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[Page 45246-45255]
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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 541

Zimbabwe Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is adding new regulations to implement Executive Order 13288 of March 6, 2003, ``Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe.''

DATES: Effective Date: July 29, 2004.

Comments: Written comments must be received no later than September 27, 2004.

ADDRESSES: You may submit comments by any of the following methods:
Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

Agency Web Site:

<http://www.treas.gov/offices/enforcement/ofac/comment.html>

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Fax: Chief of Records, 202/622-1657.

Mail: Chief of Records, ATTN: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Instructions: All submissions received must include the agency name and the FR Doc. number that appears at the end of this document.

Comments received will be posted without change to <http://www.treas.gov/ofac>, including any personal information provided. For

detailed instructions on submitting comments and additional information on the rulemaking process, see the

[[Page 45247]]

``Public Participation'' heading of the SUPPLEMENTARY INFORMATION section of this document. To read background documents or comments received, go to <http://www.treas.gov/ofac>.

FOR FURTHER INFORMATION CONTACT: Chief of Licensing, tel.: 202/622-2480, Chief of Policy Planning and Program Management, tel.:202/622-4855, or Chief Counsel, tel.: 202/622-2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This file is available for download without charge in ASCII and Adobe Acrobat readable (*.PDF) formats at GPO Access. GPO Access supports HTTP, FTP, and Telnet at fedbbs.access.gpo.gov. It may also be accessed by modem dialup at 202/512-87 followed by typing ``/GO/FAC.'' Paper copies of this document can be obtained by calling the Government Printing Office at 202/512-1530. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: <http://www.treas.gov/ofac>, or via FTP at ofacftp.treas.gov.

Facsimiles of information are available through the Office's 24-hour fax-on-demand service: call 202/622-0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On March 6, 2003, the President, invoking the authority, inter alia, of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) (``IEEPA''), issued Executive Order 13288 (68 FR 11457, Mar. 10, 2003). The order declared a national emergency with respect to ``the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions, contributing to the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation in that country, and to political and economic instability in the southern African region * * *''

These regulations are promulgated in furtherance of the sanctions set forth in Executive Order 13288. Section 1 of the order blocks, with certain exceptions, all property and interests in property of the persons described in sections 1(a) and 1(b) that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches. The persons described in section 1(a) are those listed in the Annex to the order. The persons described in section 1(b) are any persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or acting or purporting to act directly or

indirectly for or on behalf of, any of the persons listed in the Annex to the order.

Section 2(a) of the order prohibits any transaction or dealing by a United States person or within the United States in property blocked pursuant to the order, including but not limited to, the making or receiving of any contribution of funds, goods or services to or for the benefit of a person listed in or designated pursuant to the order. Section 2(b) of the order prohibits any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the order. Section 2(c) also prohibits any conspiracy formed to violate such prohibitions.

Section 4 of the order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the order. Acting under authority delegated by the Secretary of the Treasury, the Department of the Treasury's Office of Foreign Assets Control ('`OFAC'') is promulgating these Zimbabwe Sanctions Regulations, 31 CFR part 541 (the ``Regulations'').

Subpart B of the Regulations implements the prohibitions contained in sections 1 and 2 of the order. See Sec. Sec. 541.201, 541.204. Appendix A to 31 CFR chapter V has previously been amended to incorporate the names of persons set forth in the Annex to the order. Persons identified in the Annex to the order or designated by or under the authority of the Secretary of the Treasury pursuant to the order are referred to throughout the Regulations as ``persons whose property or interests in property are blocked pursuant to Sec. 541.201(a).'' Their names are or will be published on OFAC's Web site, announced in the Federal Register and incorporated on an ongoing basis into appendix A to 31 CFR chapter V, which lists persons that are the targets of various sanctions programs administered by OFAC.

Sections 541.202 and 541.203 of subpart B, respectively, detail the effect of transfers of blocked property in violation of the Regulations and set forth the requirement to hold blocked funds in interest-bearing blocked accounts. Section 541.205 of subpart B provides that all expenses incident to the maintenance of blocked physical property shall be the responsibility of the owners and operators of such property, and that such expenses shall not be met from blocked property. The section further provides that blocked property may, in the discretion of the Director 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.

Section 541.206 of subpart B details transactions that are exempt from the prohibitions of part 541. These exemptions derive from the exemptions set out in sections 203(b)(1), (3) and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)) and relate to personal communications, the importation and exportation of information or informational materials, and travel.

Subpart C of part 541 defines key terms used throughout the Regulations, and subpart D sets forth interpretive sections regarding the general prohibitions contained in subpart B. Transactions otherwise prohibited under part 541 but found to be consistent with U.S. policy may be authorized by one of the general licenses contained in subpart E or by a specific license issued pursuant to the procedures described in subpart D of 31 CFR part 501.

Subpart F of part 541 refers to subpart C of part 501 for

applicable record keeping and reporting requirements. Subpart G describes the civil and criminal penalties applicable to violations of the Regulations, as well as the procedures governing the imposition of a civil monetary penalty.

Subpart H of part 541 refers to subpart D of part 501 for applicable provisions relating to administrative procedures. Subpart I of the Regulations 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) (the ``APA'') requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. However, because of the importance of the issues addressed in these regulations, this rule is being issued in interim form and comments will be considered in the development of final regulations. Accordingly, the

[[Page 45248]]

Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments may address the impact of the Regulations on the submitter's activities, whether of a commercial, non-commercial or humanitarian nature, as well as changes that would improve the clarity and organization of the Regulations.

The period for submission of comments will close September 27, 2004. The Department will consider all comments postmarked before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such submission to the originator without considering them in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form.

All public comments on these Regulations will be a matter of public record. Copies of the public record concerning these Regulations will be made available no sooner than October 27, 2004, and will be obtainable from OFAC's Web site (<http://www.treas.gov/ofac>). If that

service is unavailable, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220, Attn: Chief, Records Division.

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 and Procedures Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously 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 541

Administrative practice and procedure, Banks, Banking, Blocking of assets, Penalties, Reporting and recordkeeping requirements, Securities, Services, Zimbabwe.

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For the reasons set forth in the preamble, part 541 is added to 31 CFR chapter V to read as follows:

PART 541--ZIMBABWE SANCTIONS REGULATIONS

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

541.101 Relation of this part to other laws and regulations.

Subpart B--Prohibitions

541.201 Prohibited transactions involving blocked property.

541.202 Effect of transfers violating the provisions of this part.

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

541.204 Evasions; attempts; conspiracies.

541.205 Expenses of maintaining blocked property; liquidation of blocked account.

541.206 Exempt transactions.

Subpart C--General Definitions

541.301 Blocked account; blocked property.

541.302 Effective date.

541.303 Entity.

541.304 Information or informational materials.

541.305 Interest.

541.306 Licenses; general and specific.

541.307 Person.

541.308 Property; property interest.

541.309 Transfer.

541.310 United States.

541.311 U.S. financial institution.

541.312 United States person; U.S. person.

Subpart D--Interpretations

541.401 Reference to amended sections.

541.402 Effect of amendment.

541.403 Termination and acquisition of an interest in blocked property.

541.404 Transactions incidental to a licensed transaction authorized.

541.405 Provision of services.

541.406 Offshore transactions.

541.407 Payments from blocked accounts to satisfy obligations prohibited.

541.408 Credit extended and cards issued by U.S. financial institutions.

541.409 Setoffs prohibited.

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

541.501 General and specific licensing procedures.
541.502 Effect of license or authorization.
541.503 Exclusion from licenses.
541.504 Payments and transfers to blocked accounts in U.S. financial institutions.
541.505 Entries in certain accounts for normal service charges authorized.
541.506 Investment and reinvestment of certain funds.
541.507 Provision of certain legal services authorized.
541.508 Authorization of emergency medical services.
Subpart F--Reports
541.601 Records and reports.
Subpart G--Penalties
541.701 Penalties.
541.702 Prepenalty notice.
541.703 Response to prepenalty notice; informal settlement.
541.704 Penalty imposition or withdrawal.
541.705 Administrative collection; referral to United States Department of Justice.
Subpart H--Procedures
541.801 Procedures.
541.802 Delegation by the Secretary of the Treasury.
Subpart I--Paperwork Reduction Act
541.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601-1651, 1701-1706; E.O. 13288, 68 FR 11457, 3 CFR, 2003 Comp., p. 186.

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

Sec. 541.101 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 record keeping 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

Sec. 541.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the

effective date, property or interests in property of the following persons that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S.

[[Page 45249]]

persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13288 of March 6, 2003 (68 FR 11457, March 10, 2003); and

(2) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or acting or purporting to act directly or indirectly for or on behalf of, any person listed in the Annex to Executive Order 13288.

Note to paragraph (a) of Sec. 541.201: The names of persons whose property or interests in property are blocked pursuant to paragraph (a) of this section will be published on OFAC's Web site, announced in the Federal Register and incorporated on an ongoing basis with the identifier [ZIMBABWE] into appendix A to 31 CFR chapter V. Section 501.807 of this chapter V sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation pursuant to paragraph (a)(2) of this section or who wish to assert that the circumstances resulting in designation no longer apply. Similarly, when a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds to have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in Sec. 501.806 of this chapter.

(b) Unless otherwise 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 any person whose property or 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 any such security or the endorsement or guaranty of signatures on any such security. 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.

Sec. 541.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to Sec. 541.201(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 interests.

(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 Sec. 541.201(a), unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control 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 the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), 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 was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

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

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization 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 was held or maintained filed with the Office of Foreign Assets Control 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 direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

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

Note to paragraph (d) of Sec. 541.202: 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 (d)(2) of this section have been satisfied.

(e) Except to the extent otherwise provided by law or 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 in which on or since the effective date there

existed an interest of a person whose property or interests in property are blocked pursuant to Sec. 541.201(a).

Sec. 541.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to Sec. 541.201(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) 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.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b)

[[Page 45250]]

may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to Sec. 541.201(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 (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to Sec. 541.201(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.

(e) 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 at the time the property becomes subject to Sec. 541.201(a). However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales in appropriate cases.

(f) 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 or interests in property are blocked pursuant to Sec. 541.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use of

blocked funds or other assets as collateral.

Sec. 541.204 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by any 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, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

Sec. 541.205 Expenses of maintaining blocked property; liquidation of blocked account.

(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 before 12:01 eastern standard time, March 7, 2003, all expenses incident to the maintenance of physical property blocked pursuant to Sec. 541.201(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 Sec. 541.201(a) may, in the discretion of the Director, Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Sec. 541.206 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 importation from any country and the exportation to any country of information or informational materials, as defined in Sec. 541.304, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions of this part.

(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, with respect to information or informational materials imported from

persons whose property or interests in property are blocked pursuant to Sec. 541.201(a), 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 from regulation 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, technology or software, 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 or interests in property are blocked pursuant to Sec. 541.201(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 exportation or importation of accompanied baggage for personal use, maintenance within any country, including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel, including nonscheduled air, sea, or land voyages.

Subpart C--General Definitions

Sec. 541.301 Blocked account; blocked property.

The terms blocked account and blocked property shall mean any account or property subject to the prohibitions in Sec. 541.201 held in the name of a person whose property or interests in property are blocked pursuant to Sec. 541.201(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 an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

Sec. 541.302 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 or interests in property are blocked pursuant to Sec. 541.201(a)(1), 12:01 eastern standard time, March 7, 2003;

(b) With respect to a person whose property or interests in property are blocked pursuant to Sec. 541.201(a)(2), the earlier of the date on which either actual notice or constructive notice is received of such person's designation by the Secretary of the Treasury.

[[Page 45251]]

Sec. 541.303 Entity.

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

Sec. 541.304 Information or informational materials.

(a) For purposes of this part, 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 paragraph (a) of Sec. 541.304: To be considered information or informational materials, artworks must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term information or informational materials, with respect to United States 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.

Sec. 541.305 Interest.

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

Sec. 541.306 Licenses; general and specific.

(a) Except as otherwise specified, 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.

(c) The term specific license means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

Note to Sec. 541.306: See Sec. 501.801 of this chapter on licensing procedures.

Sec. 541.307 Person.

The term person means an individual or entity.

Sec. 541.308 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.

Sec. 541.309 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 and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the 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.

Sec. 541.310 United States.

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

Sec. 541.311 U.S. financial institution.

The term U.S. financial institution means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but 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.

Sec. 541.312 United States person; U.S. person.

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

Subpart D--Interpretations

Sec. 541.401 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, direction, or license issued pursuant to this part refers to the same as currently amended.

Sec. 541.402 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 or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification,

[[Page 45252]]

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.

Sec. 541.403 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, such property shall no longer be deemed to be property blocked pursuant to Sec. 541.201(a), unless there exists in the property another interest that is blocked pursuant to Sec. 541.201(a) or any other part of this chapter, 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 or interests in property are blocked pursuant to Sec. 541.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

Sec. 541.404 Transactions incidental to a licensed transaction authorized.

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

(a) An incidental transaction, not explicitly authorized within the terms of the license, by or with a person whose property or interests in property are blocked pursuant to Sec. 541.201(a); or

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

Sec. 541.405 Provision of services.

(a) Except as provided in Sec. 541.206, the prohibitions on transactions involving blocked property contained in Sec. 541.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property or interests in property are blocked pursuant to Sec. 541.201(a); or

(2) With respect to property interests subject to Sec. 541.201.

(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 or interests in property are blocked pursuant to Sec. 541.201(a).

Note to Sec. 541.405: See Sec. Sec. 541.507 and 541.508 on licensing policy with regard to the provision of, respectively, certain legal or medical services.

Sec. 541.406 Offshore transactions.

The prohibitions in Sec. 541.201 on transactions involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property that the U.S. person knows, or has reason to know, is held in the name of a person whose property or interests in property are blocked pursuant to Sec. 541.201(a) or in which the U.S. person knows, or has reason to know, a person whose property or interests in property are blocked pursuant to Sec. 541.201(a) has or has had an interest since the effective date.

Sec. 541.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to Sec. 541.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as

authorized pursuant to this part.

Sec. 541.408 Credit extended and cards issued by U.S. financial institutions.

The prohibition in Sec. 541.201 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 or interests in property are blocked pursuant to Sec. 541.201(a).

Sec. 541.409 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 Sec. 541.201 if effected after the effective date.

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

Sec. 541.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart D, 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.

Sec. 541.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such license or 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 the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

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

Sec. 541.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

Sec. 541.504 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 or interests in property are blocked pursuant to Sec. 541.201(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

[[Page 45253]]

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 only be made to another blocked account held in the same name.

Note to Sec. 541.504: Refer to Sec. 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also Sec. 541.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

Sec. 541.505 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 charge 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.

Sec. 541.506 Investment and reinvestment of certain funds.

Subject to the requirements of Sec. 541.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to Sec. 541.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount which 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 persons whose property or interests in property are blocked pursuant to Sec. 541.201(a).

Sec. 541.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property or interests in property are blocked pursuant to Sec. 541.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of 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 when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state 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 or interests in property are blocked pursuant to Sec. 541.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement affecting property or interests in property 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 Sec. 541.201(a) is prohibited except to the extent otherwise provided by law or unless specifically licensed in accordance with Sec. 541.202(e).

Sec. 541.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property or interests in property are blocked pursuant to Sec. 541.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F--Reports

Sec. 541.601 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

Sec. 541.701 Penalties.

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

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

(2) Whoever willfully violates or willfully attempts to violate any license, order, or regulation issued under the Act, upon conviction, shall be fined not more than \$50,000, and if a natural person, may also be imprisoned for not more than 10 years; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

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

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of 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 not more than five years, or both.

[[Page 45254]]

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

Sec. 541.702 Prepenalty notice.

(a) When required. If the Director of the Office of Foreign Assets Control 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, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

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

(2) Right to respond. The prepenalty notice also shall inform the respondent of the respondent's right to make a written presentation within the applicable 30 day period set forth in Sec. 541.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) Informal settlement prior to issuance of prepenalty notice. At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

Sec. 541.703 Response to prepenalty notice; informal settlement.

(a) Deadline for response. The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. 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.

(1) Computation of time for response. A response to the prepenalty 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 prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) 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 Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) Form and method of response. The response must be submitted in typewritten form and signed by the respondent or a representative thereof. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped in accordance with paragraph (a) of this section.

(c) Contents of response. A written response must contain information sufficient to indicate that it is in response to the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) Failure to respond. Where OFAC receives no response to a prepenalty notice within the applicable time period set forth in paragraph (a) of this section, a penalty notice generally will be issued, taking into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

(e) Informal settlement. In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) Representation. A representative of the respondent may act on

behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty

[[Page 45255]]

notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

Sec. 541.704 Penalty imposition or withdrawal.

(a) No violation. If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) Violation. (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

Sec. 541.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, 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

Sec. 541.801 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 D, of this chapter.

Sec. 541.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13288 of March 6, 2003 (68 FR 11457, March 10, 2003), and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I--Paperwork Reduction Act

Sec. 541.901 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 record keeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see Sec. 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: May 21, 2004.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Approved: July 1, 2004.

Juan C. Zarate,
Deputy Assistant Secretary (Terrorist Financing and Financial Crimes),
Department of the Treasury.

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