

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration****21 CFR Part 1141**

[Docket No. FDA-2019-N-3065]

RIN 0910-AI39

**Tobacco Products; Required Warnings for Cigarette Packages and Advertisements; Delayed Effective Date****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Final rule; delay of effective date.

**SUMMARY:** As required by an order issued by the U.S. District Court for the Eastern District of Texas, this action delays the effective date of the final rule (“Tobacco Products; Required Warnings for Cigarette Packages and Advertisements”), which published on March 18, 2020. The new effective date is January 14, 2022.

**DATES:** The effective date of the rule amending 21 CFR part 1141 published at 85 FR 15638, March 18, 2020, is delayed until January 14, 2022.

**FOR FURTHER INFORMATION CONTACT:** Courtney Smith, Office of Regulations, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993-0002, 1-877-287-1371, email: [AskCTPRegulations@fda.hhs.gov](mailto:AskCTPRegulations@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 18, 2020, the Food and Drug Administration (FDA or Agency) issued a final rule establishing new cigarette health warnings for cigarette packages and advertisements. The final rule implements a provision of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111-31) that requires FDA to issue regulations requiring color graphics depicting the negative health consequences of smoking to accompany new textual warning label statements. The Tobacco Control Act amends the Federal Cigarette Labeling and Advertising Act of 1965 (Pub. L. 89-92) to require each cigarette package and advertisement to bear one of the new required warnings. The final rule specifies the 11 new textual warning label statements and accompanying color graphics. Pursuant to section 201(b) of the Tobacco Control Act, the rule was published with an effective date of June 18, 2021, 15 months after the date of publication of the final rule.

On April 3, 2020, the final rule was challenged in the U.S. District Court for the Eastern District of Texas.<sup>1</sup> On May 8, 2020, the Court granted a joint motion to govern proceedings in that case and postpone the effective date of the final rule by 120 days.<sup>2</sup> On December 2, 2020, the same Court granted a new motion by Plaintiffs in the same case to postpone the effective date of the final rule by an additional 90 days.<sup>3</sup> The new effective date of the final rule is January 14, 2022. Pursuant to the court order, any obligation to comply with a deadline tied to the effective date of the final rule is similarly postponed, and those obligations and deadlines are now tied to the postponed effective date.

To the extent that 5 U.S.C. 553 applies to this action, the Agency’s implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exception in 5 U.S.C. 553(b)(B). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The 90-day postponement of the effective date, until January 14, 2022, is required by court order in accordance with the court’s authority to postpone a rule’s effective date pending judicial review (5 U.S.C. 705). Seeking prior public comment on this postponement would have been impracticable, as well as contrary to the public interest in the orderly issue and implementation of regulations.

Dated: January 6, 2021.

**Stephen M. Hahn,***Commissioner of Food and Drugs.*

Dated: January 8, 2021.

**Alex M. Azar II,***Secretary, Department of Health and Human Services.*

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**BILLING CODE 4164-01-P****DEPARTMENT OF THE TREASURY****Office of Foreign Assets Control****31 CFR Part 585****Hong Kong-Related 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 adding regulations to implement a July 14, 2020, Hong Kong-related Executive order. OFAC intends to supplement these regulations with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and statements of licensing policy.

**DATES:** This rule is effective January 15, 2021.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Assistant Director for Licensing, 202-622-2480; Assistant Director for Regulatory Affairs, 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, 202-622-2490.

**SUPPLEMENTARY INFORMATION:****Electronic Availability**

This document and additional information concerning OFAC are available on OFAC’s website ([www.treasury.gov/ofac](http://www.treasury.gov/ofac)).

**Background**

On July 14, 2020, the President, invoking the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) (IEEPA), issued Executive Order (E.O.) 13936 of July 14, 2020, “The President’s Executive Order on Hong Kong Normalization” (85 FR 43413, July 17, 2020).

In E.O. 13936, the President determined that, pursuant to section 202 of the United States-Hong Kong Policy Act of 1992, the Special Administrative Region of Hong Kong (Hong Kong) is no longer sufficiently autonomous to justify differential treatment in relation to the People’s Republic of China (PRC or China) under the particular United States laws and provisions thereof set out in E.O. 13936. The President stated that in late May 2020, the National People’s Congress of China announced its intention to unilaterally and arbitrarily impose national security legislation on Hong Kong. He indicated that this announcement was China’s latest in a series of actions that have

<sup>1</sup> *R.J. Reynolds Tobacco Co. et al. v. United States Food and Drug Administration et al.*, No. 6:20-cv-00176 (E.D. Tex. filed April 3, 2020).

<sup>2</sup> *R.J. Reynolds Tobacco Co. et al.*, No. 6:20-cv-00176 (E.D. Tex. May 8, 2020) (order granting joint motion and establishing schedule), Doc. No. 33.

<sup>3</sup> *R.J. Reynolds Tobacco Co. et al.*, No. 6:20-cv-00176 (E.D. Tex. May 8, 2020) (order granting Plaintiffs’ motion and postponing effective date), Doc. No. 80.

increasingly denied autonomy and freedoms that China promised to the people of Hong Kong under the 1984 Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (Joint Declaration). The President detailed that China has since imposed national security legislation on Hong Kong, under which, *inter alia*, the people of Hong Kong may face life in prison for what China considers to be acts of secession or subversion of state power, and the right to trial by jury may be suspended. The President therefore determined that the situation with respect to Hong Kong constitutes an unusual and extraordinary threat, which has its source in substantial part outside the United States, to the national security, foreign policy, and economy of the United States and declared a national emergency to deal with that threat.

OFAC is issuing the Hong Kong-Related Sanctions Regulations, 31 CFR part 585 (the "Regulations"), to implement E.O. 13936, pursuant to authorities delegated to the Secretary of the Treasury in E.O. 13936. A copy of E.O. 13936 appears in appendix A to this part.

The Regulations are being published in abbreviated form at this time for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part 585 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and statements of licensing policy. The appendix to the Regulations will be removed when OFAC supplements this part with a more comprehensive set of regulations.

### Public Participation

Because the Regulations involve a foreign affairs function, the provisions of E.O. 12866 of September 30, 1993, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of E.O. 13771 of January 30, 2017, "Reducing Regulation and Controlling Regulatory Costs" (82 FR 9339, February 3, 2017), 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 585

Administrative practice and procedure, Banks, banking, Blocking of assets, Foreign trade, Hong Kong, Penalties, Reporting and recordkeeping requirements, Sanctions, Services.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control adds part 585 to 31 CFR chapter V to read as follows:

## PART 585—HONG KONG-RELATED SANCTIONS REGULATIONS

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

Sec.

- 585.101 Relation of this part to other laws and regulations.

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585.505 Entries in certain accounts for normal service charges.  
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- 585.601 Records and reports.

### Subpart G—Penalties and Findings of Violation

- 585.701 Penalties and Findings of Violation.

### Subpart H—Procedures

- 585.801 Procedures.  
585.802 Delegation of certain authorities of the Secretary of the Treasury.

### Subpart I—Paperwork Reduction Act

- 585.901 Paperwork Reduction Act notice. Appendix A to Part 585—Executive Order 13936 of July 14, 2020

**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); E.O. 13936, 85 FR 43413, July 17, 2020.

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

#### § 585.101 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.

**Note 1 to § 585.101.** This part has been published in abbreviated form for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and statements of licensing policy.

## Subpart B—Prohibitions

### § 585.201 Prohibited transactions.

(a) All transactions prohibited pursuant to Executive Order (E.O.) 13936 of July 14, 2020 are prohibited pursuant to this part.

(b) All transactions prohibited pursuant to any further Executive orders issued pursuant to the national emergency declared in E.O. 13936 are prohibited pursuant to this part.

**Note 1 to § 585.201.** The names of persons designated or identified as blocked pursuant to E.O. 13936, or listed in, designated, or identified as blocked pursuant to any further Executive orders issued pursuant to the national emergency declared in E.O. 13936, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) using the following identifier formulation: “[HK–E.O.[E.O. number pursuant to which the person's property and interests in property are blocked]]”. The SDN List is accessible through the following page on OFAC's website: [www.treasury.gov/sdn](http://www.treasury.gov/sdn). Additional information pertaining to the SDN List can be found in appendix A to this chapter. See § 585.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

**Note 2 to § 585.201.** 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 this section also are published in the **Federal Register** and incorporated into the SDN List using the following identifier formulation: for E.O. 13936 and any further Executive orders issued pursuant to the national emergency declared in E.O. 13936: “[BPI–HK–E.O.[E.O. number pursuant to which the person's property and interests in property are blocked pending investigation]]”.

**Note 3 to § 585.201.** 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 this section.

### § 585.202 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 § 585.201, 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 interest in property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 585.201, 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.

(e) 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.

(f) 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 or interest in property blocked pursuant to § 585.201.

### § 585.203 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 or authorized by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 585.201 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 § 585.201 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 § 585.201 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 real or personal property, 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 financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 585.201, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

**§ 585.204 Expenses of maintaining blocked tangible 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 tangible property blocked pursuant to § 585.201 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 § 585.201 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.

**§ 585.205 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) *Official business.* The prohibitions contained in § 585.201(a) do not apply to transactions for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof.

**Note 1 to paragraph (b).** See § 585.509 for a general license authorizing transactions for the conduct of the official business of the United States Government not otherwise exempt.

**Subpart C—General Definitions**

**§ 585.300 Applicability of definitions.**

The definitions in this subpart apply throughout the entire part.

**§ 585.301 Blocked account; blocked property.**

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 585.201 held in the name of a person whose property and interests in property are blocked pursuant to § 585.201, 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 1 to § 585.301.** See § 585.406 concerning the blocked status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked pursuant to § 585.201.

**§ 585.302 Effective date.**

(a) The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part, and with respect to a person whose property and interests in property are blocked pursuant to § 585.201, the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

(b) For the purposes of this section, *constructive notice* is the date that a notice of the blocking of the relevant person's property and interests in property is published in the **Federal Register**.

**§ 585.303 Entity.**

The term *entity* means a government or instrumentality of such government, partnership, association, trust, joint venture, corporation, group, subgroup,

or other organization, including an international organization.

**§ 585.304 Financial, material, or technological support.**

The term *financial, material, or technological support* means any property, tangible or intangible, including 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.

**§ 585.305 [Reserved]**

**§ 585.306 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.

**§ 585.307 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 made available on OFAC's website: [www.treasury.gov/ofac](http://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: [www.treasury.gov/ofac](http://www.treasury.gov/ofac).

**Note 1 to § 585.307.** See § 501.801 of this chapter on licensing procedures.

**§ 585.308 OFAC.**

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

**§ 585.309 Person.**

The term *person* means an individual or entity.

**§ 585.310 Property; property interest.**

The terms *property* and *property interest* include 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.

#### **§ 585.311 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.

#### **§ 585.312 United States.**

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

#### **§ 585.313 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.

#### **§ 585.314 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 other extensions 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 depository institutions, banks, savings banks, trust companies, securities brokers and dealers, 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.

### **Subpart D—Interpretations**

#### **§ 585.401 [Reserved]**

#### **§ 585.402 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.

#### **§ 585.403 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 § 585.201, such property shall no longer be deemed to be property blocked pursuant to § 585.201, unless there exists in the property another interest that is blocked pursuant to § 585.201, 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 § 585.201, such property shall be deemed to be property in which such person has an interest and therefore blocked.

#### **§ 585.404 Transactions ordinarily incident to a licensed transaction.**

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

(a) 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 § 585.201; or

(b) 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.

#### **§ 585.405 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 § 585.201 if effected after the effective date.

#### **§ 585.406 Entities owned by one or more persons whose property and interests in property are blocked.**

Persons whose property and interests in property are blocked pursuant to § 585.201 have an interest in all property and interests in property of an entity in which such persons directly or indirectly own, whether individually or in the aggregate, 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 § 585.201, regardless of whether the name of the entity is incorporated into

OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

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

#### § 585.501 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 Hong Kong-Related Sanctions page on OFAC's website: [www.treasury.gov/ofac](http://www.treasury.gov/ofac).

#### § 585.502 [Reserved]

#### § 585.503 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.

#### § 585.504 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 § 585.201 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 1 to § 585.504.** *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See also* § 585.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

#### § 585.505 Entries in certain accounts for normal service charges.

(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.

#### § 585.506 Provision of certain legal services.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 585.201 is authorized, provided that any receipt of payment of professional fees and reimbursement of incurred expenses must be authorized pursuant to § 585.507, which authorizes certain payments for legal services from funds originating outside the United States; via specific license; or otherwise pursuant to this part:

(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 or on behalf of persons whose property and interests in property are blocked pursuant to § 585.201, not otherwise authorized in this part, requires the issuance of a specific license.

(c) U.S. persons do not need to obtain specific authorization to provide related services, such as making filings and

providing other administrative services, that are ordinarily incident to the provision of services authorized by this section. Additionally, U.S. persons who provide services authorized by this section 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. *See* § 585.404.

(d) 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 § 585.201 is prohibited unless licensed pursuant to this part.

**Note 1 to § 585.506.** Pursuant to part 501, subpart E, of this chapter, 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 certain blocked funds for the payment of professional fees and reimbursement of incurred expenses for the provision of such legal services where alternative funding sources are not available.

#### § 585.507 Payments for legal services from funds originating outside the United States.

(a) *Professional fees and incurred expenses.* (1) Receipt of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 585.506(a) to or on behalf of any person whose property and interests in property are blocked pursuant to § 585.201 is authorized from funds originating outside the United States, provided that the funds do not originate from:

(i) A source within the United States;

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

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 585.506(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order or statute.

(2) Nothing in this paragraph (a) authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 585.201, any other part of this chapter, or any Executive order or statute has an interest.

(b) *Reports.* (1) U.S. persons who receive payments pursuant to paragraph (a) of this section must submit annual reports no later than 30 days following the end of the calendar year 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) The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(i) *Email (preferred method):* OFAC.Regulations.Reports@treasury.gov; or

(ii) *U.S. mail:* OFAC Regulations Reports, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

#### **§ 585.508 Emergency medical services.**

The provision and receipt of nonscheduled emergency medical services that are prohibited by this part are authorized.

#### **§ 585.509 Official business of the United States Government.**

All transactions prohibited by this part that are for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof are authorized.

### **Subpart F—Reports**

#### **§ 585.601 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 and Findings of Violation**

#### **§ 585.701 Penalties and Findings of Violation.**

(a) The penalties available under section 206 of the International

Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), as adjusted annually pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note) or, in the case of criminal violations, as adjusted pursuant to 18 U.S.C. 3571, are applicable to violations of the provisions of this part.

(b) OFAC has the authority, pursuant to IEEPA, to issue Pre-Penalty Notices, Penalty Notices, and Findings of Violation; impose monetary penalties; engage in settlement discussions and enter into settlements; refer matters to the United States Department of Justice for administrative collection; and, in appropriate circumstances, refer matters to appropriate law enforcement agencies for criminal investigation and/or prosecution. For more information, see appendix A to part 501 of this chapter, which provides a general framework for the enforcement of all economic sanctions programs administered by OFAC, including enforcement-related definitions, types of responses to apparent violations, general factors affecting administrative actions, civil penalties for failure to comply with a requirement to furnish information or keep records, and other general civil penalties information.

### **Subpart H—Procedures**

#### **§ 585.801 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.

#### **§ 585.802 Delegation of certain authorities of the Secretary of the Treasury.**

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13936, and any further Executive orders issued pursuant to the national emergency declared therein, 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**

#### **§ 585.901 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, 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.

### **Appendix A to Part 585—Executive Order 13936 of July 14, 2020**

#### **Executive Order 13936 of July 14, 2020**

#### **The President's Executive Order on Hong Kong Normalization**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the United States-Hong Kong Policy Act of 1992 (Pub. L. 102–393), the Hong Kong Human Rights and Democracy Act of 2019 (Pub. L. 116–76), the Hong Kong Autonomy Act of 2020, signed into law July 14, 2020, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, DONALD J. TRUMP, President of the United States of America, determine, pursuant to section 202 of the United States-Hong Kong Policy Act of 1992, that the Special Administrative Region of Hong Kong (Hong Kong) is no longer sufficiently autonomous to justify differential treatment in relation to the People's Republic of China (PRC or China) under the particular United States laws and provisions thereof set out in this order. In late May 2020, the National People's Congress of China announced its intention to unilaterally and arbitrarily impose national security legislation on Hong Kong. This announcement was merely China's latest salvo in a series of actions that have increasingly denied autonomy and freedoms that China promised to the people of Hong Kong under the 1984 Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (Joint Declaration). As a result, on May 27, 2020, the Secretary of State announced that the PRC had fundamentally undermined Hong Kong's autonomy and certified and reported to the Congress, pursuant to sections 205 and 301 of the United States-Hong Kong Policy Act of 1992, as amended, respectively, that Hong Kong no longer warrants treatment under United States law in the same manner as United States laws were applied to Hong Kong before July 1, 1997. On May 29, 2020, I directed the heads of executive departments and agencies (agencies) to begin the process of eliminating policy exemptions under United States law that give Hong Kong differential treatment in relation to China.

China has since followed through on its threat to impose national security legislation on Hong Kong. Under this law, the people of Hong Kong may face life in prison for what China considers to be acts of secession or subversion of state power—which may include acts like last year's widespread anti-government protests. The right to trial by jury



may be suspended. Proceedings may be conducted in secret. China has given itself broad power to initiate and control the prosecutions of the people of Hong Kong through the new Office for Safeguarding National Security. At the same time, the law allows foreigners to be expelled if China merely suspects them of violating the law, potentially making it harder for journalists, human rights organizations, and other outside groups to hold the PRC accountable for its treatment of the people of Hong Kong.

I therefore determine that the situation with respect to Hong Kong, including recent actions taken by the PRC to fundamentally undermine Hong Kong's autonomy, constitutes an unusual and extraordinary threat, which has its source in substantial part outside the United States, to the national security, foreign policy, and economy of the United States. I hereby declare a national emergency with respect to that threat.

In light of the foregoing, I hereby determine and order:

*Section 1.* It shall be the policy of the United States to suspend or eliminate different and preferential treatment for Hong Kong to the extent permitted by law and in the national security, foreign policy, and economic interest of the United States.

*Sec. 2.* Pursuant to section 202 of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5722), I hereby suspend the application of section 201(a) of the United States-Hong Kong Policy Act of 1992, as amended (22 U.S.C. 5721(a)), to the following statutes:

(a) section 103 of the Immigration Act of 1990 (8 U.S.C. 1152 note);

(b) sections 203(c), 212(l), and 221(c) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1153(c), 1182(l), and 1201(c), respectively);

(c) the Arms Export Control Act (22 U.S.C. 2751 *et seq.*);

(d) section 721(m) of the Defense Production Act of 1950, as amended (50 U.S.C. 4565(m));

(e) the Export Control Reform Act of 2018 (50 U.S.C. 4801 *et seq.*); and

(f) section 1304 of title 19, United States Code.

*Sec. 3.* Within 15 days of the date of this order, the heads of agencies shall commence all appropriate actions to further the purposes of this order, consistent with applicable law, including, to:

(a) Amend any regulations implementing those provisions specified in section 2 of this order, and, consistent with applicable law and executive orders, under IEEPA, which provide different treatment for Hong Kong as compared to China;

(b) amend the regulation at 8 CFR 212.4(i) to eliminate the preference for Hong Kong passport holders as compared to PRC passport holders;

(c) revoke license exceptions for exports to Hong Kong, reexports to Hong Kong, and transfers (in-country) within Hong Kong of items subject to the Export Administration Regulations, 15 CFR parts 730–774, that provide differential treatment compared to those license exceptions applicable to exports to China, reexports to China, and transfers (in-country) within China;

(d) consistent with section 902(b)(2) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Pub. L. 101–246), terminate the export licensing suspensions under section 902(a)(3) of such Act insofar as such suspensions apply to exports of defense articles to Hong Kong persons who are physically located outside of Hong Kong and the PRC and who were authorized to receive defense articles prior to the date of this order;

(e) give notice of intent to suspend the Agreement Between the Government of the United States of America and the Government of Hong Kong for the Surrender of Fugitive Offenders (TIAS 98–121);

(f) give notice of intent to terminate the Agreement Between the Government of the United States of America and the Government of Hong Kong for the Transfer of Sentenced Persons (TIAS 99–418);

(g) take steps to end the provision of training to members of the Hong Kong Police Force or other Hong Kong security services at the Department of State's International Law Enforcement Academies;

(h) suspend continued cooperation undertaken consistent with the now-expired Protocol Between the U.S. Geological Survey of the Department of the Interior of the United States of America and Institute of Space and Earth Information Science of the Chinese University of Hong Kong Concerning Scientific and Technical Cooperation in Earth Sciences (TIAS 09–1109);

(i) take steps to terminate the Fulbright exchange program with regard to China and Hong Kong with respect to future exchanges for participants traveling both from and to China or Hong Kong;

(j) give notice of intent to terminate the agreement for the reciprocal exemption with respect to taxes on income from the international operation of ships effected by the Exchange of Notes Between the Government of the United States of America and the Government of Hong Kong (TIAS 11892);

(k) reallocate admissions within the refugee ceiling set by the annual Presidential Determination to residents of Hong Kong based on humanitarian concerns, to the extent feasible and consistent with applicable law; and

(l) propose for my consideration any further actions deemed necessary and prudent to end special conditions and preferential treatment for Hong Kong.

*Sec. 4.* All property and interests in property 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 any United States person, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

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

(i) To be or have been involved, directly or indirectly, in the coercing, arresting, detaining, or imprisoning of individuals under the authority of, or to be or have been responsible for or involved in developing, adopting, or implementing, the Law of the

People's Republic of China on Safeguarding National Security in the Hong Kong Administrative Region;

(ii) to be responsible for or complicit in, or to have engaged in, directly or indirectly, any of the following:

(A) Actions or policies that undermine democratic processes or institutions in Hong Kong;

(B) actions or policies that threaten the peace, security, stability, or autonomy of Hong Kong;

(C) censorship or other activities with respect to Hong Kong that prohibit, limit, or penalize the exercise of freedom of expression or assembly by citizens of Hong Kong, or that limit access to free and independent print, online or broadcast media; or

(D) the extrajudicial rendition, arbitrary detention, or torture of any person in Hong Kong or other gross violations of internationally recognized human rights or serious human rights abuse in Hong Kong;

(iii) to be or have been a leader or official of:

(A) An entity, including any government entity, that has engaged in, or whose members have engaged in, any of the activities described in subsections (a)(i), (a)(ii)(A), (a)(ii)(B), or (a)(ii)(C) of this section; or

(B) an entity whose property and interests in property are blocked pursuant to this order.

(iv) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this section;

(v) 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 section; or

(vi) to be a member of the board of directors or a senior executive officer of any person whose property and interests in property are blocked pursuant to this section.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.

*Sec. 5.* I hereby determine that the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 4 of this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 4 of this order.

*Sec. 6.* The prohibitions in section 4(a) of this order include:

(a) 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 section 4(a) of this order; and



(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

**Sec. 7.** The unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in section 4(a) of this order, as well as immediate family members of such aliens, or aliens determined by the Secretary of State to be employed by, or acting as an agent of, such aliens, would be detrimental to the interest of the United States, and the entry of such persons into the United States, as immigrants and nonimmigrants, is hereby suspended. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions). The Secretary of State shall have the responsibility of implementing this section pursuant to such conditions and procedures as the Secretary has established or may establish pursuant to Proclamation 8693.

**Sec. 8.** (a) Any transaction 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 order is prohibited.

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

**Sec. 9.** Nothing in this order shall prohibit transactions for the conduct of the official business of the Federal Government by employees, grantees, or contractors thereof.

**Sec. 10.** For the purposes of this order:

(a) The term “person” means an individual or entity;

(b) the term “entity” means a government or instrumentality of such government, partnership, association, trust, joint venture, corporation, group, subgroup, or other organization, including an international organization;

(c) the term “United States 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; and

(d) The term “immediate family member” means spouses and children of any age.

**Sec. 11.** For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to section 4 of this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 4 of this order.

**Sec. 12.** The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including adopting rules and regulations, and to employ all powers granted to me by IEEPA as may be necessary to implement this order. The Secretary of the Treasury may, consistent

with applicable law, redelegate any of these functions within the Department of the Treasury. All departments and agencies of the United States shall take all appropriate measures within their authority to implement this order.

**Sec. 13.** The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

**Sec. 14.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) The authority granted by law to an executive department or agency; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**Sec. 15.** If, based on consideration of the terms, obligations, and expectations expressed in the Joint Declaration, I determine that changes in China's actions ensure that Hong Kong is sufficiently autonomous to justify differential treatment in relation to the PRC under United States law, I will reconsider the determinations made and actions taken and directed under this order.

DONALD J. TRUMP,  
THE WHITE HOUSE,  
June 11, 2020.

Dated: January 12, 2021.

**Andrea Gacki,**

*Director, Office of Foreign Assets Control.*

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**BILLING CODE 4810-AL-P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### 33 CFR Part 240

[COE-2020-0005]

RIN 0710-AB07

#### General Credit for Flood Control

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes the U.S. Army Corps of Engineers' part titled General Credit for Flood Control. Each removed section of this part is out-of-date as current policy and procedures

on this subject can be found in internal documents. Therefore, this part can be removed from the Code of Federal Regulations (CFR).

**DATES:** This rule is effective on January 15, 2021.

**ADDRESSES:** Department of the Army, U.S. Army Corps of Engineers, ATTN: CECW-P (Ms. Amy Frantz), 441 G Street NW, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Frantz at (202) 761-0106 or by email at [Amy.K.Frantz@usace.army.mil](mailto:Amy.K.Frantz@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** This final rule removes from the CFR 33 CFR part 240, General Credit for Flood Control. The rule was initially published in the **Federal Register** on November 18, 1987 (52 FR 44113). The regulation established guidelines and procedures for Department of the Army application of the provisions of section 104 of Public Law 99-662. Section 104 authorizes and directs the development of guidelines which include criteria for determining whether work carried out by local interests is compatible with a project for flood control. This legislative authority also provides that benefits and costs of compatible work will be considered in the economic evaluation of the Federal project. This authority provides a basis for non-Federal interests to undertake local work to alleviate flood damages in the period preceding authorization of a Federal project with assurance that they will not adversely affect the project's economic feasibility. The regulation provides general policy and procedures on the application of section 104 and credit criteria for projects. It was published, at that time, in the **Federal Register** to aid public accessibility. The solicitation of public comment for this removal is unnecessary because the rule is out-of-date, and otherwise covers internal agency operations that have no public compliance component or adverse public impact. For current public accessibility purposes, updated internal agency policy on this topic may be found in Engineer Regulation (ER) 1165-2-208, “In-Kind Contribution Credit Provisions of Section 221 (a)(4) of the Flood Control Act of 1970, as amended” (available at [https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER\\_1165-2-208.pdf](https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_1165-2-208.pdf)).

This rule removal is being conducted to reduce confusion for the public as well as for the Corps regarding the current policy which governs the Corps' general credit for flood control. Because the regulation does not place a burden on the public, its removal does not