Bank of New York, as fiscal agent of the United States.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14333, Feb. 26, 1981, as amended at 46 FR 42063, Aug. 19, 1981]

Sec. 535.211 Direction involving transfers by the Federal Reserve Bank concerning certain Iranian property.

The Federal Reserve Bank of New York is licensed, authorized, directed and compelled to transfer to its account at the Bank of England, and subsequently to transfer to accounts in the name of the Central Bank of Algeria as Escrow Agent at the Bank of England that are established pursuant to an escrow and related agreements approved by the Secretary of the Treasury, all gold bullion, together with all other assets in its custody (or the cash equivalent thereof), of Iran or its agencies,

instrumentalities or controlled entities. Such transfers, and whatever further related transactions are deemed appropriate by the Secretary of the Treasury, shall be executed when and in the manner directed by the Secretary of the Treasury.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14333, Feb. 26, 1981]

Sec. 535.212 Direction to transfer property in which Iran or an Iranian entity has an interest by branches and offices of United States banks located outside the United States.

(a) Any branch or office of a United States bank or subsidiary thereof, which branch, office or subsidiary is located outside the territory of the United States, and which, on or after 8:10 a.m., e.s.t., on November 14, 1979:

(1) Has been or is in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or

(2) Has carried or is carrying on its books deposits standing to the credit of or beneficially owned by such government, its agencies, instrumentalities or controlled entities, is licensed, authorized, directed and compelled to transfer such funds, securities and deposits, held on January 19, 1981, including interest from November 14, 1979, at commercially reasonable rates, to the account of the Federal Reserve Bank of New York, as fiscal agent of the U.S., at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The funds, securities and deposits described in this section shall be further transferred as provided for in the Declarations of the Government of the Democratic and Popular Republic of Algeria and the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration.

(b) Any banking institution subject to the jurisdiction of the United States that has executed a set-off on or after 8:10 a.m., e.s.t., November 14, 1979, against Iranian funds, securities or deposits referred to in paragraph (a) of this section is hereby licensed, authorized, directed and compelled to cancel such set-off and to transfer all funds, securities and deposits which have been subject to such set-off, including interest from November 14, 1979, at commercially reasonable rates, pursuant to the provisions of paragraph (a) of this section.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14333, Feb. 26, 1981]

Sec. 535.213 Direction involving property held by offices of banks in the United States in which Iran or an Iranian entity has an interest.

(a) Any branch or office of a bank, which branch or office is located within the United States and is, on the effective date of this section, either:

(1) In possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities or controlled entities, or

(2) Carrying on its books deposits standing to the credit of or beneficially owned by such government or its agencies, instrumentalities or controlled entities, is licensed, authorized, directed and compelled to transfer such funds, securities and deposits, held on January 19, 1981, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, as fiscal agent of the U.S., to be held or transferred as directed by the Secretary of the Treasury.

(b) Transfer of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of Sec. 535.221 of this part, and such funds, securities or deposits, plus interest at commercially reasonable rates from November 14, 1979, to the transfer date, shall be received by the Federal Reserve Bank of New York by 11 a.m., E.D.T., July 10, 1981. For periods for which rates are to be determined in the future, whether by agreement between Iran and the bank or otherwise (see Sec. 535.440), interest for such periods shall be transferred to the Federal Reserve Bank of New York promptly upon such determination. Such interest shall include interest at commercially reasonable rates from July 19, 1981, on the interest which would have accrued by July 19, 1981 .

(c) Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process not affected by Sec. 535.218 need not be transferred as otherwise required by this section.

(d) The transfers of securities required by this section shall be made notwithstanding Sec. 535.202.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 26477, May 13, 1981, as amended at 46 FR 30341, June 8, 1981; 46 FR 35106, July 7, 1981; 48 FR 253, Jan. 4, 1983]

Sec. 535.214 Direction involving other financial assets in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

(a) Any person subject to the jurisdiction of the United States which is not a banking institution and is on January 19, 1981, in possession or control of funds or securities of Iran or its agencies, instrumentalities or controlled entities is licensed, authorized, directed and compelled to transfer such funds or securities to the Federal Reserve Bank of New York, as fiscal agent of the U.S. to be held or transferred as directed by the Secretary of the Treasury. However, such funds and securities need not be transferred until any disputes (not relating to any attachment, injunction or similar order) as to the entitlement of Iran and its entities to them are resolved.

(b) Transfers of funds and securities under paragraph (a) of this section shall be in accordance with the provisions of Sec. 535.221 of this part, and such funds and securities shall be received by the Federal Reserve Bank of New York by 11 a.m., E.D.T., July 10, 1981.

(c) Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process not affected by Sec. 535.218 need not be transferred as otherwise required by this section.

(d) The transfers of securities required by this section shall be made notwithstanding Sec. 535.202.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 26447, May 13, 1981, as amended at 46 FR 30341, June 8, 1981; 46 FR 35107, July 7, 1981]

Sec. 535.215 Direction involving other properties in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

(a) Except as provided in paragraphs (b) and (c) of this section, all persons subject to the jurisdiction of the United States in possession or control of properties, as defined in Sec. 535.333 of this part, not including funds and securities owned by Iran or its agencies, instrumentalities or controlled entities are licensed, authorized, directed and compelled to transfer such properties held on January 19, 1981 as directed after that date by the Government of Iran, acting through its authorized agent. Except where specifically stated, this license, authorization and direction does not relieve

persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

(b) Any properties subject to a valid attachment, injunction or other like proceeding or process not affected by Sec. 535.218 need not be transferred as otherwise required by this section.

(c) Notwithstanding paragraph (a) of this section, persons subject to the jurisdiction of the United States, including agencies, instrumentalities and entities controlled by the Government of Iran, who have possession, custody or control of blocked tangible property covered by Sec. 535.201, shall not transfer such property without a specific Treasury license, if the export of such property requires a specific license or authorization pursuant to the provisions of any of the following acts, as amended, or regulations in force with respect to them: the Export Administration Act, 50 U.S.C. App. 2403, et seq., the Arms Export Control Act, 22 U.S.C. 2751, et seq., the Atomic Energy Act, 42 U.S.C. 2011, et seq., or any other act prohibiting the export of such property, except as licensed.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14334, Feb. 26, 1981, as amended at 46 FR 26477, May 13, 1981; 49 FR 21322, May 21, 1984]

Sec. 535.216 Prohibition against prosecution of certain claims.

(a) Persons subject to the jurisdiction of the United States are prohibited from prosecuting in any court within the United States or elsewhere, whether or not litigation was commenced before or after January 19, 1981, any claim against the Government of Iran arising out of events occurring before January 19, 1981 relating to:

- (1) The seizure of the hostages on November 4, 1979;
- (2) The subsequent detention of such hostages;
- (3) Injury to United States property or property of United States nationals within the United States Embassy compound in Tehran after November 3, 1979; or
- (4) Injury to United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran.

(b) Any persons who are not United States nationals are prohibited from prosecuting any claim described in paragraph (a) of this section in any court within the United States.

(c) No further action, measure or process shall be taken after the effective date of this section in any judicial proceeding instituted before the effective date of this section which is based upon any claim described in paragraph (a) of this section, and all such proceedings shall be terminated.

(d) No judicial order issued in the course of the proceedings described in paragraph (c) of this section shall be enforced in any way.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14334, Feb. 26, 1981]

Sec. 535.217 Blocking of property of the former Shah of Iran and of certain other Iranian nationals.

(a) For the purpose of protecting the rights of litigants in courts within the United States, all property and assets located in the United States in the control of the estate of Mohammad Reza Pahlavi, the former Shah of Iran, or any close relative of the former Shah served as a defendant in litigation in such courts brought by Iran seeking the return of property alleged to belong to Iran, is blocked as to each such estate or person, until all such litigation against such estate or person is finally terminated. This provision shall apply only to such estate or persons as to which Iran has furnished

proof of service to the Office of Foreign Assets Control and which the Office has identified in paragraph (b) of this section.

(b) [No persons presently listed].

(c) The effective date of this section is January 19, 1981, except as otherwise specified after the name of a person identified in paragraph (b) of this section.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 26478, May 13, 1981, as amended at 61 FR 8216, Mar. 4, 1996; 61 FR 15382, Apr. 8, 1996]

Sec. 535.218 Prohibitions and nullifications with respect to property described in Secs. 535.211, 535.212, 535.213, 535.214 and 535.215 and standby letters of credit.

(a) All licenses and authorizations for acquiring or exercising any right, power or privilege, by court order, attachment, or otherwise, including the license contained in Sec. 535.504, with respect to the property described in Secs. 535.211, 535.212, 535.213, 535.214 and 535.215 are revoked and withdrawn.

(b) All rights, powers and privileges relating to the property described in Secs. 535.211, 535.212, 535.213, 535.214 and 535.215 and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m., e.s.t., including those derived from Sec. 535.504, other than rights, powers and privileges of the Government of Iran and its agencies, instrumentalities and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power or privilege, whether by court order or otherwise, with respect to property (and any income earned thereon) referred to in Sect. 535.211, 535.212, 535.213, 535.214 and 535.215.

(d) The prohibitions contained in paragraph (c) of this section shall not apply to Iran, its agencies, instrumentalities or controlled entities.

(e) Paragraph (a) of this section does not revoke or withdraw specific licenses authorizing the operation of blocked accounts which were issued prior to January 19, 1981, and which do not relate to litigation. Such licenses shall be deemed to be revoked as of May 31, 1981, unless extended by general or specific license issued subsequent to February 26, 1981.

(f) The provisions of paragraphs (a), (b) and (c) of this section shall apply to contested and contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities or controlled entities, including debts.

(g) All existing attachments on standby letters of credit, performance bonds and similar obligations and on substitute blocked accounts established under Sec. 535.568 relating to standby letters of credit, performance bonds and similar obligations are nullified and all future attachments on them are hereafter prohibited. All rights, powers and privileges relating to such attachments are nullified and all persons hereafter are barred from asserting or exercising any rights, powers or privileges derived therefrom.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14334, Feb. 26, 1981, as amended at 46 FR 26477, May 13, 1981]

Sec. 535.219 Discharge of obligation by compliance with this part.

Compliance with Secs. 535.210, 535.211, 535.212, 535.213, 535.214 and 535.215, or any other orders, regulations, instructions or directions issued pursuant to this part licensing, authorizing, directing or compelling the transfer of the assets described in those sections, shall, to the extent thereof, be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions or directions.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14334, Feb. 26, 1981]

Sec. 535.220 Timing of transfers required by Sec. 535.212.

Transfers required by Sec. 535.212 to the account of the Federal Reserve Bank of New York, as fiscal agent of the U.S., at the Bank of England shall be executed no later than 6 a.m., e.s.t., January 20, 1981, when the banking institution had knowledge of the terms of Executive Order 12278 of January 19, 1981.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14335, Feb. 26, 1981]

Sec. 535.221 Compliance with directive provisions.

(a) Transfers of deposits or funds required by Secs. 535.213 and 535.214 of this part shall be effected by means of wire transfer to the Federal Reserve Bank of New York for credit to the following accounts: with respect to transfers required by Sec. 535.213, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Deposit Account A, and with respect to transfers required by Sec. 535.214, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Deposit Account B.

(b) Securities to be transferred as required by Secs. 535.213 and 535.214 of this part that are not presently registered in the name of Iran or an Iranian entity shall be delivered to the Federal Reserve Bank of New York in fully transferable form (bearer or endorsed in blank), accompanied by all necessary transfer documentation, e.g., stock or bond powers or powers of attorney. All securities transferred, including those presently registered in the name of Iran or an Iranian entity, shall be accompanied by instructions to deposit such securities to the following accounts: with respect to transfers required by Sec. 535.213, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account A, and with respect to transfers required by Sec. 535.214, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account B.

(1) Securities which are in book-entry form shall be transferred by wire transfer to the Federal Reserve Bank of New York to the appropriate account named in this paragraph.

(2) Definitive securities which are in bearer or registered form shall be hand delivered or forwarded by registered mail, insured, to the Federal Reserve Bank of New York, Safekeeping Department, to the appropriate account named in this paragraph.

(c) If a security in which Iran or an Iranian entity has an interest is evidenced by a depositary receipt or other evidence of a security, the legal owner of such security shall arrange to have the security placed in fully transferable form (bearer or endorsed in blank) as provided in paragraph (b) of this section, and transferred pursuant to paragraph (b)(2) of this section.

(d) Any person delivering a security or securities to the Federal Reserve Bank of New York under paragraph (b) of this section, shall provide the Bank at least 2 business days prior written notice of such delivery, specifically identifying the sending person, the face or par amount and type of security, and whether the security is in bearer, registered or book-entry form.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 30341, June 8, 1981]

Sec. 535.222 Suspension of claims eligible for Claims Tribunal.

(a) All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, dated January 19, 1981, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court in the United States, including the courts of any state and any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this section.

(b) Nothing in paragraph (a) of this section shall prohibit the assertion of a defense, set-off or counterclaim in any pending or subsequent judicial proceeding commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality or entity controlled by the Government of Iran or any political subdivision thereof.

(c) Nothing in this section precludes the commencement of an action after the effective date of this section for the purpose of tolling the period of limitations for commencement of such action.

(d) Nothing in this section shall require dismissal of any action for want of prosecution.

(e) Suspension under this section of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or portion thereof.

(f) A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim or part thereof shall operate as a final resolution and discharge of such claim or part thereof for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim or part thereof in a specified amount shall operate as a final resolution and discharge of such claim or part thereof for all purposes upon payment to the claimant of the full amount of the award including any interest awarded by the Tribunal.

(g) Nothing in this section shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond, or other similar instrument that is not the subject of a determination by the Iran-United States Claims Tribunal on the merits thereof. However, assertion of such a claim through judicial proceedings is governed by the general license in Sec. 535.504. A determination by the Iran-United States Claims Tribunal on the merits that a standby letter of credit, performance bond or similar obligation is invalid, has been paid or otherwise discharged, or has no further purpose, or any similar determination shall operate as a final resolution and discharge or Iran's interest therein and, notwithstanding the provisions of Sec. 535.504, may be enforced by a judicial proceeding to obtain a final judicial judgment or order permanently disposing of that interest.

(h) The effective date of this section is February 24, 1981.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14335, Feb. 26, 1981, as amended at 47 FR 29529, July 7, 1982; 56 FR 6546, Feb. 15, 1991]

Subpart C--General Definitions

Sec. 535.301 Iran; Iranian Entity.

(a) The term Iran and Iranian Entity includes:

(1) The state and the Government of Iran as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof;

(2) Any partnership, association, corporation, or other organization substantially owned or controlled by any of the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date acting or purporting to act directly or indirectly on behalf of any of the foregoing;

(4) Any territory which on or since the effective date is controlled or occupied by the military, naval or police forces or other authority of Iran; and

(5) Any other person or organization determined by the Secretary of the Treasury to be included within paragraph (a) of this section.

(b) A person specified in paragraph (a)(2) of this section shall not be deemed to fall within the definition of Iran solely by reason of being located in, organized under the laws of, or having its principal place of business in, Iran.

Sec. 535.308 Person.

The term person means an individual, partnership, association, corporation or other organization. [45 FR 24433, Apr. 9, 1980]

Sec. 535.310 Transfer.

The term transfer shall mean 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, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, 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 appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgement, decree, attachment, 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, or the exercise of any power of appointment, power of attorney, or other power. [44 FR 75352, Dec. 19, 1979]

Sec. 535.311 Property; property interests.

Except as defined in Sec. 535.203(f) for the purposes of that section, the terms property and property interest or property interests shall include, but not by way of limitation, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, debentures, stocks, bonds, coupons, any other financial securities, 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, 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, real estate and any interest therein, leaseholds, grounds

rents, 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, 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.

Sec. 535.312 Interest.

Except as otherwise provided in this part, the term interest when used with respect to property shall mean an interest of any nature whatsoever, direct or indirect.[44 FR 75352, Dec. 19, 1979]

Sec. 535.316 License.

Except as otherwise specified, the term license shall mean any license or authorization contained in or issued pursuant to this part.[44 FR 66832, Nov. 21, 1979]

Sec. 535.317 General license.

A general license is any license or authorization the terms of which are set forth in this part.[44 FR 66832, Nov. 21, 1979]

Sec. 535.318 Specific license.

A specific license is any license or authorization issued pursuant to this part but not set forth in this part.[44 FR 66832, Nov. 21, 1979]

Sec. 535.320 Domestic bank.

(a) The term domestic bank shall mean any branch or office within the United States of any of the following which is not Iran or an Iranian entity: any bank or trust company incorporated under the banking laws of the United States or of any state, territory, or district of the United States, or any private bank or banker subject to supervision and examination under the banking laws of the United States or of any state, territory or district of the United States. The Secretary of the Treasury may also authorize any other banking institution to be treated as a "domestic bank" for the purpose of this definition or for the purpose of any or all sections of this part.

(b) For purposes of Secs. 535.413, 535.508, 535.531 and 535.901, the term domestic bank includes any branch or office within the United States of a non-Iranian foreign bank. [44 FR 66832, Nov. 21, 1979]

Sec. 535.321 United States; continental United States.

The term United States means the United States and all areas under the jurisdiction or authority thereof including the Trust Territory of the Pacific Islands. The term continental United States means the states of the United States and the District of Columbia.[44 FR 66833, Nov. 21, 1979]

Sec. 535.329 Person subject to the jurisdiction of the United States.

The term person subject to the jurisdiction of the United States includes:

- (a) Any person wheresoever located who is a citizen or resident of the United States;
- (b) Any person actually within the United States;
- (c) Any corporation organized under the laws of the United States or of any state, territory, possession, or district of the United States; and

(d) Any partnership, association, corporation, or other organization wheresoever organized or doing business which is owned or controlled by persons specified in paragraph (a), (b), or (c) of this section.

Sec. 535.333 Properties.

(a) The term properties as used in Sec. 535.215 includes all uncontested and non-contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities or controlled entities, including debts. It does not include bank deposits or funds and securities. It also does not include obligations under standby letters of credit or similar instruments in the nature of performance bonds, including accounts established pursuant to Sec. 535.568.

(b) Properties are not Iranian properties or owned by Iran unless all necessary obligations, charges and fees relating to such properties are paid and liens against such properties (not including attachments, injunctions and similar orders) are discharged.

(c) Liabilities and property interests may be considered contested if the holder thereof reasonably believes that a court would not require the holder, under applicable law to transfer the asset by virtue of the existence of a defense, counterclaim, set-off or similar reason. For purposes of this paragraph, the term holder shall include any person who possesses the property, or who, although not in physical possession of the property, has, by contract or otherwise, control over a third party who does in fact have physical possession of the property. A person is not a "holder" by virtue of being the beneficiary of an attachment, injunction or similar order.

(d) Liabilities and property interests shall not be deemed to be contested solely because they are subject to an attachment, injunction or other similar order.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14335, Feb. 26, 1981]

Sec. 535.334 Act of the Government of Iran.

For purposes of Sec. 535.216, an act of the Government of Iran, includes any acts ordered, authorized, allowed, approved, or ratified by the Government of Iran, its agencies, instrumentalities or controlled entities.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14336, Feb. 26, 1981]

Sec. 535.335 Claim arising out of events in Iran.

For purposes of Sec. 535.216, a claim is one "arising out of events" of the type specified only if such event is the specific act that is the basis of the claim.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14336, Feb. 26, 1981]

Sec. 535.337 Funds.

For purposes of this part, the term funds shall mean monies in trust, escrow and similar special funds held by non-banking institutions, currency and coins. It does not include accounts created under Sec. 535.568.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 30341, June 8, 1981]

Subpart D--Interpretations

Sec. 535.401 Reference to amended sections.

Reference to any section of this part or to any regulation, ruling, order, instruction, direction or license issued pursuant to this part shall be deemed to refer to the same as currently amended unless otherwise so specified. [45 FR 24433, Apr. 9, 1980]

Sec. 535.402 Effect of amendment of sections of this part or of other orders, etc.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Secretary of the Treasury pursuant to section 203 of the International Emergency Economic Powers Act shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any suit or proceeding had or commenced in any civil or criminal case, prior to such amendment, modification, or revocation and all penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made. [45 FR 24433, Apr. 9, 1980]

Sec. 535.403 Termination and acquisition of an interest of Iran or an Iranian entity.

(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 Iran or an Iranian entity, such property shall no longer be deemed to be property in which Iran or an Iranian entity has or has had an interest, unless there exists in the property another such interest the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization contained in or issued pursuant to this part, if property (including any property interest) is transferred to Iran or an Iranian interest, such property shall be deemed to be property in which there exists an interest of Iran or an Iranian entity. [45 FR 24433, Apr. 9, 1980]

Sec. 535.413 Transfers between dollar accounts held for foreign banks.

Transfers authorized by Sec. 535.901 include transfers by order of a non-Iranian foreign bank from its account in a domestic bank (directly or through a foreign branch or subsidiary of a domestic bank) to an account held by a domestic bank (directly or through a foreign branch or subsidiary) for a second non-Iranian foreign bank which in turn credits an account held by it abroad for Iran. For the purposes of this section, a non-Iranian foreign bank means a bank which is not a person subject to the jurisdiction of the United States. [44 FR 66833, Nov. 21, 1979]

Sec. 535.414 Payments to blocked accounts under Sec. 535.508.

(a) Section 535.508 does not authorize any transfer from a blocked account within the United States to an account held by any bank outside the United States or any other payment into a blocked account outside the United States.

(b) Section 535.508 only authorizes payment into a blocked account held by a domestic bank as defined by Sec. 535.320.[44 FR 67617, Nov. 26, 1979]

Sec. 535.415 Payment by Iranian entities of obligations to persons within the United States.

A person receiving payment under Sec. 535.904 may distribute all or part of that payment to anyone: Provided, That any such payment to Iran or an Iranian entity must be to a blocked account in a domestic bank. [44 FR 67617, Nov. 26, 1979]

Sec. 535.416 Letters of credit.

(a) Question. Prior to the effective date, a bank subject to the jurisdiction of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. Can payment be made upon presentation of documentary drafts?

Answer. Yes, provided payment is made into a blocked account in a domestic bank.

(b) Question. Prior to the effective date, a domestic branch of a bank organized or incorporated under the laws of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. Payment is to be made through a foreign branch of the bank. Can payment be made upon presentation of documentary drafts?

Answer. Yes, provided payment is made into a blocked account in a domestic bank.

(c) Question. Prior to the effective date, a foreign bank confirms a documentary letter of credit issued by its U.S. agency or branch for a non-Iranian account party in favor of an Iranian entity. Can the U.S. agency or branch of the foreign bank transfer funds to the foreign bank in connection with that foreign bank's payment under the letter of credit?

Answer. No, the U.S. agency's payment is blocked, unless the foreign bank made payment to the Iranian entity prior to the effective date.

(d) Question. Prior to the effective date, a bank subject to the jurisdiction of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. The Iranian entity presents documentary drafts which are deficient in some detail. May the non-Iranian account party waive the documentary deficiency and authorize the bank to make payment?

Answer. Yes, provided payment is made into a blocked account in a domestic bank. However, the non-Iranian account party is not obligated by these Regulations to exercise a waiver of documentary deficiencies. In cases where such a waiver is not exercised, the bank's payment obligation, if any, under the letter of credit remains blocked, as does any obligation, contingent or otherwise, of the account party. The documents are also blocked.

(e) Question. Prior to the effective date, a bank subject to the jurisdiction of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. The Iranian entity does not make timely, complete, or proper presentation of documents, and the letter of credit expires. Does there remain a blocked payment obligation held by the bank?

Answer. No, but any documents held by the bank continue to be blocked. It is also possible that the account party still has a related obligation to the Iranian entity and any such obligation would be blocked.

(f) Question. A bank subject to the jurisdiction of the United States has issued a letter of credit for a U.S. account party in favor of an Iranian entity. The letter of credit is confirmed by a foreign bank. Prior to or after the effective date, the Iranian entity presents documents to the U.S. issuing bank. Payment is deferred. After the effective date, the Iranian entity requests that the issuing bank either return the documents to the Iranian entity or transfer them to the confirming bank. Can the issuing bank do so?

Answer. No. The U.S. issuing bank can neither return nor transfer the documents without a license. The documents constitute blocked property under the Regulations.

(g) Question. Prior to the effective date, a bank subject to the jurisdiction of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. The Iranian entity presents documentary drafts which are deficient in some detail. May the non-Iranian account party waive the documentary deficiency and make payment?

Answer. Yes, provided payment is made into a blocked account in a domestic bank. However, the non-Iranian account party is not obligated by these Regulations to exercise a waiver of documentary deficiencies. In cases where such a waiver is not exercised, the amount of the payment held by the account party is blocked. [44 FR 69287, Dec. 3, 1979, as amended at 44 FR 75353, Dec. 19, 1979]

Sec. 535.420 Transfers of accounts under Sec. 535.508 from demand to interest-bearing status.

Section 535.508 authorizes transfer of a blocked demand deposit account to interest-bearing status at the instruction of the Iranian depositor at any time.[44 FR 76784, Dec. 28, 1979]

Sec. 535.421 Prior contractual commitments not a basis for licensing.

Specific licenses are not issued on the basis that an unlicensed firm commitment or payment has been made in connection with a transaction prohibited by this part. Contractual commitments to engage in transactions subject to the prohibitions of this part should not be made, unless the contract specifically states that the transaction is authorized by general license or that it is subject to the issuance of a specific license.[45 FR 24433, Apr. 9, 1980]

Sec. 535.433 Central Bank of Iran.

The Central Bank of Iran (Bank Markazi Iran) is an agency, instrumentality and controlled entity of the Government of Iran for all purposes under this part.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14336, Feb. 26, 1981]

Sec. 535.437 Effect on other authorities.

Nothing in this part in any way relieves any persons subject to the jurisdiction of the United States from securing licenses or other authorizations as required from the Secretary of State, the Secretary of Commerce or other relevant agency prior to executing the transactions authorized or directed by this part. This includes licenses for transactions involving military equipment.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14336, Feb. 26, 1981]

Sec. 535.438 Standby letters of credit, performance or payment bonds and similar obligations.

(a) Nothing contained in Secs. 535.212, 535.213 and 535.214 or in any other provision or revocation or amendment of any provision in this part affects the prohibition in Sec. 535.201 and the licensing procedure in Sec. 535.568 relating to certain standby letters of credit, performance bonds and similar obligations. The term funds and securities as used in this part does not include substitute blocked accounts established under section 535.568 relating to standby letters of credit, performance or payment bonds and similar obligations.

(b) No transfer requirement under Sec. 535.213 or Sec. 535.214 shall be deemed to authorize or compel any payment or transfer of any obligation under a standby letter of credit, performance bond or similar obligation as to which a blocked account has been established pursuant to Sec. 535.568 or as to which payment is prohibited under an injunction obtained by the account party.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14336, Feb. 26, 1981, as amended at 46 FR 30341, June 8, 1981]

Sec. 535.440 Commercially reasonable interest rates.

(a) For purposes of Secs. 535.212 and 535.213, what is meant by “commercially reasonable rates” depends on the particular circumstances. In the case of time or savings deposits, the “commercially reasonable rate” is that rate provided for by the deposit agreement or applicable law. With respect to other obligations where the rate remains to be determined, it is presently expected that the “commercially reasonable rate” will be the rate agreed upon by the bank and Iran. However, where a deposit has in fact operated as a demand account under Treasury license, it would be appropriate to treat the deposit for purposes of Secs. 535.212 and 535.213 as a non-interest bearing account. Furthermore, in the event that the Iran-U.S. Claims Tribunal (the “Tribunal”) determines that interest additional to that agreed upon between the bank and Iran, or compensation or damages in lieu of interest, is due Iran, then that amount determined by the Tribunal to be owing to Iran shall be transferred as, or as part of, the interest at “commercially reasonable rates” required to be transferred pursuant to Secs. 535.212 and 535.213, regardless of any settlement between the bank and Iran or any release or discharge that Iran may have given the bank.

(b) The contingent interest of Iran in any liability for further or additional interest, or compensation or damages in lieu of interest, that may be claimed in, and determined by the Tribunal, constitutes an interest of Iran in property for purposes of this part, and no agreement between Iran and any person subject to the jurisdiction of the United States is effective to extinguish such Iranian interest in property unless so specifically licensed by the Treasury Department.

(c) For deposits held as time deposits, no penalty shall be imposed for early withdrawal. (In this connection, the Board of Governors of the Federal Reserve System has determined that application of the penalty for early withdrawal of time deposits transferred before maturity, pursuant to Sec. 535.213 is not required.)

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26605; E.O. 12276, 46 FR 7913; E.O. 12277, 46 FR 7915; E.O. 12278, 46 FR 7917; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; and E.O. 12294, 46 FR 14111) [48 FR 253, Jan. 4, 1983]

Sec. 535.441 Settlement Agreement regarding small claims.

(a) Award No. 483 of June 22, 1990 of the Iran-United States Claims Tribunal, approving and giving effect to the Settlement Agreement in Claims of Less Than \$250,000, Case No. 86 and Case No. B38, dated May 13, 1990 (the “Settlement Agreement”), constitutes a determination by the Iran-United States Claims Tribunal of all claims encompassed therein within the meaning of Sec. 535.222(f) of this part. In accordance with Sec. 535.222(f), upon payment from the Security Account to the United States, the Settlement Agreement shall operate as a final resolution and discharge of all claims encompassed by the Settlement Agreement for all purposes. All such claims shall be subject to the exclusive jurisdiction of the Foreign Claims Settlement Commission on the terms established in the Settlement Agreement and by the provisions of Public Law 99-93, Title V, Aug. 16, 1985, 99 Stat. 437, applicable to en bloc settlements of claims of U.S. nationals against Iran.

(b) Pursuant to the Settlement Agreement, the private claims subject to that agreement and this part are “* * * claims of less than \$250,000 each, which have been filed with the Tribunal by the United States on behalf of U.S. nationals, which claims are included in Cases Nos. 10001 through 12785, and which are still pending, * * * ,” and “* * * claims of U.S. nationals for less than \$250,000 which have been submitted to the United States Department of State but were not timely filed with the Tribunal, as well as claims of U.S. nationals for less than \$250,000 which have been either withdrawn by the Claimants or dismissed by the Tribunal for lack of jurisdiction, * * * .” Settlement Agreement, Art. I(A).[55 FR 40831, Oct. 5, 1990]

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

Sec. 535.502 Effect of license or authorization.

(a) No license or other authorization contained in this part or otherwise issued by or under the direction of the Secretary of the Treasury pursuant to section 203 of the International Emergency Economic Powers Act, shall be deemed to authorize or validate any transaction effected prior to the issuance thereof, unless such license or other authorization specifically so provides.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Treasury Department and specifically refers to this part. No regulation, ruling, instruction or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of parts 500, 505, 515, 520 or 530 of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction or license authorizing a transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions in subpart B from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.[44 FR 66833, Nov. 21, 1979, as amended at 44 FR 75353, Dec. 19, 1979]

Sec. 535.503 Exclusion from licenses and authorizations.

The Secretary of the Treasury reserves the right to exclude any person from the operation of any license or from the privileges therein conferred or to restrict the applicability thereof with respect to particular persons, transactions or property or classes thereof. Such action shall be binding upon all persons receiving actual notice or constructive notice thereof.[44 FR 66833, Nov. 21, 1979]

Sec. 535.504 Certain judicial proceedings with respect to property of Iran or Iranian entities.

(a) Subject to the limitations of paragraphs (b) and (c) of this section and Sec. 535.222, judicial proceedings are authorized with respect to property in which on or after 8:10 a.m., e.s.t., November 14, 1979, there has existed an interest of Iran or an Iranian entity.

(b) This section does not authorize:

(1) Any pre-judgment attachment or any other proceeding of similar or analogous effect pertaining to any property (and any income earned thereon) subject to the provisions of Secs. 535.211, 535.212, 535.213, 535.214 or 535.215 on January 19, 1981, including, but not limited to, a temporary restraining order or preliminary injunction, which operates as a restraint on property, for purposes of holding it within the jurisdiction of a court, or otherwise;

(2) Any payment or delivery out of a blocked account based upon a judicial proceeding, pertaining to any property subject to the provisions of Secs. 535.211, 535.212, 535.213, 535.214 or 535.215 on January 19, 1981;

(3) (i) Any final judicial judgment or order (A) permanently enjoining, (B) terminating or nullifying, or (C) otherwise permanently disposing of any interest of Iran in any standby letter of credit, performance bond or similar obligation. Any license authorizing such action is hereby revoked

and withdrawn. This revocation and withdrawal of prior licenses prohibits judgments or orders that are within the terms of this paragraph (b)(3)(i), including any such judgments or orders which may have been previously entered but which had not become final by July 2, 1982, through the conclusion of appellate proceedings or the expiration of the time for appeal.

(ii) Nothing in this paragraph (b)(3) shall prohibit the assertion of any defense, set-off or counterclaim in any pending or subsequent judicial proceeding commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality or entity owned or controlled by the Government of Iran or any political subdivision thereof.

(iii) Nothing in this paragraph (b)(3) shall preclude the commencement of an action for the purpose of tolling the period of limitations for commencement of such action.

(iv) Nothing in this paragraph (b)(3) shall require dismissal of any action for want of prosecution.

(c) For purposes of this section, contested and contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities, or controlled entities, including debts, shall be deemed to be subject to Sec. 535.215.

(d) A judicial proceeding is not authorized by this section if it is based on transactions which violated the prohibitions of this part.

(e) Judicial proceedings to obtain attachments on standby letters of credit, performance bonds or similar obligations and on substitute blocked accounts established under Sec. 535.568 relating to standby letters of credit, performance bonds and similar obligations are not authorized or licensed.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14336, Feb. 26, 1981, as amended at 46 FR 26477, May 13, 1981; 47 FR 29529, July 7, 1982; 47 FR 55482, Dec. 10, 1982; 48 FR 57129, Dec. 28, 1983]

Sec. 535.508 Payments to blocked accounts in domestic banks.

(a) Any payment or transfer of credit, including any payment or transfer by any U.S.-owned or controlled foreign firm or branch to a blocked account in a domestic bank in the name of Iran or any Iranian entity is hereby authorized: Provided, Such payment or transfer shall not be made from any blocked account if such payment or transfer represents, directly or indirectly, a transfer of the interest of Iran or an Iranian entity to any other country or person.

(b) This section does not authorize:

(1) Any payment or transfer to any blocked account held in a name other than that of Iran or the Iranian entity who is the ultimate beneficiary of such payment or transfer; or

(2) Any foreign exchange transaction including, but not by way of limitation, any transfer of credit, or payment of an obligation, expressed in terms of the currency of any foreign country.

(c) This section does not authorize any payment or transfer of credit comprising an integral part of a transaction which cannot be effected without the subsequent issuance of a further license.

(d) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a sub-account thereof, or the income derived from such securities to a blocked account or sub-account under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such securities were held.

(e) This section does not authorize any payment or transfer from a blocked account in a domestic bank to a blocked account held under any name or designation which differs from the name or designation of the specified blocked account or sub-account from which the payment or transfer is made.

Note to Sec. 535.508: Please refer to Sec. 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. [44 FR 66590, Nov. 20, 1979, as amended at 62 FR 45107, Aug. 25, 1997]

Sec. 535.528 Certain transactions with respect to Iranian patents, trademarks and copyrights authorized.

(a) The following transactions by any person subject to the jurisdiction of the United States are authorized:

(1) The filing and prosecution of any application for an Iranian patent, trademark or copyright, or for the renewal thereof;

(2) The receipt of any Iranian patent, trademark or copyright;

(3) The filing and prosecution of opposition or infringement proceedings with respect to any Iranian patent, trademark, or copyright, and the prosecution of a defense to any such proceedings;

(4) The payment of fees currently due to the government of Iran, either directly or through an attorney or representative, in connection with any of the transactions authorized by paragraphs (a)(1), (2), and (3) of this section or for the maintenance of any Iranian patent, trademark or copyright; and

(5) The payment of reasonable and customary fees currently due to attorneys or representatives in Iran incurred in connection with any of the transactions authorized by paragraphs (a)(1), (2), (3) or (4) of this section.

(b) Payments effected pursuant to the terms of paragraphs (a)(4) and (5) of this section may not be made from any blocked account.

(c) As used in this section the term Iranian patent, trademark, or copyright shall mean any patent, petty patent, design patent, trademark or copyright issued by Iran. [45 FR 29288, May 2, 1980]

Sec. 535.531 Payment of certain checks and drafts.

(a) A bank subject to the jurisdiction of the United States is hereby authorized to make payments from blocked accounts with such banking institution of checks and drafts drawn or issued prior to the effective date, provided that:

(1) The amount involved in any one payment, acceptance, or debit does not exceed \$3,000;

or

(2) The check or draft was within the United States in process of collection by a domestic bank on or prior to the effective date and does not exceed \$50,000.

(3) The authorization contained in this paragraph shall expire at the close of business on January 14, 1980.

(b) A bank subject to the jurisdiction of the United States as its own obligation may make payment to a person subject to the jurisdiction of the United States who is the beneficiary of any letter of credit issued or confirmed by it, or on a draft accepted by it, prior to the effective date, where the letter of credit was issued or confirmed on behalf of Iran or an Iranian entity, Provided, That:

(1) Notwithstanding the provisions of Sec. 535.902, no blocked account may at any time be debited in connection with such a payment.

(2) Such a payment shall give the bank making payment no special priority or other right to blocked accounts it holds in the event that such blocked accounts are vested or otherwise lawfully used in connection with a settlement of claims.

(3) Nothing in this paragraph prevents payment being made to the beneficiary of any draft or letter of credit or to any banking institution pursuant to Sec. 535.904.

(c) The office will consider on a case-by-case basis, without any commitment on its part to authorize any transaction or class of transactions, applications for specific licenses to make payments from blocked accounts of documentary drafts drawn under irrevocable letters of credit issued or confirmed by a domestic bank prior to the effective date, in favor of any person subject to the jurisdiction of the United States. Any bank or payee submitting such an application should include data on all such letters of credit in which it is involved. Applications should be submitted not later than January 10, 1980.

(d) Paragraphs (a) and (b) of this section do not authorize any payment to Iran or an Iranian entity except payments into a blocked account in a domestic bank unless Iran or the Iranian entity is otherwise licensed to receive such payment.[44 FR 75352, Dec. 19, 1979]

Sec. 535.532 Completion of certain securities transactions.

(a) Banking institutions within the United States are hereby authorized to complete, on or before November 21, 1979, purchases and sales made prior to the effective date of securities purchased or sold for the account of Iran or an Iranian entity provided the following terms and conditions are complied with, respectively.

(1) The proceeds of such sale are credited to a blocked account in a banking institution in the name of the person for whose account the sale was made; and

(2) The securities so purchased are held in a blocked account in a banking institution in the name of the person for whose account the purchase was made.

(b) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a sub-account thereof, to a blocked account or sub-account under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such securities were held.

Sec. 535.540 Disposition of certain tangible property.

(a) Specific licenses may be issued in appropriate cases at the discretion of the Secretary of the Treasury for the public sale and transfer of certain tangible property that is encumbered or contested within the meaning of Sec. 535.333 (b) and (c) and that, because it is blocked by Sec. 535.201, may not be sold or transferred without a specific license, provided that each of the following conditions is met:

(1) The holder or supplier of the property has made a good faith effort over a reasonable period of time to obtain payment of any amounts owed by Iran or the Iranian entity, or adequate assurance of such payment;

(2) Neither payment nor adequate assurance of payment has been received;

(3) The license applicant has, under provisions of law applicable prior to November 14, 1979, a right to sell, or reclaim and sell, such property by methods not requiring judicial proceedings, and would be able to exercise such right under applicable law, but for the prohibitions in this part, and

(4) The license applicant shall enter into an indemnification agreement acceptable to the United States providing for the applicant to indemnify the United States, in an amount up to 150 percent of the proceeds of sale, for any monetary loss which may accrue to the United States from a decision by the Iran-U.S. Claims Tribunal that the United States is liable to Iran for damages that are in any way attributable to the issuance of such license. In the event the applicant and those acting for or on its behalf are the only bidders on the property, the United States shall have the right to establish a reasonable indemnification amount.

(b) An applicant for a license under this section shall provide the Office of Foreign Assets Control with documentation on the points enumerated in paragraph (a) of this section. The applicant normally will be required to submit an opinion of legal counsel regarding the legal right claimed under paragraph (a)(3) of this section.

(c) Any sale of property licensed under this section shall be at public auction and shall be made in good faith in a commercially reasonable manner. Notwithstanding any provision of State law, the license applicant shall give detailed notice to the appropriate Iranian entity of the proposed sale or transfer at least 30 days prior to the sale or other transfer. In addition, if the license applicant has filed a claim with the Iran-U.S. Claims Tribunal, the license applicant shall give at least 30 days' advance notice of the sale to the Tribunal.

(d) The disposition of the proceeds of any sale licensed under this section, minus such reasonable costs of sale as are authorized by applicable law (which will be licensed to be deducted), shall be in accordance with either of the following methods:

(1) Deposit into a separate blocked, interest-bearing account at a domestic bank in the name of the licensed applicant; or

(2) Any reasonable disposition in accordance with provisions of law applicable prior to November 14, 1979, which may include unrestricted use of all or a portion of the proceeds, provided that the applicant shall post a bond or establish a standby letter of credit, subject to the prior approval of the Secretary of the Treasury, in favor of the United States in the amount of the proceeds of sale, prior to any such disposition.

(e) For purposes of this section, the term proceeds means any gross amount of money or other value realized from the sale. The proceeds shall include any amount equal to any debt owed by Iran which may have constituted all or part of a successful bid at the licensed sale.

(f) The proceeds of any such sale shall be deemed to be property governed by Sec. 535.215 of this part. Any part of the proceeds that constitutes Iranian property which under Sec. 535.215 is to be transferred to Iran shall be so transferred in accordance with that section.

(g) Any license pursuant to this section may be granted subject to conditions deemed appropriate by the Secretary of the Treasury.

(h) Any person licensed pursuant to this section is required to submit a report to the Chief of Licensing, Office of Foreign Assets Control, within ten business days of the licensed sale or other transfer, providing a full accounting of the transaction, including the costs, any payment to lienholders or others, including payments to Iran or Iranian entities, and documentation concerning any blocked account established or payments made.

(Sec. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26605; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; and E.O. 12294, 46 FR 14111) [47 FR 31683, July 22, 1982]

Sec. 535.566 Unblocking of foreign currency deposits held by U.S.-owned or controlled foreign firms.

Deposits held abroad in currencies other than U.S. dollars by branches and subsidiaries of persons subject to the jurisdiction of the United States are unblocked, provided however that conversions of blocked dollar deposits into foreign currencies are not authorized. [44 FR 66833, Nov. 21, 1979]

Sec. 535.567 Payment under advised letters of credit.

(a) Specific licenses may be issued for presentation, acceptance, or payment of documentary drafts under a letter of credit opened by an Iranian entity and advised by a domestic bank or an Iranian bank subject to the jurisdiction of the United States, provided, That:

(1) The letter of credit was advised prior to the effective date;

(2) The property which is the subject of the payment under the letter of credit was not in the possession or control of the exporter on or after the effective date;

(3) The Beneficiary is a person subject to the jurisdiction of the United States.

(b) As a general matter, licenses will not be issued if the amount to be paid to a single payee exceeds \$500,000, or if hardship cannot be shown. [44 FR 75354, Dec. 19, 1979]

Sec. 535.568 Certain standby letters of credit and performance bonds.

(a) Notwithstanding any other provision of law, payment into a blocked account in a domestic bank by an issuing or confirming bank under a standby letter of credit in favor of an Iranian entity is prohibited by Sec. 535.201 and not authorized, notwithstanding the provisions of Sec. 535.508, if either:

(1) A specific license has been issued pursuant to the provisions of paragraph (b) of this section, or

(2) Eight business days have not expired after notice to the account party pursuant to paragraph (b) of this section.

(b) Whenever an issuing or confirming bank shall receive such demand for payment under a standby letter of credit, it shall promptly notify the person for whose account the credit was opened. Such person may then apply within five business days for a specific license authorizing the account party to establish a blocked account on its books in the name of the Iranian entity in the amount payable under the credit, in lieu of payment by the issuing or confirming bank into a blocked account and reimbursement therefor by the account party.

(c) Where there is outstanding a demand for payment under a standby letter of credit, and the issuing or confirming bank has been enjoined from making payment, upon removal of the injunction, the person for whose account the credit was opened may apply for a specific license for the same purpose and in the same manner as that set forth in paragraph (b) of this section. The issuing or confirming bank shall not make payment under the standby letter of credit unless:

(1) Eight business days have expired since the bank has received notice of the removal of the injunction and;

(2) A specific license issued to the account party pursuant to the provisions of this paragraph has not been presented to the bank.

(d) If necessary to assure the availability of the funds blocked, the Secretary may at any time require the payment of the amounts due under any letter of credit described in paragraph (a) of this section into a blocked account in a domestic bank or the supplying of any form of security deemed necessary.

(e) Nothing in this section precludes any person for whose account a standby letter of credit was opened or any other person from at any time contesting the legality of the demand from the Iranian entity or from raising any other legal defense to payment under the standby letter of credit.

(f) This section does not affect the obligation of the various parties of the instruments covered by this section if the instruments and payment thereunder are subsequently unblocked.

(g) For the purposes of this section, the term standby letter of credit shall mean a letter of credit securing performance of, or repayment of, any advance payments of deposits, under a contract with Iran or an Iranian entity, or any similar obligation in the nature of a performance bond.

(h) The regulations do not authorize any person subject to the jurisdiction of the United States to reimburse a non-U.S. bank for payment to Iran or an Iranian entity under a standby letter of credit, except by payment into a blocked account in accordance with Sec. 535.508 or paragraph (b) or (c) of this section.

(i) A person receiving a specific license under paragraph (b) or (c) of this section shall certify to the Office of Foreign Assets Control within five business days after receipt of that license that it has established the blocked account on its books as provided for in those paragraphs. However, in appropriate cases, this time may be extended upon application to the Office of Foreign Assets Control when the account party has filed a petition with an appropriate court seeking a judicial order barring payment by the issuing or confirming bank.

(j) The extension or renewal of a standby letter of credit is authorized.

(k) All specific licenses previously issued under this section to account parties to standby letters of credit are revoked, effective February 28, 1991, unless the license holder submits documentation to the Office of Foreign Assets Control establishing that the specific license pertains to a standby letter of credit obligation that (1) is at issue in any claim brought before the Iran-United States Claims Tribunal ("Tribunal"), (2) is or was at issue in any claim that the Tribunal resolves, or has resolved, on the merits in favor of the account party, or (3) was at issue in a matter that was settled by the parties. The documentation required for such a showing may include such items as a copy of a Tribunal Award, a copy of a signed settlement agreement, or copies of cover pages of recent filings in pending Tribunal cases.[47 FR 12339, Mar. 23, 1982, as amended at 56 FR 6546, Feb. 15, 1991]

Sec. 535.569 Licensed letter of credit transactions; forwarding of documents.

When payment of a letter of credit issued, advised, or confirmed by a bank subject to the jurisdiction of the United States is authorized by either general or specific license, the forwarding of the letter of credit documents to the account party is authorized. [45 FR 1877, Jan. 9, 1980]

Sec. 535.576 Payment of non-dollar letters of credit to Iran.

Notwithstanding the prohibitions of Secs. 535.201 and 535.206(a)(4), payment of existing non-dollar letters of credit in favor of Iranian entities or any person in Iran by any foreign branch or subsidiary of a U.S. firm is authorized, provided that the credit was opened prior to the respective effective date. [45 FR 29288, May 2, 1980]

Sec. 535.579 Authorization of new transactions concerning certain Iranian property.

(a) Transactions involving property in which Iran or an Iranian entity has an interest are authorized where:

(1) The property comes within the jurisdiction of the United States or into the control or possession of any person subject to the jurisdiction of the United States after January 19, 1981, or

(2) The interest in the property of Iran or an Iranian entity (e.g. exports consigned to Iran or an Iranian entity) arises after January 19, 1981.

(b) Transactions involving standby letters of credit, performance or payment bonds and similar obligations, entered into prior to January 20, 1981, described in Sec. 535.568 remain subject to the prohibitions and procedures contained in Secs. 535.201 and 535.568.

(c) Property not blocked under Sec. 535.201 as of January 19, 1981, in which the Government of Iran or an Iranian entity has an interest, which after that date is or becomes subject to the jurisdiction of the United States or comes within the control or possession of a person subject to the jurisdiction of the United States for the express purpose of settling claims against Iran or Iranian entities, is excluded from any authorization in this part for any attachment, injunction or other order of similar or analogous effect and any such attachment, injunction or order is prohibited by Secs. 535.201 and 535.203.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14336, Feb. 26, 1981]

Sec. 535.580 Necessary living expenses of relatives of the former Shah of Iran.

The transfer, payment or withdrawal of property described in Sec. 535.217 is authorized to the extent necessary to pay living expenses of any individual listed in that section. Living expenses for this purpose shall include food, housing, transportation, security and other personal expenses.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12211, 45 FR 26685; E.O. 12284, 46 FR 7929) [46 FR 14330, Feb. 26, 1981]

Subpart F--Reports

Sec. 535.601 Records and reports.

For provisions relating to records and reports, see subpart C of part 501 of this chapter. [62 FR 45107, Aug. 25, 1997]

Subpart G--Penalties

Sec. 535.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the "Act") (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act. Section 206 of the Act, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty of not to exceed \$11,000 per violation may be imposed on any person who violates any license, order, or regulation issued under the Act;

(2) Whoever willfully violates any license, order, or regulation issued under the Act shall, upon conviction, be fined not more than \$50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment or both.

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

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

(d) Attention is directed to 18 U.S.C. 2332d, as added by Public Law 104-132, section 321, which provides that, except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, a U.S. person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act, 50 U.S.C. App. 2405, as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under title 18, United States Code, or imprisoned for not more than 10 years, or both. [44 FR 65956, Nov. 15, 1979, as amended at 61 FR 43461, Aug. 23, 1996; 61 FR 54938, Oct. 23, 1996; 62 FR 45107, Aug. 25, 1997]

Sec. 535.702 Prepenalty notice.

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

(b) Contents—

(1) Facts of violation. The prepenalty notice shall:

(i) Describe the violation.

(ii) Specify the laws and regulations allegedly violated.

(iii) State the amount of the proposed monetary penalty.

(2) Right to make presentations. The prepenalty notice also shall inform the person of his right to make a written presentation within thirty (30) days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed. [53 FR 7356, Mar. 8, 1988]

Sec. 535.703 Presentation responding to prepenalty notice.

(a) Time within which to respond. The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) Form and contents of written presentation. The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.[53 FR 7356, Mar. 8, 1988]

Sec. 535.704 Penalty notice.

(a) No violation. If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) Violation. If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person. [53 FR 7356, Mar. 8, 1988]

Sec. 535.705 Referral to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this subpart or make payment arrangements acceptable to the Director within thirty days of the mailing of the written notice of the imposition of the penalty, the matter shall be referred to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.[53 FR 7356, Mar. 8, 1988]

Subpart H--Procedures

Sec. 535.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.[62 FR 45107, Aug. 25, 1997]

Subpart I--Miscellaneous Provisions

Sec. 535.901 Dollar accounts at banks abroad.

Any domestic bank is hereby authorized to effect withdrawals or other transfers from any account held in the name of a non-Iranian bank located in a foreign country, provided such non-Iranian foreign bank is not a person subject to the jurisdiction of the United States.

Sec. 535.902 Set-offs by U.S. owned or controlled firms abroad.

(a) Branches and subsidiaries in foreign countries of persons subject to the jurisdiction of the United States are licensed to set-off their claims against Iran or Iranian entities by debit to blocked accounts held by them for Iran or Iranian entities.

(b) The general license in paragraph (a) of this section is revoked as of January 19, 1981.

(c) For purposes of this section, set-offs include combinations of accounts and any similar actions.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; E.O. 12276, 46 FR 7913; E.O. 12279, 46 FR 7919; E.O. 12280, 46 FR 7921; E.O. 12281, 46 FR 7923; E.O. 12282, 46 FR 7925; E.O. 12283, 46 FR 7927, and E.O. 12294, 46 FR 14111) [46 FR 14337, Feb. 26, 1981]

Sec. 535.904 Payment by Iranian entities of obligations to persons within the United States.

The transfer of funds after the effective date by, through or to any U.S. banking institution or other person within the United States solely for purposes of payment of obligations by Iranian entities owed to persons within the United States is authorized: Provided, That there is no debit to a blocked account. Property is not blocked by virtue of being transferred or received pursuant to this section.[44 FR 66591, Nov. 20, 1979]

Sec. 535.905 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see Sec. 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. [62 FR 45107, Aug. 25, 1997]

SECTION 7

SETTLEMENT OF THE IRAN-IRAQ WAR

U.N. Security Council Resolution 598

This U.N. Security Council Resolution was adopted on July 20, 1987. Iraq accepted the resolution when it was first adopted but Iran did not, believing that victory was in sight. Following a series of highly successful Iraqi offensives in 1988 which convinced Iran that it could not win the war, Iran changed course and accepted the resolution.

Paragraph 8 of the Resolution has some relevance to U.S.-Iran relations. It calls on the U.N. Secretary-General to examine, “in consultation with Iran and Iraq and with other states of the region” steps to enhance Persian Gulf security and stability. Although the United States is not a “state of the region,” it has substantial influence on the Persian Gulf monarchy states, which certainly meet that definition. A U.S. administration seeking to improve relations with Iran could cite this provision of Resolution 598 to encourage the Gulf monarchy states to take Iran up on its calls for a new Gulf security regime. Iran has long argued that the states of the Gulf should work out their own security arrangements — an implicit call for the Gulf states to end their reliance on the United States for security. Formal U.S. backing for this provision of the resolution could serve as a signal to Iran that the United States is willing to take its Gulf security concerns into account and allow Iran a formal role in preserving Gulf security.

§7.1 - U.N. SECURITY COUNCIL RESOLUTION 598

20 July 1987

RESOLUTION 598 (1987)

Adopted by the Security Council at its 2750th meeting on 20 July 1987

The Security Council,

Reaffirming its resolution 582 (1986)

Deeply concerned that, despite its calls for a cease-fire, the conflict between Iran and Iraq continues unabated, with further heavy loss of human life and material destruction,

Deploing the initiation and continuation of the conflict,

Deploing also the bombing of purely civilian population centers, attacks on neutral shipping or civilian aircraft, the violation of international humanitarian law and other laws of armed conflict, and, in particular, the use of chemical weapons contrary to obligations under the 1925 Geneva Protocol,

Deeply concerned that further escalation and widening of the conflict may take place,

Determined to bring to an end all military actions between Iran and Iraq,

Convinced that a comprehensive, just, honourable and durable settlement should be achieved between Iran and Iraq,

Recalling the provisions of the Charter of the United Nations and in particular the obligation of all member states to settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,

Determining that there exists a breach of the peace as regards the conflict between Iran and Iraq,

Acting under Articles 39 and 40 of the Charter of the United Nations,

1. Demands that, as a first step towards a negotiated settlement, Iran and Iraq observe an immediate cease-fire, discontinue all military actions on land, at sea and in the air, and withdraw all forces to the internationally recognized boundaries without delay;

2. Requests the Secretary-General to dispatch a team of United Nations Observers to verify, confirm and supervise the cease-fire and withdrawal and further requests the Secretary-General to make the necessary arrangements in consultation with the Parties and to submit a report thereon to the Security Council;

3. Urges that prisoners of war be released and repatriated without delay after the cessation of active hostilities in accordance with the Third Geneva Convention of 12 August 1949;

4. Calls upon Iran and Iraq to cooperate with the Secretary-General in implementing this resolution and in mediation efforts to achieve a comprehensive, just and honourable settlement, acceptable to both sides, of all outstanding issues in accordance with the principles contained in the Charter of the United Nations;

5. Calls upon all other States to exercise the utmost restraint and to refrain from any act which may lead to further escalation and widening of the conflict and thus to facilitate the implementation of the present resolution;
 6. Requests the Secretary-General to explore, in consultation with Iran and Iraq, the question of entrusting an impartial body with inquiring into responsibility for the conflict and to report to the Security Council as soon as possible;
 7. Recognizes the magnitude of the damage inflicted during the conflict and the need for reconstruction efforts, with appropriate international assistance, once the conflict is ended and, in this regard, requests the Secretary-General to assign a team of experts to study the question of reconstruction and to report to the Security Council;
 8. Further requests the Secretary-General to examine in consultation with Iran and Iraq and with other states of the region measures to enhance the security and stability of the region;
 9. Requests the Secretary-General to keep the Security Council informed on the implementation of this resolution;
 10. Decides to meet again as necessary to consider further steps to insure compliance with this resolution.
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SECTION 8

TRAVEL AND CULTURAL EXCHANGES

Fingerprinting of Iranian Visitors

The first attachment is a ruling that consolidates earlier rulings of the Immigration and Naturalization Service requiring Iranian (and Libyan, Iraqi, and Sudanese) passport holders to be photographed and fingerprinted upon entry to the United States. The ruling was effective for Iranians as of September 5, 1996, one month after the enactment of the Iran-Libya Sanctions Act. (However, no provision of ILSA addressed the fingerprinting or photography of Iranian visitors.) The requirement was imposed in response to continuing U.S. concern about terrorist plots and attacks in the United States by nationals of the subject countries.

Some Iranian officials cite the ruling as an indication that the United States unfairly considers all nationals of terrorism list countries as potential terrorists. The ruling has not been amended, despite U.S. pronouncements since early 1998 that it wants to take up Khatami's call for increased people-to-people contacts with the United States. Some private organizations believe the ruling makes it difficult to promote U.S.-Iranian cultural and educational exchanges.

Travel Advisory

The second attachment is a revised travel advisory issued by the Department of State for U.S. visitors to Iran. The April 2, 1998 advisory warns U.S. citizens to "defer," but not "avoid," travel to Iran. The advisory notes that hostility to the United States remains "in some segments of the Iranian population and *some elements* of the Iranian government." This language is notable for its suggestion that the Iranian government as a whole, and Khatami and his allies in particular, are no longer hostile to the United States. This advisory appeared to support the Clinton Administration's assertion that it wants to encourage increased informal contacts with Iran.

§8.1.1 - FINGERPRINTING REGULATIONS/TRAVEL ADVISORY

Immigration and Naturalization Service
INS No. 1943-98; AG Order No. 2169-98

Requirement for Registration and Fingerprinting of Certain Nonimmigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice consolidates and replaces two prior notices requiring the registration and fingerprinting of certain nonimmigrants. The prior notices were published in response to continuing concern for national security resulting from terrorist attacks and uncovered plots directed by nationals of certain countries. This consolidation of prior notices allows more flexibility in the publication of such notices and clarifies the Attorney General's authority to exempt certain nationals from countries listed in this notice when such action is deemed to be in the interest of foreign policy or national security.

EFFECTIVE DATES: July 21, 1998.

FOR FURTHER INFORMATION CONTACT: Walter D. Cadman, Counterterrorism, Coordinator, Office of Field Operations, Immigration and Naturalization Service, 425 I Street, NW., Room 7125, Washington, D.C. 20536, telephone (202) 305-3396.

SUPPLEMENTARY INFORMATION: On January 16, 1991, the Department of Justice published a Final Rule in the Federal Register at 56 FR 1566 requiring the registration and fingerprinting of certain nonimmigrants bearing Iraqi and Kuwaiti travel documents who apply for admission to the United States. The requirement was promulgated in response to the United States' condemnation of Iraq's invasion of Kuwait, United States' sanctions against Iraq, and the theft of thousands of Kuwaiti passports during the occupation of Kuwait by Iraq, all of which heightened the potential for domestic anti-United States terrorist activities. On December 23, 1993, the Department published an Interim Rule in the Federal Register at 58 FR 68024 that removed the requirement for the registration and fingerprinting of certain nonimmigrants bearing Iraqi and Kuwaiti travel documents and added a new paragraph (f) to 8 CFR 264.1. Paragraph (f) of that section provides that the Attorney General may require, by public notice in the Federal Register, certain nonimmigrants of specific countries to be registered and fingerprinted upon arrival in the United States, pursuant to section 263(a)(6) of the Immigration and Nationality Act, as amended.

Under the authority of 8 CFR 264.1(f), the Department published a notice entitled Requirement for the Registration and Fingerprinting of Certain Nonimmigrants Bearing Iranian and Libyan Travel Documents in the Federal Register at 61 FR 46829 (September 5, 1996) and a notice entitled Requirement for the Registration and Fingerprinting of Certain Nonimmigrants Bearing Iraqi and Sudanese Travel Documents in the Federal Register at 58 FR 68157 (December 23, 1993). This notice replaces and consolidates these prior notices.

Notice of Requirement for Registration and Fingerprinting of Certain Nonimmigrants

Pursuant to 8 CFR 264.1(f), I hereby order as follows: nonimmigrant aliens from the following countries shall be registered on Form I-94 (Arrival/Departure Record), photographed, and fingerprinted on Form FD-258 (Fingerprint Chart) by the Immigration and Naturalization Service at the Port of Entry where the aliens apply for admission to the United States: Iran; Libya; Iraq; and Sudan.

Nonimmigrants who apply for admission under section 101(a)(15)(A) or 101(a)(15)(G) of the Immigration and Nationality Act, as amended, are exempt from the requirements of this notice. In addition, the Attorney General, after consultation with the Secretary of State, may exempt certain nonimmigrants who are nationals of the countries listed herein from the requirements of this notice when such action is deemed to be in the interest of foreign policy or national security. Nothing in the foregoing sentence may be construed as creating a right to apply for or receive such an exemption.

Dated: July 17, 1998.
Janet Reno,
Attorney General.

§8.1.2 - IRAN - TRAVEL WARNING

April 2, 1998

The Department of State warns all U.S. citizens to defer travel to Iran. Iranian President Khatami has called for a "dialogue of civilizations" and an increase of private exchanges between Iranians and Americans; some limited exchanges have taken place. There is, however, evidence that hostility to the United States remains in some segments of the Iranian population and some elements of the Iranian government.

The U.S. government does not currently have diplomatic or consular relations with the Islamic Republic of Iran, and therefore, cannot provide protection or routine consular services to American citizens in Iran. The Swiss government, acting through its Embassy in Tehran, serves as protecting power for U.S. interests in Iran. The Iranian government does not recognize dual citizenship and generally does not permit the Swiss to provide protective services for American citizens who are also Iranian nationals. In addition, U.S. citizens of Iranian origin who are considered to be Iranian citizens have been detained and harassed by Iranian authorities. Former Muslims who have converted to other religions, as well as persons who encourage Muslims to convert, are subject to arrest and possible execution. The Iranian government reportedly has the names of all individuals who filed claims against Iran at the Iran-U.S. Claims Tribunal at the Hague pursuant to the 1981 Algerian Accords. There are restrictions on both import and export of goods between Iran and the United States. Neither U.S. passports nor visas to the United States are issued in Tehran.

No. 98-006

This replaces the previous Travel Warning dated July 8, 1997 to reflect President Khatami's call for dialogue and the limited private exchanges which have taken place between Iranians and Americans.

SECTION 9

PENDING LEGISLATION

Iran Nonproliferation Act of 1999

On May 20, 1999, Chairman of the House International Relations Committee Benjamin Gilman, along with the Committee's ranking Democrat Sam Gejdenson, Rep. Sensenbrenner, and Rep. Berman, introduced the Iran Nonproliferation Act of 1999 (H.R. 1883). The bill is an updated version of legislation passed by both chambers of Congress in 1998 but vetoed by President Clinton. To forestall a veto override, the administration issued Executive order 13094 ([See §4.31](#)).

The 1998 and the 1999 legislation require sanctions on foreign entities that provide Iran with technology that could contribute to its weapons of mass destruction programs. (The 1998 legislation focused on missile development, but the 1999 legislation is more expansive to include nuclear, chemical, and biological technology.)

H.R. 1883 contains a section (Sec. 6) that is absent from the 1998 legislation, absent from Executive order 13094, and the subject of significant debate. The provision would prohibit U.S. payments to the Russian Government or the Russian Space Agency in connection with the construction of the international space station — or any entity under that Agency's control — if the president has determined that the Space agency or its subordinate entities is assisting Iran's missile programs. The president can waive this prohibition if he can certify to Congress:

- that it is Russian government policy to oppose WMD technology sales to Iran;
- that the Russian government is taking necessary steps to prevent the transfer of such technology to Iran; and
- that neither the Russian Space Agency or any of its subordinate entities has made any recent transfers of missile technology to Iran.

The provision has been the subject of some debate because the international space station is a high-profile symbol of U.S.-Russian cooperation in the post-Cold War period. Cutting off U.S. payments to the Russian Space Agency because of this legislation, if that were to occur, would no doubt provoke Russia to withhold, or to threaten to withhold, cooperation with the United States on other areas, such as enforcement of peace in Kosovo. Some prefer other steps, such as cutting Russia's quota of launches of U.S.-made satellites, to any sanction that might set back the international space station project.

**§9.1 - PENDING LEGISLATION:
IRAN NONPROLIFERATION ACT OF 1999**

HR 1883 IH
106th CONGRESS
1st Session
H. R. 1883

To provide for the application of measures to foreign persons who transfer to Iran certain goods, services, or technology, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

May 20, 1999

Mr. GILMAN (for himself, Mr. GEJDENSON, Mr. SENSENBRENNER, and Mr. BERMAN) introduced the following bill; which was referred to the committee on International Relations, and in addition to the Committee on Science, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the application of measures to foreign persons who transfer to Iran certain goods, services, or technology, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Iran Nonproliferation Act of 1999'.

SEC. 2. REPORTS ON PROLIFERATION TO IRAN.

(a) REPORTS- The President shall, at the times specified in subsection (b), submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report identifying every foreign person with respect to whom there is credible information indicating that that person, on or after January 22, 1998, transferred to Iran--

(1) goods, services, or technology listed on--

(A) the Nuclear Suppliers Group Guidelines for the Export of Nuclear Material, Equipment and Technology (published by the International Atomic Energy Agency as Information Circular INFCIRC/254/Rev.3/Part 1) and Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology (published by the International Atomic Energy Agency as Information Circular INFCIRC/254/Rev.3/Part 2);

(B) the Missile Technology Control Regime Equipment and Technology Annex;

(C) the lists of items and substances relating to biological and chemical weapons the export of which is controlled by the Australia Group;

(D) the list of items and substances the export of which is controlled pursuant to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction; or

(E) the Wassenaar Arrangement list of Dual Use Goods and Technologies and Munitions list; or

(2) goods, services, or technology not listed on any list identified in paragraph (1) but which nevertheless would be, if they were United States goods, services, or technology, prohibited for export to Iran because of their potential contribution to the development of nuclear, biological, or chemical weapons, or of ballistic missile systems.

(b) TIMING OF REPORTS- The reports under subsection (a) shall be submitted not later than 30 days after the date of the enactment of this Act, not later than 6 months after such date of enactment, and not later than the end of each 6-month period thereafter.

(c) EXCEPTIONS- Any foreign person who--

(1) was identified in a previous report submitted under subsection (a) on account of a particular transfer, or

(2) has engaged in a transfer on behalf of, or in concert with, the Government of the United States, is not required to be identified on account of that same transfer in any report submitted thereafter under this section, except to the degree that new information has emerged indicating that the particular transfer may have continued, or been larger, more significant, or different in nature than previously reported under this section.

(d) SUBMISSION IN CLASSIFIED FORM- When the President considers it appropriate, reports submitted under subsection (a), or appropriate parts thereof, may be submitted in classified form.

SEC. 3. APPLICATION OF MEASURES TO CERTAIN FOREIGN PERSONS.

(a) APPLICATION OF MEASURES- Subject to sections 4 and 5, the President is authorized to apply with respect to each foreign person identified in a report submitted pursuant to section 2(a), for such period of time as he may determine, any or all of the measures described in subsection (b).

(b) DESCRIPTION OF MEASURES- The measures referred to in subsections (a) are the following:

(1) EXECUTIVE ORDER 12938 PROHIBITIONS- The measures set forth in subsections (b) and (c) of section 4 of Executive Order 12938 shall be applied with respect to that person.

(2) ARMS EXPORT PROHIBITION- The United States Government shall not sell to that foreign person any item on the United States Munitions List as in effect on August 8, 1995, and shall terminate sales to that person of any defense articles, defense services, or design and construction services under the Arms Export Control Act.

(3) DUAL USE EXPORT PROHIBITION- The authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit the export to that person of any goods or technology on the control list established under section 5(c)(1) of that Act.

(c) EFFECTIVE DATE OF MEASURES- Measures applied pursuant to subsection (a) shall be effective with respect to a foreign person--

(1) 30 days after the report identifying the foreign person is submitted, if the report is submitted on or before the date required by section 2(b);

(2) 30 days after the date required by section 2(b) for submitting the report, if the report identifying the foreign person is submitted within 30 days after that date; or

(3) on the date that the report identifying the foreign person is submitted, if that report is submitted more than 30 days after the date required by section 2(b).

(d) PUBLICATION IN FEDERAL REGISTER- The application of measures to a foreign person pursuant to subsection (a) shall be announced by notice published in the Federal Register.

SEC. 4. PROCEDURES IF MEASURES ARE NOT APPLIED.

(a) **REQUIREMENT TO NOTIFY CONGRESS-** Should the President not exercise the authority of section 3(a) to apply any or all of the measures described in section 3(b) with respect to a foreign person identified in a report submitted pursuant to section 2(a), he shall so notify the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate no later than the effective date under section 3(c) for measures with respect to that person.

(b) **WRITTEN JUSTIFICATION-** Any notification submitted by the President under subsection (a) shall include a written justification describing in detail the facts and circumstances relating specifically to the foreign person identified in a report submitted pursuant to section 2(a) that support the President's decision not to exercise the authority of section 3(a) with respect to that person.

(c) **SUBMISSION IN CLASSIFIED FORM-** When the President considers it appropriate, the notification of the President under subsection (a), and the written justification under subsection (b), or appropriate parts thereof, may be submitted in classified form.

SEC. 5. DETERMINATION EXEMPTING FOREIGN PERSON FROM SECTIONS 3 AND 4.

(a) **IN GENERAL-** Sections 3 and 4 shall not apply to a foreign person 15 days after the President determines and reports to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that, on the basis of information provided by that person, or otherwise obtained by the President, the President is persuaded that--

(1) the person did not, on or after January 22, 1998, knowingly transfer to Iran the goods, services, or technology the apparent transfer of which caused that person to be identified in a report submitted pursuant to section 2(a); or

(2) the goods, services, or technology the transfer of which caused that person to be identified in a report submitted pursuant to section 2(a) did not materially contribute to Iran's efforts to develop nuclear, biological, or chemical weapons, or ballistic missile systems.

(b) **WRITTEN JUSTIFICATION-** Any determination and report of the President under subsection (a) shall include a written justification describing in detail--

(1) the credible information indicating that the person, on or after January 22, 1998, transferred to Iran goods, services, or technology the apparent transfer of which caused that person to be identified in a report submitted pursuant to section 2(a);

(2) the additional information which persuaded the President that the person did not, on or after January 22, 1998, knowingly transfer to Iran goods, services, or technology the apparent transfer of which caused that person to be identified in a report submitted pursuant to section 2(a); and

(3) the analysis of the information supporting the President's conclusion.

(c) **SUBMISSION IN CLASSIFIED FORM-** When the President considers it appropriate, the determination and report of the President under subsection (a), and the written justification under subsection (b), or appropriate parts thereof, may be submitted in classified form.

SEC. 6. RESTRICTION ON EXTRAORDINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION.

(a) **RESTRICTION ON EXTRAORDINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION-** Notwithstanding any other provision of law, no agency of the United States Government may make extraordinary payments in connection with the International Space Station to the Russian Space Agency, any organization or entity under the jurisdiction of the Russian Space Agency, or any other organization, entity, or element of the Government of the Russian Federation, unless, during the fiscal year in which the extraordinary payments in connection with the International Space Station are to be made, the President has made the determination described in subsection (b), and reported such determination to the Committee on International

Relations and the Committee on Science of the House of Representatives and the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation of the Senate.

(b) DETERMINATION REGARDING RUSSIAN COOPERATION IN PREVENTING PROLIFERATION TO IRAN- The determination referred to in subsection (a) is a determination by the President that--

(1) it is the policy of the Government of the Russian Federation to oppose the proliferation to Iran of weapons of mass destruction and missile systems capable of delivering such weapons;

(2) the Government of the Russian Federation (including all law enforcement, export promotion, export control, and intelligence agencies of such government) is taking the necessary steps to prevent the transfer from Russia to Iran of goods, services, and technology useful in the development of weapons of mass destruction and missile systems capable of delivering such weapons; and

(3) neither the Russian Space Agency, nor any organization or entity under the jurisdiction or control of the Russian Space Agency, has, during the 1-year period prior to the date of the determination pursuant to this subsection, made transfers to Iran reportable under section 2(a) of this Act (other than transfers with respect to which a determination pursuant to section 5 has been or will be made).

(c) PRIOR NOTIFICATION- Not less than 30 days before making a determination under subsection (b), the President shall notify the Committee on International Relations and the Committee on Science of the House of Representatives and the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation of the Senate of his intention to make such determination.

(d) WRITTEN JUSTIFICATION- A determination of the President under subsection (b) and a prior notification under subsection (c) shall include a written justification describing in detail the facts and circumstances supporting the President's conclusion.

(e) SUBMISSION IN CLASSIFIED FORM- When the President considers it appropriate, a determination of the President under subsection (b), a prior notification under subsection (c), and a written justification under subsection (d), or appropriate parts thereof, may be submitted in classified form.

SEC. 7. DEFINITIONS.

For purposes of this Act, the following terms have the following meanings:

(1) EXTRAORDINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION - The term 'extraordinary payments in connection with the International Space Station' means payments in cash or in kind made or to be made by the United States Government--

(A) for work on the International Space Station which the Russian Government pledged at any time to provide at its expense; or

(B) for work on the International Space Station, or for the purchase of goods or services relating to human space flight, that are not required to be made under the terms of a contract or other agreement that was in effect on January 1, 1999, as those terms were in effect on such date.

(2) FOREIGN PERSON; PERSON- The terms 'foreign person' and 'person' mean--

(A) a natural person that is an alien;

(B) a corporation, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group, that is organized under the laws of a foreign country or has its principal place of business in a foreign country;

(C) any foreign governmental entity operating as a business enterprise; and

(D) any successor or subsidiary of any entity described in subparagraph (B) or (C).

(3) EXECUTIVE ORDER 12938- The term 'Executive Order 12938' means Executive Order 12938 as in effect on January 1, 1999

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ABOUT THE AUTHOR

Dr. Kenneth Katzman received his Ph.D in Political Science from New York University in 1991. His thesis was on Iran's Revolutionary Guard, and was subsequently published by Westview Press under the title *The Warriors of Islam: Iran's Revolutionary Guard*. He entered government service as a Persian Gulf analyst at the Central Intelligence Agency during 1985-1989. After two years as a defense consultant with a private company, he joined the Congressional Research Service in June 1991. During 1996, he was assigned to the majority staff of the House International Relations Committee, where he helped organize hearings on the Middle East and worked on such legislative initiatives as the Iran-Libya Sanctions Act. He also has authored numerous articles on the Persian Gulf region and Middle Eastern terrorism for various Middle East-related journals.

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