



This document is scheduled to be published in the Federal Register on 12/08/2011 and available online at <http://federalregister.gov/a/2011-31557>, and on FDsys.gov

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 538

Sudanese Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is amending the Sudanese Sanctions Regulations by issuing two general licenses that authorize all activities and transactions relating to the petroleum and petrochemical industries in the Republic of South Sudan and

related financial transactions and the transshipment of goods, technology, and services through Sudan to or from the Republic of South Sudan and related financial transactions. OFAC also is amending an existing general license to broaden its authorization with respect to the importation of certain Sudanese-origin services and to add an authorization for activities related to Sudanese persons' travel to the United States. Lastly, OFAC is making technical changes to the Sudanese Sanctions Regulations, including changes to reflect the formation by Southern Sudan of the independent state of the Republic of South Sudan on July 9, 2011.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach and Implementation, tel.: 202/622-2490, Assistant Director for Licensing, tel.: 202/622-2480, Assistant Director for Policy, tel.: 202/622-4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622-2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (www.treas.gov/ofac) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Background

The Sudanese Sanctions Regulations, 31 CFR part 538 (the "SSR"), were promulgated to implement Executive Order 13067 of November 3, 1997 (62 FR 59989, November 5, 1997) ("E.O. 13067"), in which the President declared a national emergency with respect to the policies and actions of the Government of Sudan. To deal with that emergency, E.O. 13067 imposed comprehensive trade sanctions with respect to Sudan and blocked all property and interests in property of the Government of Sudan in the United States or within the possession or control of United States persons.

Subsequently, on October 13, 2006, the President signed the Darfur Peace and Accountability Act of 2006 (Pub. L. 109-344, 120 Stat. 1869) (the "DPAA") and issued Executive Order 13412 of

October 13, 2006 (71 FR 61369, October 17, 2006) ("E.O. 13412"). The DPAA and E.O. 13412, inter alia, exempted the Specified Areas of Sudan from certain prohibitions set forth in E.O. 13067, and defined the term Specified Areas of Sudan to include Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and marginalized areas in and around Khartoum. While E.O. 13412 exempted the Specified Areas of Sudan from certain prohibitions in E.O. 13067, it continued the country-wide blocking of the Government of Sudan's property and interests in property and imposed a new country-wide prohibition on transactions relating to Sudan's petroleum or petrochemical industries. E.O. 13412 also removed the regional Government of Southern Sudan from the definition of the term Government of Sudan set forth in E.O. 13067. OFAC issued amendments to the SSR implementing E.O. 13412 on October 31, 2007 (72 FR 61513, October 31, 2007).

On January 9, 2011, in a popular referendum, the people of Southern Sudan voted in favor of independence. On July 9, 2011, Southern Sudan gained its independence, becoming the new Republic of South Sudan, and was formally recognized by the United States Government. Since July 9, 2011, the Republic of South Sudan has been an independent state. As such, it is no longer subject to the SSR.

While the Republic of South Sudan is no longer subject to the SSR, certain activities in or involving the Republic of South Sudan continue to be prohibited by the SSR, absent authorization from OFAC, given the interdependence between certain sectors of the economies of the Republic of South Sudan and Sudan. For example, the SSR continue to prohibit U.S. persons from engaging in transactions relating to the petroleum or petrochemical industry in the Republic of South Sudan if such transactions also relate to the petroleum or petrochemical industry in Sudan, and from exporting goods, technology, or services to, or importing goods or services from, the Republic of South Sudan that transit through Sudan (see SSR §§ 538.406, 538.210, and 538.417).

OFAC today is amending the SSR by issuing two general licenses that authorize, to the extent otherwise prohibited by the SSR, (1) all activities involving the petroleum and petrochemical industries in the Republic of South Sudan and related financial transactions and (2) the transshipment of goods, technology, and services through Sudan to or from the Republic of South Sudan and related financial transactions. OFAC also is amending an existing general license to broaden its authorization with respect to the importation of certain

Sudanese-origin services and to add an authorization for activities related to Sudanese persons' travel to the United States. Finally, OFAC is making certain technical changes to the SSR, including changes to reflect the establishment of the independent state of the Republic of South Sudan and the separation of the Government of the Republic of South Sudan from the Government of Sudan.

Public Participation

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

Paperwork Reduction Act

The collections of information related to 31 CFR part 538 are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction

Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505-0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 538

Administrative practice and procedure, Banking, Banks, Blocking of assets, Exports, Foreign trade, Humanitarian aid, Imports, Penalties, Petroleum, Reporting and recordkeeping requirements, Specially designated nationals, Sudan, Transportation.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR Part 538 as follows:

PART 538 - SUDANESE SANCTIONS REGULATIONS

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

AUTHORITY: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 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); 22 U.S.C. 7201-7211; Pub. L. 109-344, 120 Stat. 1869; Pub. L. 110-96, 121 Stat. 1011; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13412, 71 FR 61369, 3 CFR, 2006 Comp., p. 244.

Subpart C - General Definitions

2. Amend § 538.305 by redesignating paragraph (a) as introductory text of the section and republishing it, removing paragraph (b), redesignating paragraphs (1) through (4) as (a) through (d), respectively, redesignating the Note to § 538.305 as Note 2 to § 538.305, and adding new Note 1 to § 538.305 to read as follows:

§ 538.305 Government of Sudan.

The term Government of Sudan includes:

* * * * *

NOTE 1 TO § 538.305: The term Government of Sudan does not include the Government of the Republic of South Sudan or the central bank of the Republic of South Sudan.

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3. Amend § 538.312 by adding new paragraph (e) to read as follows:

§ 538.312 Sudanese origin.

* * * * *

(e) The term goods or services of Sudanese origin does not include goods or services that have transshipped through Sudan to or from the Republic of South Sudan pursuant to the authorization in § 538.537 of this part.

4. Amend § 538.320 by revising paragraph (a) to read as follows:

§ 538.320 Specified Areas of Sudan.

(a) The term Specified Areas of Sudan means Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and marginalized areas in and around Khartoum.

* * * * *

Subpart D-Interpretations

5. Amend § 538.405 by revising paragraphs (b), (c), and (d), and adding new paragraph (e) to read as follows:

§ 538.405 Transactions incidental to a licensed transaction authorized.

* * * * *

(b) Provision of any transportation services to or from Sudan not explicitly authorized in or pursuant to this part other than loading, transporting, and discharging licensed or exempt cargo there;

(c) Distribution or leasing in Sudan of any containers or similar goods owned or controlled by United States persons after the performance of transportation services to Sudan;

(d) Financing of licensed sales for exportation or reexportation of the excluded food items specified in § 538.523(a)(3)(iii), other agricultural commodities not included in the definition of food set forth in § 538.523(a)(3)(ii), food

(as defined in § 538.523(a)(3)(ii)) intended for military or law enforcement purchasers or importers, medicine, and medical devices to the Government of Sudan, to an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to any of the foregoing. See § 538.525; and

(e) All financial transactions ordinarily incident to the activities authorized by §§ 538.536 and 538.537 of this part.

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6. Amend § 538.417 by redesignating the Note to § 538.417 as Note 2 to § 538.417, adding new Note 1 to § 538.417, and revising redesignated Note 2 to § 538.417 to read as follows:

§ 538.417 Transshipments through Sudan.

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NOTE 1 TO § 538.417: See § 538.537 for a general license authorizing the transshipment of goods, technology, and services through Sudan to or from the Republic of South Sudan, and related transactions.

NOTE 2 TO § 538.417: See § 538.532 for a general license authorizing humanitarian transshipments through areas of Sudan other than the Specified Areas of Sudan to or from the Specified Areas of Sudan.

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

7. Revise § 538.509 to read as follows:

§ 538.509 Importation of certain Sudanese-origin services authorized; activities related to travel to the United States by Sudanese persons authorized.

(a) The importation of Sudanese-origin services into the United States or other dealing in such services is authorized where such services are performed in the United States by a Sudanese citizen or national and either are for the purpose of or directly relate to participating in a public conference, performance, exhibition or similar event.

(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 (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 Sudan or a business entity or other organization in Sudan.

(d) U.S. persons are authorized to provide services to persons in Sudan in connection with the filing of visa applications with the U.S. Department of State or the Department of Homeland Security's U.S. Citizenship and Immigration Services

for the visa categories listed in paragraphs (b) and (c) of this section.

8. Amend § 538.515 by removing paragraph (c), redesignating the Note to paragraph (c) of § 538.515 as Note to § 538.515, and revising the redesignated Note to § 538.515 to read as follows:

§ 538.515 Sudanese diplomatic missions in the United States.

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NOTE TO § 538.515: The importation of goods and services into the United States by the Government of the Republic of South Sudan not involving transit or transshipment through Sudan is not prohibited and therefore requires no authorization. Similarly, the provision of goods, technology, and services in the United States to the Government of the Republic of South Sudan and its employees is not prohibited and also requires no authorization. See § 538.537 for a general license authorizing the transshipment of goods, technology, and services through Sudan to or from the Republic of South Sudan, and related transactions.

9. Revise § 538.532 to read as follows:

§ 538.532 Humanitarian transshipments to or from the Specified Areas of Sudan.

The transit or transshipment to or from the Specified Areas of Sudan of goods, technology, or services intended for humanitarian purposes, through areas of Sudan other than the Specified Areas of Sudan, is authorized.

10. Add new § 538.536 to read as follows:

§ 538.536 Activities relating to the petroleum and petrochemical industries in the Republic of South Sudan.

(a) To the extent they are not exempt from the prohibitions of this part, all activities and transactions relating to the petroleum and petrochemical industries in the Republic of South Sudan are authorized, including but not limited to the transshipment of goods, technology, and services to or from the Republic of South Sudan through Sudan; exploration; development; production; field auditing services; oilfield services; activities related to oil and gas pipelines; investment; payment to the Government of Sudan or to entities owned or controlled by the Government of Sudan of pipeline, port, and other fees; and

downstream activities such as refining, sale, and transport of petroleum from the Republic of South Sudan, except for the refining in Sudan of petroleum from the Republic of South Sudan.

(b) All financial transactions ordinarily incident to the activities authorized by paragraph (a) of this section also are authorized, including but not limited to financial transactions with a depository institution owned or controlled by the Government of Sudan or located in Sudan, provided that any transaction between a U.S. depository institution and a depository institution owned or controlled by the Government of Sudan must first transit through a depository institution not owned or controlled by the Government of Sudan.

(c) This section does not authorize exports of goods, services, or technology that are not used in connection with the Republic of South Sudan's petroleum or petrochemical industries.

11. Add new § 538.537 to read as follows:

§ 538.537 Transshipment of goods, technology, and services to or from the Republic of South Sudan.

(a) To the extent they are not exempt from the prohibitions of this part, the transit or transshipment of goods, technology, and services through Sudan to or from the Republic of South Sudan are authorized.

(b) All financial transactions ordinarily incident to the activities authorized by paragraph (a) of this section also are authorized, including but not limited to financial transactions with a depository institution owned or controlled by the Government of Sudan or located in Sudan, provided that any transaction between a U.S. depository institution and a depository institution owned or controlled by the Government of Sudan must first transit through a depository institution not owned or controlled by the Government of Sudan.

Dated: _December 5, 2011

Adam J. Szubin

Director, Office of Foreign Assets Control.

BILLING CODE 04810AL

[FR Doc. 2011-31557 Filed 12/07/2011 at 8:45 am; Publication
Date: 12/08/2011]