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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 537

Burmese 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 and reissuing in their entirety the Burmese Sanctions Regulations to implement Executive Order 13448 of October 18, 2007, "Blocking Property and Prohibiting Certain Transactions Related to Burma," Executive Order 13464 of April 30, 2008, "Blocking Property and Prohibiting Certain Transactions Related to Burma," Executive Order 13619 of July 11, 2012, "Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma," and Executive Order 13651 of August 6, 2013, "Prohibiting Certain Imports of Burmese Jadeite and Rubies."

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

FOR FURTHER INFORMATION CONTACT: Assistant Director for Licensing, tel.: 202-622-2480, Assistant Director for Policy, tel.: 202-622-2746, Assistant Director for Regulatory Affairs, tel.: 202-622-4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490, 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 website (www.treasury.gov/ofac). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202-622-0077.

Background

On May 20, 1997, the President issued Executive Order 13047 (62 FR 28301, May 22, 1997) (E.O. 13047), determining that the Government of Burma, then ruled by a military junta, had committed large-scale repression of the democratic opposition in Burma and declaring a national emergency to deal with the unusual and extraordinary threat posed by the actions and policies of that government. E.O. 13047, issued under the authority of, inter alia, section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104-208) (section 570), and the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) (IEEPA), prohibits new investment in Burma by a U.S. person and any facilitation by a U.S. person of new investment in Burma by a foreign person. Section 570 provides the President with the authority to waive the new investment prohibition in that section in the national security interests of the United States.

On July 28, 2003, the President signed into law the Burmese Freedom and Democracy Act of 2003 (Public Law 108-61) (BFDA) to further sanction the military junta then ruling Burma. The BFDA required the imposition, subject to annual renewal, of a ban on the importation into the United States of any article that is a product of Burma. To implement the BFDA and to take additional steps with respect to the national emergency declared in

E.O. 13047, the President issued Executive Order 13310 (68 FR 44853, July 30, 2003) (E.O. 13310), also on July 28, 2003.

E.O. 13310 blocks, with certain exceptions, all property and interests in property of the persons listed in its Annex and persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to meet the criteria set forth in E.O. 13310. E.O. 13310 also prohibits the exportation or reexportation to Burma of financial services from the United States or by a U.S. person, except as exempted, licensed, or authorized. While E.O. 13310 also prohibited the importation into the United States of any article that is a product of Burma, that prohibition has been revoked, as discussed in more detail below.

On October 18, 2007, the President issued Executive Order 13448 (72 FR 60223, October 23, 2007) (E.O. 13448), expanding the scope of the national emergency declared in E.O. 13047 and blocking, with certain exceptions, all property and interests in property of the persons listed in the Annex to E.O. 13448 and persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to meet the criteria set forth in E.O. 13448.

In order to take additional steps with respect to the national emergency declared in E.O. 13047 and expanded in E.O. 13448, the President issued Executive Order 13464 (73 FR 24491, May 2, 2008) (E.O. 13464) on April 30, 2008. E.O. 13464 blocks all property and interests in property of the persons listed in its Annex and persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to meet the criteria set forth in E.O. 13464.

On July 29, 2008, the President signed into law the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Public Law 110-286) (JADE Act), which, among other things, imposes mandatory blocking and financial sanctions on certain categories of persons described in the JADE Act. The JADE Act also amended the BFDA to require a prohibition on the importation into the United States of jadeite or rubies mined or extracted from Burma and articles of jewelry containing such jadeite or rubies and the imposition of certain conditions on the importation into the United States of jadeite or rubies mined or extracted from a country other than Burma and articles of jewelry containing such jadeite or rubies. The importation provisions of the BFDA, as amended by the JADE Act, required annual renewal, which did not occur in 2013.

On July 11, 2012, the President issued Executive Order 13619 (77 FR 41243, July 13, 2012) (E.O. 13619), modifying the scope of the national emergency declared in E.O. 13047 and blocking all property and interests in property of persons determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State, to meet the criteria set forth in E.O. 13619.

Also on July 11, 2012, in response to historic reforms in Burma, the U.S. Government took a number of steps to authorize new U.S. investment in Burma and the exportation or reexportation of U.S. financial services to Burma. OFAC issued and made available on its website a general license authorizing the exportation or reexportation of financial services to Burma from the United States or by a U.S. person, subject to certain limitations. The Department of State, pursuant to a delegation of authority from the President, waived the ban on new U.S. investment in Burma set forth in section 570. Consistent with this waiver, OFAC issued and made available on its website a general license authorizing new investment in Burma, subject to certain limitations and requirements.

The Department of State, pursuant to a delegation of authority from the President, subsequently waived the

importation prohibitions set forth in section 3(a) of the BFDA. Consistent with this waiver, on November 16, 2012, OFAC issued and made available on its website a general license authorizing the importation into the United States of any article that is a product of Burma, subject to certain limitations. This general license did not authorize the importation into the United States of jadeite and rubies and of articles of jewelry containing them, which continued to be prohibited.

On February 22, 2013, OFAC issued and made available on its website a general license authorizing U.S. persons to conduct most transactions, including opening and maintaining accounts and conducting other financial services involving four of Burma's major financial institutions included on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List): Asia Green Development Bank, Ayeyarwady Bank, Myanmar Economic Bank, and Myanmar Investment and Commercial Bank.

On August 6, 2013, in light of the expiration of the BFDA importation ban, as amended by the JADE Act, the President issued Executive Order 13651 (78 FR 48793, August 9, 2013) (E.O. 13651) revoking the provisions of E.O. 13310 implementing the broad ban on importation of products of Burma. However, due to continuing concerns, including with respect to labor and

human rights in specific sectors, E.O. 13651 reinstates the prohibition that was originally imposed by the JADE Act amendments to the BFDA on the importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma. Also in E.O. 13651, the President, pursuant to Section 5(i) of the JADE Act, waived the blocking and financial sanctions provisions of Section 5(b) of the JADE Act. Except as authorized by or exempt from the Burmese Sanctions Regulations, 31 CFR part 537 (the "Regulations"), transactions involving persons whose property and interests in property are blocked pursuant to E.O. 13310, E.O. 13448, E.O. 13464, or E.O. 13619 continue to be prohibited pursuant to the Regulations.

The Regulations, originally issued in 1998 to implement E.O. 13047, were amended and reissued in their entirety in 2005 to implement E.O. 13310. OFAC now is further amending the Regulations to implement E.O. 13448, E.O. 13464, E.O. 13619, and E.O. 13651. Due to the extensive nature of these amendments, OFAC is again reissuing the Regulations in their entirety.

Subpart A of the Regulations clarifies the relation of this part to other laws and regulations. Subpart B of the

Regulations implements the prohibitions contained in E.O. 13047, E.O. 13310, E.O. 13448, E.O. 13464, E.O. 13619, and E.O. 13651. Section 537.201(a)(1) blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any foreign branch, of: (1) any person listed in the Annexes to E.O. 13310, E.O. 13448, or E.O. 13464; and (2) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to meet the criteria set forth in any of those Executive orders. Section 537.201(a)(2) blocks, with certain exceptions, all property and interests in property of any person determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State, to meet the criteria set forth in E.O. 13619. Persons listed in the Annexes to E.O. 13310, E.O. 13448, or E.O. 13464, designated by or under the authority of the Secretary of the Treasury pursuant to E.O. 13310, E.O. 13448, E.O. 13464, or E.O. 13619, or otherwise subject to the blocking provisions of these authorities are referred to throughout the Regulations as "persons whose property and interests in property are blocked pursuant to § 537.201(a)." The names of persons listed in the Annexes to E.O. 13310, E.O. 13448, or E.O. 13464 or designated pursuant to E.O. 13310,

E.O. 13448, E.O. 13464, or E.O. 13619 are published on the SDN List, which is accessible through the following page on OFAC's website: www.treasury.gov/sdn.

Section 537.202 of subpart B prohibits the exportation or reexportation of financial services to Burma from the United States or by a U.S. person, wherever located. Note, however, that new section 537.529 contains a general license authorizing the exportation or reexportation of financial services to Burma, subject to certain limitations.

Section 537.203 of subpart B prohibits the importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma.

Section 537.204 of subpart B prohibits new investment in Burma. Note, however, that new section 537.530 contains a general license authorizing new investment in Burma by U.S. persons, subject to certain limitations and requirements.

Section 537.205 of subpart B prohibits any approval, financing, facilitation, or guarantee by a U.S. person, wherever located, of a foreign person's transaction where the transaction

would be prohibited by section 537.202 or 537.204 of this part if performed by a U.S. person or within the United States. Section 537.206 prohibits any transaction by a U.S. person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in the Regulations, and any conspiracy formed to violate such prohibitions.

Sections 537.207 and 537.208 of subpart B detail the effect of transfers of blocked property in violation of the Regulations and set forth the requirement to hold blocked funds, such as currency, bank deposits, or liquidated financial obligations, in blocked interest-bearing accounts. Section 537.209 provides that all expenses incident to the maintenance of blocked physical property shall be the responsibility of the owners or operators of such property, and that such expenses shall not be met from blocked funds, unless otherwise authorized. The section further provides that blocked property may, in OFAC's discretion, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Exemptions from certain prohibitions contained in the Regulations are set forth in section 537.210 of subpart B,

including, pursuant to E.O. 13619, a new exemption for the official business of the U.S. Government.

Subpart C defines key terms used throughout the Regulations, and subpart D contains interpretive sections regarding the Regulations. Section 537.416 of subpart D explains that the property and interests in property of an entity are blocked if the entity is 50 percent or more owned by a person whose property and interests in property are blocked, whether or not the name of the entity is incorporated into the SDN List.

Transactions otherwise prohibited under the Regulations but found to be consistent with U.S. policy may be authorized by one of the general licenses contained in subpart E of the Regulations or by a specific license issued pursuant to the procedures described in subpart E of 31 CFR part 501. Subpart E of the Regulations also contains certain statements of specific licensing policy. Several sections in subpart E of the Regulations have been removed and reserved. In some cases activities previously authorized in those sections, including certain importations, are no longer prohibited. In other cases, including certain financial transactions, the current licensing policy is now reflected in new sections 537.529 and 537.531,

which authorize the exportation or reexportation of financial services to Burma and certain transactions involving financial institutions included on the SDN List, respectively. In light of the new general licenses authorizing the exportation or reexportation of financial services to Burma and certain transactions involving financial institutions included on the SDN List, the general license formerly found in section 537.525, which broadly authorized transactions, including with persons whose property or interests in property are blocked pursuant to section 537.201(a), by U.S. citizens permanently residing in Burma, has been removed.

Subpart F of the Regulations refers to subpart C of part 501 for applicable recordkeeping and reporting requirements. Subpart G describes the civil and criminal penalties applicable to violations of the Regulations, as well as the procedures governing the potential imposition of a civil monetary penalty. Subpart G also refers to Appendix A of part 501 for a more complete description of these procedures.

Subpart H of the Regulations refers to subpart E of part 501 for applicable provisions relating to administrative procedures and contains a delegation of authority by the

Secretary of the Treasury. Subpart I sets forth a Paperwork Reduction Act notice.

Public Participation

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

Paperwork Reduction Act

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

List of Subjects in 31 CFR Part 537

Administrative practice and procedure, Banks, Banking, Blocking of assets, Burma, Credit, Exportation, Exports, Foreign trade, Importation, Imports, Investments, Jadeite, Loans, New investment, Penalties, Reporting and recordkeeping requirements, Rubies, Securities, Services, Specially Designated Nationals.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control revises part 537 of 31 CFR chapter V to read as follows:

PART 537—BURMESE SANCTIONS REGULATIONS

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537.101 Relation of this part to other laws and regulations.

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537.523-537.525 [Reserved]

537.526 Transactions necessary and ordinarily incident to publishing authorized.

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537.528 Payments for legal services from funds originating outside the United States authorized.

537.529 Exportation or reexportation of financial services to Burma authorized.

537.530 New investment in Burma by U.S. persons authorized.

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537.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C 1601-1651, 1701-1706; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Sec. 570, Pub. L. 104-208, 110 Stat. 3009; Pub. L. 110-96, 121 Stat. 1011 (50 U.S.C. 1701 note); Pub. L. 110-286, 122 Stat. 2632 (50 U.S.C. 1701 note); E.O. 13047, 62 FR 28301, 3 CFR, 1997 Comp., p. 202; E.O. 13310, 68 FR 44853, 3 CFR, 2003

Comp., p. 241; E.O. 13448, 72 FR 60223, 3 CFR, 2007 Comp., p. 304; E.O. 13464, 73 FR 24491, 3 CFR, 2008 Comp., p. 189; E.O. 13619, 77 FR 41243, 3 CFR, 2012 Comp., p. 279; E.O. 13651, 78 FR 48793 (August 9, 2013); Determination No. 2009-11, 74 FR 3957, 3 CFR, 2009 Comp., p. 330.

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

§ 537.101 Relation of this part to other laws and regulations.

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

No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 537.201 Prohibited transactions involving blocked property.

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

(i) The persons listed in the Annex to Executive Order 13310 of July 28, 2003 (E.O. 13310), the Annex to Executive Order 13448 of October 18, 2007 (E.O. 13448), or the Annex to Executive Order 13464 of April 30, 2008 (E.O. 13464); and

(ii) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) To be a senior official of the Government of Burma, the State Peace and Development Council of Burma, the Union Solidarity and Development Association of Burma, or any successor entity to any of the foregoing;

(B) To be responsible for, or to have participated in, human rights abuses related to political repression in Burma;

(C) To be engaged, or to have engaged, in activities facilitating public corruption by senior officials of the Government of Burma;

(D) To be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to E.O. 13310 or E.O. 13448;

(E) To be owned or controlled by, directly or indirectly, the Government of Burma or an official or officials of the Government of Burma;

(F) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the Government of Burma, the State Peace and Development Council of Burma, the Union Solidarity and

Development Association of Burma, any successor entity to any of the foregoing, any senior official of any of the foregoing, or any person whose property and interests in property are blocked pursuant to this paragraph (a) (1); or

(G) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this paragraph (a) (1).

Note to § 537.201(a) (1): The Department of State has determined that the State Peace and Development Council of Burma no longer exists.

(2) All property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any foreign branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: Any person determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State:

(i) To have engaged in acts that directly or indirectly threaten the peace, security, or stability of Burma, such as actions that have the purpose or effect of undermining or obstructing the political reform process or the peace process with ethnic minorities in Burma;

(ii) To be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of human rights abuses in Burma;

(iii) To have, directly or indirectly, imported, exported, reexported, sold, or supplied arms or related materiel from North Korea or the Government of North Korea to Burma or the Government of Burma;

(iv) To be a senior official of an entity that has engaged in the acts described in paragraphs (a)(2)(i) through (iii) of this section;

(v) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the acts described in paragraphs (a)(2)(i) through (iii) of this section or any person whose

property and interests in property are blocked pursuant to this paragraph (a) (2); or

(vi) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this paragraph (a) (2).

Note 1 to paragraph (a) of § 537.201: The names of persons listed in or designated pursuant to E.O. 13310, E.O. 13448, E.O. 13464, or Executive Order 13619 of July 11, 2012, whose property and interests in property are blocked pursuant to paragraph (a) of this section, are published in the Federal Register and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the identifier "[BURMA]." The SDN List is accessible through the following page on OFAC's website: www.treasury.gov/sdn. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. See § 537.416 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a) of § 537.201: The International Emergency Economic Powers Act (50 U.S.C. 1701-1706), in section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the Federal Register and incorporated into the SDN List with the identifier "[BPI-BURMA]."

Note 3 to paragraph (a) of § 537.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, prohibitions on the following transactions:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person

whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the 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, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or

might appear to have assigned, transferred, or otherwise disposed of the security.

(d) The prohibitions in paragraph (a) of this section apply except to the extent transactions are authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

Note to § 537.201: Section 5(b) of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (P.L. 110-286) (JADE Act) imposes blocking and financial sanctions on certain categories of persons described in Section 5(a)(1) of the JADE Act. In Executive Order 13651 of August 6, 2013, the President waived these blocking and financial sanctions pursuant to Section 5(i) of the JADE Act. Except as authorized or exempt, transactions involving persons whose property and interests in property are blocked pursuant to paragraph (a) of this section continue to be prohibited.

§ 537.202 Prohibited exportation or reexportation of financial services to Burma.

Except as otherwise authorized, the exportation or reexportation, directly or indirectly, to Burma of any financial services from the United States or by a U.S. person, wherever located, is prohibited.

Note to § 537.202: See § 537.529 for a general license authorizing the exportation or reexportation of financial services to Burma.

§ 537.203 Prohibited importation of Burmese jadeite and rubies into the United States.

(a) Except as provided in paragraphs (b) and (c) of this section or as otherwise authorized, the importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma is prohibited.

(b) The prohibition in paragraph (a) of this section does not apply to any jadeite or rubies mined or extracted from Burma or any articles of jewelry containing jadeite or rubies mined or extracted from Burma that were previously exported from the United States, including those that accompanied an individual outside the United States for personal use, if they are

reimported to the United States by the same person, without having been advanced in value or improved in condition by any process or other means while outside the United States.

(c) Nothing in paragraph (a) of this section shall prohibit transactions to the extent such prohibition would conflict with the international obligations of the United States under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, the United Nations Headquarters Agreement, or other legal instruments providing equivalent privileges and immunities.

Note § 537.203: See §§ 537.324, 537.325, and 537.326 for definitions of the terms jadeite, rubies, and articles of jewelry containing jadeite or rubies, respectively.

§ 537.204 Prohibited new investment in Burma.

Except as otherwise authorized, new investment, as defined in § 537.311, in Burma by U.S. persons is prohibited.

Note to § 537.204: See § 537.530 for a general license authorizing new investment in Burma by U.S. persons.

§ 537.205 Prohibited facilitation.

(a) Except as otherwise authorized, U.S. persons, wherever located, are prohibited from approving, financing, facilitating, or guaranteeing a transaction by a person who is a foreign person where the transaction by that foreign person would be prohibited by § 537.202 or § 537.204 of this part if performed by a U.S. person or within the United States.

(b) With respect to new investment in Burma, the prohibition against facilitation does not include the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology unless such contract includes any of the activities described in § 537.311(a)(2), (3), or (4).

Note to § 537.205: See § 537.530 for a general license authorizing new investment in Burma by U.S. persons. See § 537.418 for an interpretive provision regarding facilitating new investment in Burma.

§ 537.206 Evasions; attempts; causing violations; conspiracies.

(a) Any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited.

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

§ 537.207 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 537.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interest.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any

property or interest in property blocked pursuant to § 537.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

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

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

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

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

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

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

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

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

Note to § 537.207(d): The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property and interests in property blocked pursuant to § 537.201(a).

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

(a) Except as provided in paragraph (e) or (f) of this section, or as otherwise directed by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 537.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

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

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

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

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

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

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

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 537.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 537.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 537.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 537.209 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 537.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 537.201(a) may, in the discretion of OFAC, be sold or liquidated and the net proceeds

placed in a blocked interest-bearing account in the name of the owner of the property.

§ 537.210 Exempt transactions.

(a) Personal communications. The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(b) Information or informational materials. (1) The prohibitions contained in this part do not apply to the importation from any country and the exportation to any country of any information or informational materials, as defined in § 537.308, whether commercial or otherwise, regardless of format or medium of transmission.

(2) This section does not exempt from regulation or authorize transactions related to information or 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. Such prohibited transactions include, but are not limited to, payment of

advances for information or 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 or informational materials; and payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt or authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730-774, or to the exportation of goods (including software) or technology for use in the transmission of any data, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person whose property and interests in property are blocked pursuant to § 537.201(a) are prohibited.

(c) Travel. The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation or exportation 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.

(d) Pre-1997 contracts. Except as prohibited by § 537.201(a) with respect to persons whose property and interests in property are blocked pursuant to Executive Order 13448 of October 18, 2007, Executive Order 13464 of April 30, 2008, or Executive Order 13619 of July 11, 2012, or by § 537.203, the prohibitions contained in this part do not apply to any activity undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that was entered into by a U.S. person with the Government of Burma or a non-governmental entity in Burma prior to 12:01 a.m. eastern daylight time on May 21, 1997.

(e) Official business. The prohibitions contained in this part, other than that in § 537.203, do not apply to transactions for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof.

Note to § 537.210(e): Section 537.210(e) does not apply to the extent that engaging in such transactions would require the issuance of a statutory waiver and such a waiver is not issued. As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]), the statutory waivers required to authorize otherwise prohibited transactions have been issued. Specifically, the Department of State, pursuant to a delegation of authority from the President, waived the ban on new U.S. investment in Burma set forth in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, and in § 537.204 of this part. In addition, in Executive Order 13651 of August 6, 2013, the President waived pursuant to Section 5(i) of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (P.L. 110-286) (JADE Act) the blocking and financial sanctions provisions of Section 5(b) of the JADE Act.

Subpart C—General Definitions

§ 537.300 Applicability of definitions.

The definitions in this subpart apply throughout the entire part.

§ 537.301 Blocked account; blocked property.

The terms blocked account and blocked property shall mean any account or property subject to the prohibitions in § 537.201 held in the name of a person whose property and interests in property are blocked pursuant to § 537.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

Note to § 537.301: See § 537.416 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 537.201(a).

§ 537.302 Economic development of resources located in Burma.

(a) The term economic development of resources located in Burma means activities pursuant to a contract the subject of which includes responsibility for the development or exploitation of resources located in Burma, including making or attempting to make those resources accessible or available for exploitation or economic use. The term shall not be construed

to include not-for-profit educational, health, or other humanitarian programs or activities.

(b) Examples: The economic development of resources located in Burma includes a contract conferring rights to explore for, develop, extract, or refine petroleum, natural gas, or minerals in the ground in Burma; or a contract to assume control of a mining operation in Burma, acquire a forest or agricultural area for commercial use of the timber or other crops, or acquire land for the construction and operation of a hotel or factory.

Note to § 537.302: See § 537.316 for a definition of the term resources located in Burma.

§ 537.303 Effective date.

The term effective date refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person whose property and interests in property are blocked pursuant to § 537.201(a)(1)(i), 12:01 a.m. eastern daylight time, July 29, 2003, for persons listed in

the Annex to Executive Order 13310 of July 28, 2003; 12:01 a.m. eastern daylight time, October 19, 2007, for persons listed in the Annex to Executive Order 13448 of October 18, 2007; and 12:01 a.m. eastern daylight time, May 1, 2008, for persons listed in the Annex to Executive Order 13464 of April 30, 2008;

(b) With respect to a person whose property and interests in property are otherwise blocked pursuant to § 537.201(a), the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked;

(c) With respect to the exportation or reexportation of financial services to Burma prohibited by § 537.202, or with respect to facilitation thereof prohibited by § 537.205, 12:01 a.m. eastern daylight time, July 29, 2003;

(d) With respect to the importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma prohibited by § 537.203, 12:01 a.m. eastern daylight time, August 7, 2013;

(e) With respect to new investment prohibited by § 537.204, or with respect to facilitation thereof prohibited by § 537.205, 12:01 a.m. eastern daylight time, May 21, 1997.

§ 537.304 Entity.

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

§ 537.305 Exportation or reexportation of financial services to Burma.

The term exportation or reexportation of financial services to Burma means:

(a) The transfer of funds, directly or indirectly, from the United States or by a U.S. person, wherever located, to Burma; or

(b) The provision, directly or indirectly, to persons in Burma of insurance services, investment or brokerage services (including but not limited to brokering or trading services regarding securities, debt, commodities, options, or foreign

exchange), banking services, or money remittance services; loans, guarantees, letters of credit, or other extensions of credit; or the service of selling or redeeming traveler's checks, money orders, or stored value.

§ 537.306 Foreign person.

The term foreign person means any person that is not a U.S. person.

§ 537.307 Government of Burma.

The term Government of Burma means the Government of Burma (also known as Myanmar), its agencies, instrumentalities, and controlled entities, and the Central Bank of Burma.

§ 537.308 Information or informational materials.

(a) The term information or informational materials includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

Note to § 537.308(a): To be considered information or informational materials, artworks must be classified under heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term information or 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 (1979) (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

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

§ 537.309 Interest.

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

§ 537.310 Licenses; general and specific.

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

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

(c) The term specific license means any license or authorization issued pursuant to this part, but not set forth in subpart E of this part or made available on OFAC's website.

Note to § 537.310: See § 501.801 of this chapter on licensing procedures.

§ 537.311 New investment.

(a) The term new 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 Burma or a nongovernmental entity in Burma on or after May 21, 1997:

(1) The entry into a contract that includes the economic development of resources located in Burma, as defined in § 537.302;

(2) The entry into a contract providing for the general supervision and guarantee of another person's performance of a contract that includes the economic development of resources located in Burma;

(3) The purchase of a share of ownership, including an equity interest, in the economic development of resources located in Burma; or

(4) The entry into a contract providing for the participation in royalties, earnings, or profits in the economic development of resources located in Burma, without regard to the form of the participation.

(b) The term new investment shall not include the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology unless such contract

includes any of the activities described in paragraphs (a) (2) through (4) of this section.

§ 537.312 Nongovernmental entity in Burma.

The term nongovernmental entity in Burma means a partnership, association, trust, joint venture, corporation, or other organization, wherever organized, that is located in Burma or exists for the exclusive or predominant purpose of engaging in the economic development of resources located in Burma or derives its income predominantly from such economic development, and is not the Government of Burma.

§ 537.313 Person.

The term person means an individual or entity.

§ 537.314 [Reserved]

§ 537.315 Property; property interest.

The terms property and property interest include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes,

guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 537.316 Resources located in Burma.

The term resources located in Burma means any resources, including natural, agricultural, commercial, financial, industrial, and human resources, located within the territory of

Burma, including the territorial sea, or located within the exclusive economic zone or continental shelf of Burma.

§ 537.317 Transfer.

The term transfer means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign

country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 537.318 United States.

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

§ 537.319 U.S. depository institution.

The term U.S. depository institution means any entity (including its foreign branches) organized under the laws of the United States or 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) and is subject to regulation by federal or state banking authorities.

§ 537.320 U.S. financial institution.

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

§ 537.321 United States person; U.S. person.

The term United States person or U.S. person means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any

jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 537.322 U.S. registered broker or dealer in securities.

The term U.S. registered broker or dealer in securities means any U.S. citizen, permanent resident alien, or entity organized under the laws of the United States or of any jurisdiction within the United States (including its foreign branches), or any agency, office, or branch of a foreign entity located in the United States, that:

(a) Is a "broker" or "dealer" in securities within the meanings set forth in the Securities Exchange Act of 1934;

(b) Holds or clears customer accounts; and

(c) Is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

§ 537.323 U.S. registered money transmitter.

The term U.S. registered money transmitter means any U.S. citizen, permanent resident alien, or entity organized under the

laws of the United States or of any jurisdiction within the United States (including its foreign branches), or any agency, office, or branch of a foreign entity located in the United States, that is a money transmitter, as defined in 31 CFR 1010.100(ff)(5), and that is registered pursuant to 31 CFR 1022.380.

§ 537.324 Jadeite.

The term jadeite means any jadeite classifiable under heading 7103 of the Harmonized Tariff Schedule of the United States.

§ 537.325 Rubies.

The term rubies means any rubies classifiable under heading 7103 of the Harmonized Tariff Schedule of the United States.

§ 537.326 Articles of jewelry containing jadeite or rubies.

The term articles of jewelry containing jadeite or rubies means any article of jewelry classifiable under heading 7113 of the Harmonized Tariff Schedule of the United States that contains jadeite or rubies, or any article of jadeite or rubies

classifiable under heading 7116 of the Harmonized Tariff Schedule of the United States.

§ 537.327 Financial, material, or technological support.

The term financial, material, or technological support, as used in § 537.201(a) of this part, means any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods.

"Technologies" as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

§ 537.328 OFAC.

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

Subpart D—Interpretations

§ 537.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 537.402 Effect of amendment.

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

§ 537.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person whose property and interests in property are blocked pursuant to § 537.201(a), such property shall no longer be deemed to be property blocked pursuant to § 537.201(a), unless there exists in the property another interest that is blocked pursuant to § 537.201(a), the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 537.201(a), such property shall be deemed to be property in which such a person has an interest and therefore blocked.

§ 537.404 Transactions ordinarily incident to a licensed transaction.

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

(1) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 537.201(a), except as provided in paragraph (b) of this section; or

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

(b) Transactions licensed pursuant to subpart E of this part and those transactions falling within the scope of paragraph (a) of this section are authorized even though they may involve transfers to or from an account of a financial institution whose property and interests in property are blocked pursuant to § 537.201(a), provided that the account is not on the books of a financial institution that is a U.S. person, unless otherwise authorized.

Note to § 537.404(b): See § 537.531 for a general license authorizing transactions involving certain Burmese financial institutions whose property and interests in property are blocked pursuant to § 537.201(a), including establishing and maintaining accounts on the books of U.S. financial institutions.

(c) Example: A license authorizing a person to complete a securities sale involving Company A, whose property and interests in property are blocked pursuant to § 537.201(a), also authorizes other persons to engage in activities that are ordinarily incident and necessary to complete the sale, including transactions by the buyer, broker, transfer agents, and banks, provided that, except as provided in paragraph (b) of this section, such other persons are not themselves persons whose property and interests in property are blocked pursuant to § 537.201(a).

§ 537.405 Provision of services.

(a) The prohibitions on transactions contained in § 537.201 apply to services performed in the United States or by U.S. persons, wherever located, including by a foreign branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 537.201(a); or

(2) With respect to property interests of any person whose property and interests in property are blocked pursuant to § 537.201(a).

(b) Example: U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 537.201(a).

Note to § 537.405: See §§ 537.507 and 537.508 on licensing policy with regard to the provision of certain legal and emergency medical services.

§ 537.406 Offshore transactions involving blocked property.

The prohibitions in § 537.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to

property held in the name of a person whose property and interests in property are blocked pursuant to § 537.201(a).

§ 537.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 537.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

Note to § 537.407: See also § 537.502(e), which provides that no license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

§ 537.408 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 537.201 if effected after the effective date.

§ 537.409 Activities under pre-May 21, 1997 agreements.

Pursuant to § 537.210(d), a U.S. person who is a party to a pre-May 21, 1997 agreement may enter into subsequent agreements where such agreements are pursuant to, or in exercise of rights under, the pre-May 21, 1997 agreement and are specifically contemplated by the pre-May 21, 1997 agreement, unless such subsequent agreements involve any activity prohibited by § 537.201(a) with respect to any person whose property and interests in property are blocked pursuant to Executive Order 13448 of October 18, 2007 (E.O. 13448), Executive Order 13464 of April 30, 2008 (E.O. 13464), or Executive Order 13619 of July 11, 2012 (E.O. 13619), or by § 537.203. The exercise of rights under a pre-May 21, 1997 agreement may include the exercise of options to extend the contract, depending on such factors as the degree of specificity with which the option to extend is described in the pre-May 21, 1997 agreement and the degree to which the party wishing to renew can enforce its decision to exercise the option, unless such exercise of rights involves any activity prohibited by § 537.201(a) with respect to any person whose property and interests in property are blocked pursuant to E.O. 13448, E.O. 13464, or E.O. 13619, or by § 537.203.

§ 537.410 Contracts and subcontracts regarding economic development of resources in Burma.

Section 537.204 prohibits new investment in Burma by U.S. persons. However, pursuant to § 537.530, U.S. persons may engage in new investment in Burma, provided that all conditions of that general license are satisfied. Section 537.311 defines the term new investment to include certain contracts providing for the general supervision and guarantee of another person's performance of a contract that includes the economic development of resources located in Burma. With respect to entry into such contracts, only the following will be considered new investment in Burma:

(a) Entry into contracts for supervision and guarantee at the highest level of project management, such as entry into a contract with a development project's sponsor or owner to become a prime contractor or general manager for a development project;

(b) Entry into subcontracts where the functional scope of the subcontractor's obligations is substantially similar to that of a prime contractor's or general manager's obligations for a development project; or

(c) Entry into a contract or subcontract where the consideration includes a share of ownership in, or participation in the royalties, earnings, or profits of, the economic development of resources located in Burma.

§ 537.411 [Reserved]

§ 537.412 Investments in entities involved in economic development projects in Burma.

(a) The purchase of shares in a third-country company that is engaged in the economic development of resources located in Burma is prohibited by § 537.204 where the company's profits are predominantly derived from the company's economic development of resources located in Burma. The purchase of such shares, however, is authorized by general license pursuant to § 537.530, provided that all conditions of that general license are satisfied.

(b) If a U.S. person holds shares in an entity which subsequently engages predominantly in the economic development of resources located in Burma or subsequently derives its income exclusively or predominantly from such economic development, the

U.S. person is not required to relinquish its shares. Owning such shares, and purchasing additional shares is authorized by general license pursuant to § 537.530, provided that all conditions of that general license are satisfied.

§ 537.413 [Reserved]

§ 537.414 Charitable contributions.

Unless specifically authorized by OFAC pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing, or medicine, may be made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 537.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 537.201(a) if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit

of such a person, or the receipt of contributions from such a person.

§ 537.415 Credit extended and cards issued by U.S. financial institutions to a person whose property and interests in property are blocked.

The prohibition in § 537.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 537.201(a).

§ 537.416 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 537.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and

interests in property are blocked pursuant to § 537.201(a), regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

§ 537.417 Importation into a bonded warehouse or foreign trade zone.

The prohibition in § 537.203 applies to importation into a bonded warehouse or a foreign trade zone of the United States.

§ 537.418 Facilitating new investment.

Consistent with § 537.530, U.S. persons may approve, finance, facilitate, or guarantee new investment by foreign persons provided such new investment is not pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that:

(a) is entered into with the Burmese Ministry of Defense, state or non-state armed groups (which includes the military), or entities owned 50 percent or more by any of the foregoing, or

(b) involves a transaction, directly or indirectly, with any person whose property and interests and property are blocked pursuant to § 537.201(a).

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

§ 537.501 General and specific licensing procedures.

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

§ 537.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by OFAC, authorizes or validates any transaction effected prior to the issuance of such license or

other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by OFAC 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 other part of this chapter unless the regulation, ruling, instruction, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition 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.

(d) 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 OFAC, 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.

(e) No license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

(f) Any payment relating to a transaction authorized in or pursuant to this part that is routed through the U.S. financial system should reference the relevant OFAC general or specific license authorizing the payment to avoid the blocking or rejection of the transfer.

§ 537.503 Exclusion from licenses.

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

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

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 537.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note to § 537.504: See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 537.208 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 537.505 Entries in certain accounts for normal service charges authorized.

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

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

§ 537.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 537.208, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 537.201(a), subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to a person whose property and interests in property are blocked pursuant to § 537.201(a).

§ 537.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 537.201(a) is authorized, provided that receipt of payment of professional fees and reimbursement of incurred expenses must be specifically licensed or otherwise authorized pursuant to § 537.528:

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

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

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

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

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

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 537.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 537.201(a) is prohibited unless licensed pursuant to this part.

Note to § 537.507: U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply

for a specific license from OFAC to authorize the release of a limited amount of blocked funds for the payment of legal fees where alternative funding sources are not available. For more information, see OFAC's Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings, which is available on OFAC's website: www.treasury.gov/ofac.

§ 537.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 537.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

§ 537.509 Official activities of certain international organizations authorized.

All transactions and activities otherwise prohibited by this part that are for the conduct of the official business of the United Nations or the Specialized Agencies, Programmes,

Funds, and Related Organizations of the United Nations by employees, contractors, or grantees thereof are authorized.

Note to § 537.509: For an organizational chart listing the Specialized Agencies, Programmes, Funds, and Related Organizations of the United Nations, see the following page on the United Nations website:

www.un.org/en/aboutun/structure/pdfs/un-system-chart-color-sm.pdf.

§§ 537.510-537.518 [Reserved]

§ 537.519 Activities undertaken pursuant to certain pre-May 21, 1997 agreements.

Except as prohibited by § 537.201(a) with respect to persons whose property and interests in property are blocked pursuant to Executive Order 13448 of October 18, 2007, Executive Order 13464 of April 30, 2008, or Executive Order 13619 of July 11, 2012, or by § 537.203, U.S. persons are authorized to engage in any activity, or any transaction incident to an activity, undertaken pursuant to an agreement entered into prior to 12:01 a.m., eastern daylight time, on May 21, 1997, or

pursuant to the exercise of rights under such an agreement, provided that the parties to the agreement include:

(a) The Government of Burma or a nongovernmental entity in Burma, and

(b) An entity organized under the laws of a foreign state.

Note to § 537.519: The authorization contained in this section pertains to pre-May 21, 1997 contracts between foreign entities and either the Government of Burma or a nongovernmental entity in Burma. A parallel exemption for pre-May 21, 1997 contracts between U.S. persons and the Government of Burma or a nongovernmental entity in Burma is contained in § 537.210(d) and further explained in § 537.409.

§§ 537.520-537.521 [Reserved]

§ 537.522 Certain transactions related to patents, trademarks, copyrights, and other intellectual property authorized.

(a) All of the following transactions in connection with patent, trademark, copyright, or other intellectual property protection in the United States or Burma 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;

(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; and

(5) The assignment or transfer of a patent, trademark, copyright, or other form of intellectual property protection.

(b) This section authorizes the payment of fees currently due to the United States Government or the Government of Burma, or of the reasonable and customary fees and charges currently due to attorneys or representatives within the United States or Burma, in connection with the transactions authorized in

paragraph (a) of this section, except that payment effected pursuant to the terms of this paragraph may not be made from a blocked account.

§§ 537.523-537.525 [Reserved]

§ 537.526 Transactions necessary and ordinarily incident to publishing authorized.

To the extent that such activities are not exempt from this part, U.S. persons are authorized to engage in all transactions otherwise prohibited by § 537.201 that are necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals, and newspapers in paper or electronic format (collectively, "written publications"). This section does not apply if the parties to the transactions described in this paragraph include the State Peace and Development Council of Burma or the Union Solidarity and Development Association of Burma; any successor entity to any of the foregoing entities; or any person, other than personnel of academic and research institutions, acting or purporting to act directly or indirectly on behalf of the foregoing entities with respect to the transactions described in this paragraph.

Pursuant to this section, transactions incident to the following

activities are authorized, provided they do not involve any importations prohibited by § 537.203:

(a) Commissioning and making advance payments for identifiable written publications not yet in existence, to the extent consistent with industry practice;

(b) Collaborating on the creation and enhancement of written publications;

(c) (1) Augmenting written publications through the addition of items such as photographs, artwork, translation, explanatory text, and, for a written publication in electronic format, the addition of embedded software necessary for reading, browsing, navigating, or searching the written publication;

(2) Exporting embedded software necessary for reading, browsing, navigating, or searching a written publication in electronic format, provided that, to the extent a license is required under the Export Administration Regulations, 15 CFR parts 730-774 (EAR), the exportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the EAR;

(d) Substantive editing of written publications;

(e) Payment of royalties for written publications;

(f) Creating or undertaking a marketing campaign to promote a written publication; and

(g) Other transactions necessary and ordinarily incident to the publishing and marketing of written publications as described in this section.

Note 1 to § 537.526: The Department of State has determined that the State Peace and Development Council of Burma no longer exists.

Note 2 to § 537.526: See § 537.529 for a general license authorizing the exportation or reexportation of financial services to Burma.

§ 537.527 [Reserved]

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

Receipts of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 537.507(a) to or on behalf of any person whose property and interests in property are blocked pursuant to § 537.201(a) are authorized from funds originating outside the United States, provided that:

(a) Prior to receiving payment for legal services authorized pursuant to § 537.507(a) rendered to persons whose property and interests in property are blocked pursuant to § 537.201(a), the U.S. person that is an attorney, law firm, or legal services organization provides to OFAC a copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity. The copy of a letter of engagement or a letter of intent to engage, accompanied by correspondence referencing this paragraph (a), is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Annex, Washington, DC 20220;

(b) The funds received by U.S. persons as payment of professional fees and reimbursement of incurred expenses for the

provision of legal services authorized pursuant to § 537.507(a) must not originate from:

(1) A source within the United States;

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

(3) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 537.507(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order;

Note to § 537.528(b): This paragraph authorizes the blocked person on whose behalf the legal services authorized pursuant to § 537.507(a) are to be provided to make payments for authorized legal services using funds originating outside the United States that were not previously blocked. Nothing in this paragraph authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 537.201(a), any other part of this chapter, or any Executive order holds an interest.

(c) Reports. (1) U.S. persons who receive payments in connection with legal services authorized pursuant to § 537.507(a) must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the payments were received providing information on the funds received. Such reports shall specify:

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

(ii) If applicable:

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

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

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

(2) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect; and

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

Note to § 537.528: U.S. persons who receive payments in connection with legal services authorized pursuant to § 537.507(a) do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. Additionally, U.S. persons do not need to obtain specific authorization to provide related services that are ordinarily incident to the provision of legal services authorized pursuant to § 537.507(a).

§ 537.529 Exportation or reexportation of financial services to Burma authorized.

(a) Except as provided in paragraphs (b)-(d) of this section, the exportation or reexportation of financial services to Burma, directly or indirectly, from the United States or by a U.S. person, wherever located, is authorized.

(b) This section does not authorize, in connection with the provision of security services, the exportation or reexportation of financial services, directly or indirectly, to the Burmese Ministry of Defense, including the Office of Procurement; any state or non-state armed group; or any entity in which any of the foregoing own a 50 percent or greater interest.

(c) This section does not authorize the exportation or reexportation of financial services, directly or indirectly, to any person whose property and interests in property are blocked pursuant to § 537.201(a), except as set forth in § 537.404(b).

Note to § 537.529(c): See § 537.531 for a general license authorizing transactions involving certain Burmese financial institutions whose property and interests in property are blocked pursuant to § 537.201(a), including establishing and maintaining accounts on the books of U.S. financial institutions.

(d) This section does not authorize any debit to a blocked account.

Note to § 537.529: As a result of the authorization contained in this section, the special measures against Burma imposed under Section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Pub. L. 107-56) (USA PATRIOT Act) do not apply to the operation of correspondent accounts for Burmese financial institutions, or to transactions that are conducted through those accounts, provided the Burmese financial institution is not an entity whose property and interests in property are blocked pursuant to § 537.201(a) and the transactions are otherwise authorized by this part, and therefore fall within the exception set forth in 31 CFR 1010.651(b)(3). In addition, section 537.531 of this part authorizes certain transactions involving specific Burmese financial institutions whose property and interests in property are blocked pursuant to this part. This section does not affect any obligation of U.S. financial institutions processing such transactions to conduct enhanced due diligence under Section 312 of the USA PATRIOT Act. See 31 CFR 1010.610(c).

**§ 537.530 New investment in Burma by U.S. persons
authorized.**

(a) Except as provided in paragraphs (c) and (d) of this section, new investment, as defined in § 537.311, in Burma by U.S. persons is authorized.

(b) Any U.S. person engaging in new investment in Burma pursuant to this section must report to the Department of State in compliance with the requirements set forth in the Department of State's "Reporting Requirements on Responsible Investment in Burma," available at:

www.HumanRights.gov/BurmaResponsibleInvestment.

(c) This section does not authorize new investment undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Burmese Ministry of Defense, including the Office of Procurement; any state or non-state armed group; or any entity in which any of the foregoing own a 50 percent or greater interest.

(d) This section does not authorize transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to § 537.201(a).

Note to § 537.530: The Department of State, pursuant to section 570(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Pub. L. 104-208) and a delegation of authority by the President, has waived the prohibition on new investment in Burma authorized in section 570 of that act. See 77 Fed. Reg. 62596 (Oct. 15, 2012).

§ 537.531 Certain transactions involving Asia Green Development Bank, Ayeyarwady Bank, Myanma Economic Bank, and Myanma Investment and Commercial Bank authorized.

(a) Except as provided in paragraphs (b) through (f) of this section, all transactions involving Asia Green Development Bank, Ayeyarwady Bank, Myanma Economic Bank, and Myanma Investment and Commercial Bank are authorized.

(b) This section does not authorize transactions involving any person whose property and interests in property are blocked pursuant to § 537.201(a) other than Asia Green Development Bank,

Ayeyarwady Bank, Myanma Economic Bank, and Myanma Investment and Commercial Bank.

(c) This section does not authorize, in connection with the provision of security services, the exportation or reexportation of financial services, directly or indirectly, to the Burmese Ministry of Defense, including the Office of Procurement; any state or non-state armed group; or any entity in which any of the foregoing own a 50 percent or greater interest.

(d) This section does not authorize any new investment, as defined in § 537.311, including in or with Asia Green Development Bank, Ayeyarwady Bank, Myanma Economic Bank, or Myanma Investment and Commercial Bank.

(e) This section does not authorize any importations into the United States prohibited by § 537.203.

(f) This section does not authorize the unblocking of any property and interests in property that were blocked as of February 22, 2013, pursuant to 31 CFR § 537.201(a), Executive Order 13448 of October 18, 2007, Executive Order 13464 of April 30, 2008, or Executive Order 13619 of July 11, 2012.

Note to § 537.531: As a result of the authorization contained in this section, the special measures against Burma imposed under Section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Pub. L. 107-56) (USA PATRIOT Act) do not apply to the operation of correspondent accounts for Asia Green Development Bank, Ayeyarwady Bank, Myanma Economic Bank, and Myanma Investment and Commercial Bank, or to transactions conducted through such accounts, provided the transactions are authorized pursuant to this part, and therefore fall within the exception set forth in 31 CFR 1010.651(b)(3). This section does not affect any obligation of U.S. financial institutions processing such transactions to conduct enhanced due diligence under Section 312 of the USA PATRIOT Act. See 31 CFR 1010.610(c).

Subpart F—Reports

§ 537.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with

respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 537.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (IEEPA), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

Note to § 537.701(a)(1): As of the date of publication in the Federal Register of the final rule amending and reissuing this part ([INSERT DATE OF PUBLICATION IN THE FEDERAL

REGISTER]), IEEPA provides for a maximum civil penalty not to exceed the greater of \$250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than \$1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) Adjustments to penalty amounts. (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment 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 the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies,

conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned, or both.

(d) Violations of this part may also be subject to other applicable laws.

Note to § 537.701: The Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (the "JADE Act") provides that any person who violates any prohibition imposed pursuant to Section 5(b) of the JADE Act shall be subject to the penalties provided in IEEPA. In Executive Order 13651 of August 6, 2013, the President waived pursuant to Section 5(i) of JADE Act the blocking and financial sanctions described in Section 5(b) of the JADE Act.

§ 537.702 Pre-Penalty Notice; settlement.

(a) When required. If OFAC has reason 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 (50 U.S.C. 1705) (IEEPA) and determines that a civil monetary penalty is warranted, OFAC will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see Appendix A to part 501 of this chapter.

(b) (1) Right to respond. An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to OFAC. For a description of the information that should be included in such a response, see Appendix A to part 501 of this chapter.

(2) Deadline for response. A response to a Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to submit a response

within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) Computation of time for response. A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) Extensions of time for response. If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of OFAC, only upon specific request to OFAC.

(3) Form and method of response. A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and

must include the OFAC identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to OFAC's Enforcement Division by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) Settlement. Settlement discussion may be initiated by OFAC, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see Appendix A to part 501 of this chapter.

(d) Guidelines. Guidelines for the imposition or settlement of civil penalties by OFAC are contained in Appendix A to part 501 of this chapter.

(e) Representation. A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 537.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, OFAC determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, OFAC may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see Appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

§ 537.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to OFAC, the matter may be referred for administrative collection measures by the Department of the Treasury 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

§ 537.801 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 part 501, subpart E, of this chapter.

§ 537.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Pub. L. 110-286); Executive Order 13047 of May 20, 1997, Executive Order 13310 of July 28, 2003, Executive Order 13448 of October 18, 2007, Executive Order 13464 of April 30, 2008, Executive Order 13619 of July 11, 2012, Executive Order 13651 of August 6, 2013, and any further Executive orders relating to the national emergency declared in Executive Order 13047, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 537.901 Paperwork Reduction Act notice.

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

Dated: June 18, 2014.

Barbara C. Hammerle,
Acting Director, Office of Foreign Assets Control.

Approved: June 18, 2014.

David S. Cohen,
Under Secretary, Office of Terrorism and Financial Intelligence,
Department of the Treasury.
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