

FEDERAL RESERVE BANK
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Fiscal Agent of the United States

[Circular No. 9331]
July 30, 1982

AMENDMENTS TO IRANIAN ASSETS CONTROL REGULATIONS

To All Banking Institutions in the Second
Federal Reserve District, and Others Concerned:

Printed on the following pages are amendments to the Iranian Assets Control Regulations issued by the Office of Foreign Assets Control of the United States Treasury Department, as published in the *Federal Register*.

The amendments provide a licensing procedure for the sale and disposition of tangible property that is currently blocked because of an interest of Iran in the property. The licensing procedure will permit the authorized sale of such property in appropriate cases following the review of license applications on a case-by-case basis.

The amendments also revoke all licenses and authorizations that permit a final judicial judgment permanently enjoining, terminating, or otherwise permanently disposing of any interest of Iran in a standby letter of credit or similar obligation, and further clarify the applicability of sections of the Iranian Assets Control Regulations to standby-letter-of-credit litigation.

Inquiries regarding the new amendments should be directed to Daniel M. Rossner, Attorney, Legal Department (Tel. No. 212-791-5024).

ANTHONY M. SOLOMON,
President.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations; Judicial Action Involving Standby Letters of Credit

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations, by: (1) Revoking and withdrawing any and all licenses and authorizations for enjoining permanently, terminating or otherwise permanently disposing of any interest of Iran in any standby letter of credit or similar instrument by means of the entry of any final judicial judgment or order; and (2) making clear that section 535.222 is not a licensing provision and that standby letter of credit litigation is governed by § 535.201, as modified by the section 535.504 license for judicial proceedings.

The amendment is needed to facilitate the ongoing implementation of the Iran-U.S. agreements of January 19, 1981.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, tel. (202) 376-0236.

SUPPLEMENTARY INFORMATION: Iran has filed more than 200 claims with the Iran-United States Claims Tribunal (the "Tribunal") based on standby letters of credit issued for the account of United States parties. United States nationals have filed with the Tribunal a large number of claims related to, or based on, many of the same standby letters of credit at issue in Iran's claims. Other United States nationals have litigation pending in United States courts concerning some of these same letters of credit.

The purpose of the amendment is to preserve the status quo by continuing to allow U.S. account parties to obtain

preliminary injunctions or other temporary relief to prevent payment on standby letters of credit, while prohibiting, for the time being, final judicial action permanently enjoining, nullifying or otherwise permanently disposing of such letters of credit.

Preservation of the status quo will provide an opportunity for negotiations with Iran regarding the status and disposition of these various letters of credit claims. Preservation of the status quo for a period of time also permits possible resolution in the context of the Tribunal of the matters pending before it. The amendment will expire by its terms on December 31, 1982.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date, are inapplicable. Similarly, because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of subjects in 31 CFR Part 535

Iran, Foreign assets control.

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

31 CFR Part 535 is amended as follows:

Section 535.222 is amended by the revision of paragraph (g) to read as follows:

§ 535.222 Suspension of claims eligible for claims tribunal.

* * * * *

(g) Nothing in this section shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument. However, assertion of such a claim through judicial proceedings is governed by the general license in § 535.504.

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Section 535.504 is amended by the addition of new paragraph (b)(3) as follows:

§ 535.504 Certain judicial proceedings with respect to property of Iran or Iranian entities.

* * * * *

(b) This section does not authorize:

* * * * *

(3)(i) Any final judicial judgment or order (A) permanently enjoining, (B) terminating or nullifying, or (C) otherwise permanently disposing of any interest of Iran in any standby letter of credit, performance bond or similar obligation. Any license authorizing such action is hereby revoked and withdrawn.

(ii) Nothing in this paragraph (b)(3) shall prohibit the assertion of any defense, set-off or counterclaim in any pending or subsequent judicial proceeding commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality or entity owned or controlled by the Government of Iran or any political subdivision thereof.

(iii) Nothing in this paragraph (b)(3) shall preclude the commencement of an action for the purpose of tolling the period of limitations for commencement of such action.

(iv) Nothing in this paragraph (b)(3) shall require dismissal of any action for want of prosecution.

(v) The provisions of this paragraph (b)(3) shall expire at 11:59 p.m., e.s.t., on December 31, 1982.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12205, 45 FR 24099; E.O. No. 12211, 45 FR 26605; E.O. No. 12276, 46 FR 7913, E.O. No. 12278, 46 FR 7917, 46 FR 10895; E.O. No. 12279, 46 FR 7919; E.O. No. 12280, 46 FR 7921; E.O. No. 12281, 46 FR 7923; E.O. No. 12282, 46 FR 7926; and E.O. No. 12294, 46 FR 14111)

Dated: July 1, 1982.

Dennis M. O'Connell,
Director, Office of Foreign Assets Control.

Approved:

John M. Walker, Jr.,
Assistant Secretary (Enforcement and Operations).

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DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****31 CFR Part 535****Iranian Assets Control Regulations
Tangible Properties Licensing Policy****AGENCY:** Office of Foreign Assets Control, Treasury.**ACTION:** Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations to provide a licensing procedure for the sale and disposition of tangible property that is currently blocked because of an interest of Iran in the property. The purpose of the amendment is to prevent the property from physically deteriorating and declining in value, to halt the accrual of storage charges, and to permit the satisfaction of certain claims against the property. The new licensing policy will permit the authorized sale of such property in appropriate cases following the review of license applications on their individual merits on a case-by-case basis.

EFFECTIVE DATE: July 20, 1982.**FOR FURTHER INFORMATION CONTACT:**

Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376-0236.

SUPPLEMENTARY INFORMATION: The new statement of licensing policy provides a mechanism for the disposition of blocked Iranian tangible property held by United States exporters, purchasing agents and others. It also provides for the satisfaction of certain claims out of the proceeds of a licensed sale of such property and for the transfer of any net proceeds in excess of such claims to Iran.

The disposition of tangible property in which Iran has an interest is governed by the provisions of sections 535.201 and 535.215 of the Regulations. Section 535.215 authorizes and directs the transfer of "properties . . . owned by Iran or its agencies, instrumentalities or controlled entities" as directed by the Government of Iran or its agent. However, § 515.333 of the Regulations provides that term "properties" as used in § 535.215 includes all uncontested and non-contingent liabilities and property interests of the Government of Iran.

Among other matters, the section provides:

(b) Properties are not Iranian properties or owned by Iran unless all necessary obligations, charges and fees relating to such properties are paid and liens on such properties (not including attachments, injunctions and similar orders) are discharged.

Among other properties subject to the foregoing provisions are tangible properties as to which Iran does not possess complete or uncontested ownership rights under applicable provisions of U.S. law because of failure to pay the purchase price and other related charges. The referenced provisions implement the provisions of paragraph 9 of the Declaration of the Government of the Democratic and Popular Republic of Algeria which obligates the United States to arrange the transfer to Iran of "Iranian properties" (other than bank deposits or financial assets) "subject to the provisions of U.S. law applicable prior to November 14, 1979 * * *"

Tangible property in which Iran has an interest which is exempt from transfer to Iran under § 535.215 by virtue of § 535.333 of the Regulations remains subject to the blocking provisions of § 535.201. Section 535.201 prohibits, among other matters, the U.S. holder of such property from exercising any lien or set off against such property as a means of satisfying claims. Also, the prohibitions and nullifications in § 535.218 apply to such property even if it is exempt from transfer to Iran under § 535.215 by virtue of § 535.333. Further, such claims are suspended for purposes of seeking satisfaction out of such property through any action in a U.S. court (e.g., judicial creation or enforcement of a lien) by § 535.222.

In order to better formulate a licensing policy regarding Iranian tangible property, on May 24, 1982, the Office initiated a census of such property under § 535.625. Reports on Form TFR-625 were due July 1, 1982. Any person subject to the reporting requirement who has not submitted the report, which is mandatory, should do so immediately.

Under the new policy, the applicant holding property and wishing to dispose of it through public sale must establish that reasonable efforts have been made to obtain payment from Iran and that neither payment nor adequate assurance of payment has been received. The applicant must have, under provisions of law applicable prior to November 14,

1979, a right to sell, or a right to reclaim and sell such property by methods not requiring judicial proceedings.

The applicant must agree to indemnify the United States against liability in the Iran-United States Claims Tribunal in an amount equal to 150% of the proceeds of a licensed sale.

In the event that the applicant elects to use the license to exercise a lien against the property to satisfy a claim out of the proceeds of the sale, the applicant must post a bond or establish a standby letter of credit in favor of the United States in the amount of the proceeds of the sale in order to back up the indemnity. The applicant may elect to hold all or a part of the proceeds in a blocked, interest-bearing account at a domestic bank to the extent they constitute contested property under § 535.333. In the event that the entire proceeds are so held, no bond or standby letter of credit is required. Any proceeds which are un-contested and non-contingent are subject to § 535.215 and must be transferred to Iran.

Reasonable costs of administration of a licensed sale will be licensed to be deducted from the proceeds in any case. A full report to the Office of Foreign Assets Control on the conduct of the sale will be required.

List of Subjects in 31 CFR Part 535

Iran, Foreign assets control.

31 CFR Part 535 is amended as follows:

**PART 535—IRANIAN ASSETS
CONTROL REGULATIONS**

Section 535.540 is added as follows:

§ 535.540 Disposition of certain tangible property.

(a) Specific licenses may be issued in appropriate cases at the discretion of the Secretary of the Treasury for the public sale and transfer of certain tangible property that is encumbered or contested within the meaning of § 535.333 (b) and (c) and that, because it is blocked by § 535.201, may not be sold or transferred without a specific license, provided that each of the following conditions is met:

(1) The holder or supplier of the property has made a good faith effort over a reasonable period of time to obtain payment of any amounts owed by Iran or the Iranian entity, or adequate assurance of such payment;

(2) Neither payment nor adequate assurance of payment has been received;

(3) The license applicant has, under provisions of law applicable prior to November 14, 1979, a right to sell, or reclaim and sell, such property by methods not requiring judicial proceedings, and would be able to exercise such right under applicable law, but for the prohibitions in this part, and

(4) The license applicant shall enter into an indemnification agreement acceptable to the United States providing for the applicant to indemnify the United States, in an amount up to 150 percent of the proceeds of sale, for any monetary loss which may accrue to the United States from a decision by the Iran-U.S. Claims Tribunal that the United States is liable to Iran for damages that are in any way attributable to the issuance of such license. In the event the applicant and those acting for or on its behalf are the only bidders on the property, the United States shall have the right to establish a reasonable indemnification amount.

(b) An applicant for a license under this section shall provide the Office of Foreign Assets Control with documentation on the points enumerated in paragraph (a) of this section. The applicant normally will be required to submit an opinion of legal counsel regarding the legal right claimed under paragraph (a)(3) of this section.

(c) Any sale of property licensed under this section shall be at public auction and shall be made in good faith in a commercially reasonable manner. Notwithstanding any provision of State

law, the license applicant shall give detailed notice to the appropriate Iranian entity of the proposed sale or transfer at least 30 days prior to the sale or other transfer. In addition, if the license applicant has filed a claim with the Iran-U.S. Claims Tribunal, the license applicant shall give at least 30 days' advance notice of the sale to the Tribunal.

(d) The disposition of the proceeds of any sale licensed under this section, minus such reasonable costs of sale as are authorized by applicable law (which will be licensed to be deducted), shall be in accordance with either of the following methods:

(1) Deposit into a separate blocked, interest-bearing account at a domestic bank in the name of the licensed applicant; or

(2) Any reasonable disposition in accordance with provisions of law applicable prior to November 14, 1979, which may include unrestricted use of all or a portion of the proceeds, provided that the applicant shall post a bond or establish a standby letter of credit, subject to the prior approval of the Secretary of the Treasury, in favor of the United States in the amount of the proceeds of sale, prior to any such disposition.

(e) For purposes of this section, the term "proceeds" means any gross amount of money or other value realized from the sale. The proceeds shall include any amount equal to any debt owed by Iran which may have constituted all or part of a successful bid at the licensed sale.

(f) The proceeds of any such sale shall

be deemed to be property governed by § 535.215 of this part. Any part of the proceeds that constitutes Iranian property which under § 535.215 is to be transferred to Iran shall be so transferred in accordance with that section.

(g) Any license pursuant to this section may be granted subject to conditions deemed appropriate by the Secretary of the Treasury.

(h) Any person licensed pursuant to this section is required to submit a report to the Chief of Licensing, Office of Foreign Assets Control, within ten business days of the licensed sale or other transfer, providing a full accounting of the transaction, including the costs, any payment to lienholders or others, including payments to Iran or Iranian entities, and documentation concerning any blocked account established or payments made.

(Sec. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12205, 45 FR 24099; E.O. No. 12211, 45 FR 26605; E.O. No. 12276, 46 FR 7913; E.O. No. 12279, 46 FR 7919; E.O. No. 12280, 46 FR 7921; E.O. No. 12281, 46 FR 7923; E.O. No. 12282, 46 FR 7925; and E.O. No. 12294, 46 FR 14111)

Dennis M. O'Connell,
Director, Office of Foreign Assets Control.

Approved:
John M. Walker, Jr.,
Assistant Secretary.

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