

**<RULE>**

**<PREAMB>**

**DEPARTMENT OF THE TREASURY**

**Office of Foreign Assets Control**

**31 CFR Parts 515, 538, and 560**

**Cuban Assets Control Regulations; Sudanese Sanctions  
Regulations; Iranian Transactions Regulations**

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

**ACTION:** Final rule.

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**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is amending the Sudanese Sanctions Regulations and the Iranian Transactions Regulations to authorize the exportation of certain services and software incident to the exchange of personal communications over the Internet. Similarly, OFAC is amending the Cuban Assets Control Regulations to authorize the exportation of certain services incident to the exchange of personal communications over the Internet.

**DATES:** Effective Date: March 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director for Compliance, Outreach & 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](http://www.treas.gov/ofac)). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

**Background**

OFAC is amending the Sudanese Sanctions Regulations, 31 CFR part 538 (the "SSR"), and the Iranian Transactions Regulations, 31 CFR part 560 (the "ITR"), to authorize the exportation to persons in Sudan and Iran, respectively, of certain services and software incident to the exchange of personal communications over the Internet.

Unless authorized by a general or specific license, or otherwise exempt, the exportation of such services and software from the United States or by a United States person, wherever located, to Sudan or Iran is prohibited. Pursuant to section 538.205 of the SSR, the exportation or reexportation, directly or indirectly, to Sudan of any goods, technology, or services from the United States or by a United States person, wherever located, or requiring the issuance of a license by a Federal agency, is prohibited. As set forth in section 538.212(g)(1) of the SSR, however, this prohibition does not apply with respect to most exports and reexports to the Specified Areas of Sudan, as defined in section 538.320. In addition, pursuant to section 538.201 of the SSR, all property and interests in property of the Government of Sudan that are or come within the United States, or that are or come within the possession or control of U.S. persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn or otherwise

dealt in. The term property, as defined in section 538.310 of the SSR, specifically includes services. As defined in section 538.305 of the SSR, the term Government of Sudan does not include the regional government of Southern Sudan.

Section 560.204 of the ITR provides that the exportation, reexportation, sale, or supply, directly or indirectly, from the United States or by a U.S. person, wherever located, of any goods, technology, or services to Iran or the Government of Iran is prohibited. The Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 102-484) (50 U.S.C. 1701 note) ("IIANPA") and section 6 of Executive Order 13059 of August 19, 1997 ("Prohibiting Certain Transactions With Respect to Iran") (62 FR 44531, August 21, 1997), generally preclude OFAC from authorizing - whether by general or specific license - the exportation to Iran of any goods or technology listed on the Commerce Control List ("CCL") in the Export Administration Regulations, 15 CFR parts 730 through 774 (the "EAR"), unless the President exercises the waiver authority provided in section 1606 of IIANPA. On September 27, 1994, the President delegated his authorities under IIANPA to the Secretary of State. Since much of the software necessary for the exchange of personal communications or the sharing of information over the Internet is listed on the CCL, the exercise of this waiver authority is necessary before

OFAC may generally or specifically license the exportation of such software to Iran.

On December 10, 2009, the Department of State determined that it is essential to the national interest of the United States to exercise the waiver authority in section 1606 of IIANPA with respect to the exportation to Iran of certain dual-use software classified as mass market software by the Department of Commerce ("Commerce") and essential for the exchange of personal communications and/or sharing of information over the Internet. In reporting this determination to Congress on December 15, 2009, the Department of State explained that this software is necessary to foster and support the free flow of information to individual Iranian citizens and, therefore, is essential to the national interest of the United States.

As events in Iran since last June's Presidential election there have shown, personal Internet-based communications are a vital tool for change. Similar considerations apply in Sudan. Accordingly, to ensure that the sanctions on Sudan and Iran do not have an unintended chilling effect on the ability of companies to provide personal communications tools to individuals in those countries, OFAC is adding new § 538.533 to

the SSR and new § 560.540 to the ITR. These new sections authorize the exportation from the United States or by U.S. persons, wherever located, to persons in Sudan and Iran, respectively, of certain services and software incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging. To qualify for this authorization, such services and software must be publicly available at no cost to the user. In addition, such software qualifies for this authorization only if it is (1) classified as "EAR99" under the EAR; (2) not subject to the EAR; or (3) classified by Commerce as mass market software under export control classification number ("ECCN") 5D992 of the EAR. These new sections of the SSR and the ITR, however, do not authorize the direct or indirect exportation of services or software with knowledge or reason to know that such services or software are intended for the Government of Sudan or the Government of Iran.

New § 538.533 of the SSR and new § 560.540 of the ITR each contain a statement of licensing policy in addition to the general licenses authorizing the exportation of certain Internet-based personal communications services and software. Paragraph (c) of each of these two sections provides that specific licenses may be issued on a case-by-case basis for the

exportation of services and software not covered by the general license that are incident to the sharing of information over the Internet. To be eligible for consideration under this policy, software must be classified as "EAR99," not subject to the EAR, or classified by Commerce as mass market software under ECCN 5D992 of the EAR.

OFAC also is amending the Cuban Assets Control Regulations, 31 CFR part 515 (the "CACR"), to add a similar general license authorizing the exportation to persons in Cuba of certain services incident to the exchange of personal communications over the Internet. Unless authorized by a general or specific license, the exportation of such services from the United States or by persons subject to U.S. jurisdiction to Cuba is prohibited. Section 515.201 of the CACR prohibits all dealings in, including, without limitation, transfers, withdrawals, or exportations of, any property in which Cuba or a Cuban national has any interest of any nature whatsoever, direct or indirect, by any person subject to the jurisdiction of the United States. The term property, as defined in § 515.311 of the CACR, specifically includes services.

On April 13, 2009, the President stated that the promotion of democracy and human rights in Cuba is in the national

interest of the United States and is a key component of U.S. foreign policy in the Americas. The President announced an initiative to pursue these goals by, among other things, increasing the flow of information to the Cuban people. Consistent with that initiative, OFAC is adding new § 515.578 to the CACR to authorize the exportation from the United States or by persons subject to U.S. jurisdiction to persons in Cuba of certain services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging. To qualify for this authorization, the services must be publicly available at no cost to the user. New § 515.578 does not authorize the direct or indirect exportation of services with knowledge or reason to know that such services are intended for a prohibited official of the Government of Cuba, as defined in § 515.337 of the CACR, or a prohibited member of the Cuban Communist Party, as defined in § 515.338.

Like the new authorization sections added to the SSR and ITR, new § 515.578 contains a statement of licensing policy in addition to the general license authorizing the exportation of certain Internet-based personal communications services.

Paragraph (c) of § 515.578 provides that specific licenses may

be issued on a case-by-case basis for the exportation of services not covered by the general license that are incident to the sharing of information over the Internet.

The new general license for Cuba, unlike those for Sudan and Iran, does not include an authorization for the exportation of software, because the exportation of goods and technology, including software, to Cuba is separately licensed or otherwise authorized by Commerce under the EAR. Section 515.533 of the CACR generally licenses all transactions ordinarily incident to the exportation of items from the United States, or the reexportation of 100% U.S.-origin items from a third country, to any person in Cuba, provided the exportation or reexportation is licensed or otherwise authorized by Commerce under the EAR, and provided further that only certain specified payment and financing terms may be used.

By the addition of the authorizations described above to the SSR, ITR, and CACR, OFAC hopes to encourage the exchange of personal communications over the Internet by persons in Sudan, Iran, and Cuba.

#### **Public Participation**

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

#### **Paperwork Reduction Act**

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

#### **List of Subjects**

31 CFR Part 515

Banks, Banking, Communications, Cuba, Exports, Foreign trade.

31 CFR Part 538

Banks, Banking, Communications, Exports, Foreign trade, Sudan.

31 CFR Part 560

Banks, Banking, Communications, Exports, Foreign trade, Iran.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR parts 515, 538, and 560 as follows:

**PART 515—CUBAN ASSETS CONTROL REGULATIONS**

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

**Authority:** 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001-6010; 22 U.S.C. 7201-7211; 31 U.S.C. 321(b); 50 U.S.C. App 1-44; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104-114, 110 Stat. 785 (22 U.S.C. 6082); Pub. L. 105-277, 112 Stat. 2681; Pub. L. 111-8, 123 Stat. 524; E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959-1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

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

2. Add a new § 515.578 to subpart E to read as follows:

**§ 515.578 Exportation of certain services incident to Internet-based communications.**

(a) Except as provided in paragraph (b) of this section, the exportation from the United States or by persons subject to U.S. jurisdiction to persons in Cuba of services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, is authorized,

provided that such services are publicly available at no cost to the user.

(b) This section does not authorize:

(1) The direct or indirect exportation of services with knowledge or reason to know that such services are intended for a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part.

(2) The direct or indirect exportation of Internet connectivity services or telecommunications transmission facilities (such as satellite links or dedicated lines).

**Note to § 515.578(b)(2):** For general licenses related to the provision of telecommunications services between the United States and Cuba and contracts for telecommunications services provided to particular individuals in Cuba, see § 515.542(b) and § 515.542(c), respectively, of this part. For a general license and a statement of specific licensing policy related to the establishment of telecommunications facilities linking the United States or third countries and Cuba, see § 515.542(d) of this part.

(3) The direct or indirect exportation of web-hosting services that are for purposes other than personal communications (e.g., web-hosting services for commercial endeavors) or of domain name registration services.

(4) The direct or indirect exportation of any items to Cuba.

**Note to § 515.578(b) (4):** For the rules related to transactions ordinarily incident to the exportation or reexportation of items, including software, to Cuba, see §§ 515.533 and 515.559 of this part.

(c) Specific licenses may be issued on a case-by-case basis for the exportation of other services incident to the sharing of information over the Internet.

#### **PART 538—SUDANESE SANCTIONS REGULATIONS**

3. The authority citation for part 538 is revised 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 (50 U.S.C. 1705 note); 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 E—Licenses, Authorizations, and Statements of Licensing Policy**

4. Add a new § 538.533 to subpart E to read as follows:

**§ 538.533 Exportation of certain services and software incident to Internet-based communications.**

(a) To the extent that such transactions are not exempt from the prohibitions of this part and subject to the restrictions set forth in paragraph (b) of this section, the following transactions are authorized:

(1) The exportation from the United States or by U.S. persons, wherever located, to persons in Sudan of services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social

networking, sharing of photos and movies, web browsing, and blogging, provided that such services are publicly available at no cost to the user.

(2) The exportation from the United States or by U.S. persons, wherever located, to persons in Sudan of software necessary to enable the services described in paragraph (a) (1) of this section, provided that such software is classified as "EAR99" under the Export Administration Regulations, 15 CFR parts 730 through 774 (the "EAR"), is not subject to the EAR, or is classified by the U.S. Department of Commerce ("Commerce") as mass market software under export control classification number ("ECCN") 5D992 of the EAR, and provided further that such software is publicly available at no cost to the user.

(b) This section does not authorize:

(1) The direct or indirect exportation of services or software with knowledge or reason to know that such services or software are intended for the Government of Sudan.

(2) The direct or indirect exportation of any goods or technology listed on the Commerce Control List in the EAR, 15 CFR part 774, supplement No. 1 ("CCL"), except for software

necessary to enable the services described in paragraph (a) (1) of this section that is classified by Commerce as mass market software under ECCN 5D992 of the EAR.

(3) The direct or indirect exportation of Internet connectivity services or telecommunications transmission facilities (such as satellite links or dedicated lines).

(4) The direct or indirect exportation of web-hosting services that are for purposes other than personal communications (e.g., web-hosting services for commercial endeavors) or of domain name registration services.

(c) Specific licenses may be issued on a case-by-case basis for the exportation of other services and software incident to the sharing of information over the Internet, provided the software is classified as "EAR99," not subject to the EAR, or classified by Commerce as mass market software under ECCN 5D992 of the EAR.

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

**PART 560—IRANIAN TRANSACTIONS REGULATIONS**

5. The authority citation for part 560 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 18 U.S.C. 2339B, 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); 22 U.S.C. 7201-7211; Pub. L. 110-96, 121 Stat. 1011 (50 U.S.C. 1705 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 E—Licensing, Authorizations, and Statements of Licensing Policy**

6. Add a new § 560.540 to subpart E to read as follows:

**§ 560.540 Exportation of certain services and software incident to Internet-based communications.**

(a) To the extent that such transactions are not exempt from the prohibitions of this part and subject to the restrictions set forth in paragraph (b) of this section, the following transactions are authorized:

(1) The exportation from the United States or by U.S. persons, wherever located, to persons in Iran of services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, provided that such services are publicly available at no cost to the user.

(2) The exportation from the United States or by U.S. persons, wherever located, to persons in Iran of software necessary to enable the services described in paragraph (a) (1) of this section, provided that such software is classified as "EAR99" under the Export Administration Regulations, 15 CFR parts 730 through 774 (the "EAR"), is not subject to the EAR, or is classified by the U.S. Department of Commerce ("Commerce") as mass market software under export control classification number ("ECCN") 5D992 of the EAR, and provided further that such software is publicly available at no cost to the user.

(b) This section does not authorize:

(1) The direct or indirect exportation of services or software with knowledge or reason to know that such services or software are intended for the Government of Iran.

(2) The direct or indirect exportation of any goods or technology listed on the Commerce Control List in the EAR, 15 CFR part 774, supplement No. 1 ("CCL"), except for software necessary to enable the services described in paragraph (a) (1) of this section that is classified by Commerce as mass market software under ECCN 5D992 of the EAR.

(3) The direct or indirect exportation of Internet connectivity services or telecommunications transmission facilities (such as satellite links or dedicated lines).

(4) The direct or indirect exportation of web-hosting services that are for purposes other than personal communications (e.g., web-hosting services for commercial endeavors) or of domain name registration services.

(c) Specific licenses may be issued on a case-by-case basis for the exportation of other services and software incident to

the sharing of information over the Internet, provided the software is classified as "EAR99," not subject to the EAR, or classified by Commerce as mass market software under ECCN 5D992 of the EAR.

Dated: March 3, 2010

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

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