U. S. Department of Commerce Foreign Direct Investment Program

To All Banks and Other Financial Institutions in the Second Federal Reserve District:

Printed on the following pages are the texts of the following documents:

(1) Message to the Nation on the Balance of Payments, issued January 1, 1968, by President Johnson;

(2) Executive Order No. 11387, dated January 1, 1968, Governing Certain Capital Transfers Abroad, which, among other things, authorizes the Secretary of Commerce to issue regulations governing such transfers;

(3) Regulations of the Secretary of Commerce, dated January 1, 1968, relating to Foreign Direct Investment by Persons in the United States, which implement Executive Order No. 11387;

(4) U. S. Department of Commerce Order 184-A, dated January 1, 1968, which establishes the Office of Foreign Direct Investments to carry out the provisions of the Executive Order; and

(5) Instructions for Specific Authorizations or Exemptions Pursuant to Section 1000.801 of Foreign Direct Investment Regulations, issued by said Office of Foreign Direct Investments.

Documents 2, 3, and 4 above have been extracted from the Federal Register, dated January 3, 1968.

Additional copies of this circular will be furnished upon request.

Alfred Hayes,
President.
MESSAGE TO THE NATION
ON THE BALANCE OF PAYMENTS

Where We Stand Today

I want to discuss with the American people a subject of vital concern to the economic health and well-being of this Nation and the Free World.

It is our international balance of payments position.

The strength of our dollar depends on the strength of that position.

The soundness of the Free World monetary system, which rests largely on the dollar, also depends on the strength of that position.

To the average citizen, the balance of payments, and the strength of the dollar and of the international monetary system, are meaningless phrases. They seem to have little relevance to our daily lives. Yet their consequences touch us all — consumer and captain of industry, worker, farmer, and financier.

More than ever before, the economy of each nation is today deeply intertwined with that of every other. A vast network of world trade and financial transactions ties us all together. The prosperity of every economy rests on that of every other.

More than ever before, this is one world — in economic affairs as in every other way.

Your job, the prosperity of your farm or business, depends directly or indirectly on what happens in Europe, Asia, Latin America, or Africa.

The health of the international economic system rests on a sound international money in the same way as the health of our domestic economy rests on a sound domestic money. Today, our domestic money — the U. S. dollar — is also the money most used in international transactions. That money can be sound at home — as it surely is — yet can be in trouble abroad — as it now threatens to become.

In the final analysis its strength abroad depends on our earning abroad about as many dollars as we send abroad.

U. S. dollars flow from these shores for many reasons — to pay for imports and travel, to finance loans and investments and to maintain our lines of defense around the world.

When that outflow is greater than our earnings and credits from foreign nations, a deficit results in our international accounts.

For 17 of the last 18 years we have had such deficits. For a time those deficits were needed to help the world recover from the ravages of World War II. They could be tolerated by the United States and welcomed by the rest of the world. They distributed more equitably the world's monetary gold reserves and supplemented them with dollars.

Once recovery was assured, however, large deficits were no longer needed and indeed began to threaten the strength of the dollar. Since 1961 your government has worked to reduce that deficit.

By the middle of the decade, we could see signs of success. Our annual deficit had been reduced two-thirds — from $3.9 billion in 1960 to $1.3 billion in 1965.

In 1966, because of our increased responsibility to arm and supply our men in Southeast Asia, progress was interrupted, with the deficit remaining at the same level as 1965 — about $1.3 billion.
In 1967, progress was reversed for a number of reasons:

— Our costs for Vietnam increased further.
— Private loans and investments abroad increased.
— Our trade surplus, although larger than 1966, did not rise as much as we had expected.
— Americans spent more on travel abroad.

Added to these factors was the uncertainty and unrest surrounding the devaluation of the British pound. This event strained the international monetary system. It sharply increased our balance of payments deficit and our gold sales in the last quarter of 1967.

The Problem

Preliminary reports indicate that these conditions may result in a 1967 balance of payments deficit in the area of $3.5 to $4 billion — the highest since 1960. Although some factors affecting our deficit will be more favorable in 1968, my advisors and I are convinced that we must act to bring about a decisive improvement.

We cannot tolerate a deficit that could threaten the stability of the international monetary system — of which the U. S. dollar is the bulwark.

We cannot tolerate a deficit that could endanger the strength of the entire Free World economy, and thereby threaten our unprecedented prosperity at home.

A Time for Action

The time has now come for decisive action designed to bring our balance of payments to — or close to — equilibrium in the year ahead.

The need for action is a national and international responsibility of the highest priority.

I am proposing a program which will meet this critical need, and at the same time satisfy four essential conditions:

— Sustain the growth, strength and prosperity of our own economy.
— Allow us to continue to meet our international responsibilities in defense of freedom, in promoting world trade, and in encouraging economic growth in the developing countries.
— Engage the cooperation of other free nations, whose stake in a sound international monetary system is no less compelling than our own.
— Recognize the special obligation of those nations with balance of payments surpluses, to bring their payments into equilibrium.

The First Order of Business

The first line of defense of the dollar is the strength of the American economy.

No business before the returning Congress will be more urgent than this: To enact the anti-inflation tax which I have sought for almost a year. Coupled with our expenditure controls and appropriate monetary policy, this will help to stem the inflationary pressures which now threaten our economic prosperity and our trade surplus.

No challenge before business and labor is more urgent than this: To exercise the utmost responsibility in their wage-price decisions, which affect so directly our competitive position at home and in world markets.
I have directed the Secretaries of Commerce and Labor, and the Chairman of the Council of Economic Advisers to work with leaders of business and labor to make more effective our voluntary program of wage-price restraint.

I have also instructed the Secretaries of Commerce and Labor to work with unions and companies to prevent our exports from being reduced or our imports increased by crippling work stoppages in the year ahead.

A sure way to instill confidence in our dollar — both here and abroad — is through these actions.

The New Program

But we must go beyond this and take action to deal directly with the balance of payments deficit.

Some of the elements in the program I propose will have a temporary but immediate effect. Others will be of longer range.

All are necessary to assure confidence in the American dollar.

1. Direct Investment

Over the past three years, American business has cooperated with the government in a voluntary program to moderate the flow of U. S. dollars into foreign investments. Business leaders who have participated so wholeheartedly deserve the appreciation of their country.

But the savings now required in foreign investment outlays are clearly beyond the reach of any voluntary program. This is the unanimous view of all my economic and financial advisers and the Chairman of the Federal Reserve Board.

To reduce our balance of payments deficit by at least $1 billion in 1968 from the estimated 1967 level, I am invoking my authority under the Banking Laws to establish a mandatory program that will restrain direct investment abroad.

This program will be effective immediately. It will insure success and guarantee fairness among American business firms with overseas investments.

The program will be administered by the Department of Commerce, and will operate as follows:

—As in the voluntary program, over-all and individual company targets will be set. Authorizations to exceed these targets will be issued only in exceptional circumstances.

—New direct investment outflows to countries in continental western Europe and other developed nations not heavily dependent on our capital will be stopped in 1968. Problems arising from work already in process or commitments under binding contracts will receive special consideration.

—New net investments in other developed countries will be limited to 65% of the 1965-66 average.

—New net investments in the developing countries will be limited to 110% of the 1965-66 average.

This program also requires businesses to continue to bring back foreign earnings to the United States in line with their own 1964-66 practices.

In addition, I have directed the Secretary of the Treasury to explore with the Chairmen of the House Ways and Means Committee and Senate Finance Committee legislative proposals to induce or encourage the repatriation of accumulated earnings by U. S.-owned foreign businesses.
2. **Lending by Financial Institutions**

To reduce the balance of payments deficit by at least another $500 million, I have requested and authorized the Federal Reserve Board to tighten its program restraining foreign lending by banks and other financial institutions.

Chairman Martin has assured me that this reduction can be achieved:

—without harming the financing of our exports;
—primarily out of credits to developed countries without jeopardizing the availability of funds to the rest of the world.

Chairman Martin believes that this objective can be met through continued cooperation by the financial community. At the request of the Chairman, however, I have given the Federal Reserve Board standby authority to invoke mandatory controls, should such controls become desirable or necessary.

3. **Travel Abroad**

Our travel deficit this year will exceed $2 billion. To reduce this deficit by $500 million:

—I am asking the American people to defer for the next two years all nonessential travel outside the Western Hemisphere.
—I am asking the Secretary of the Treasury to explore with the appropriate Congressional committees legislation to help achieve this objective.

4. **Government Expenditures Overseas**

We cannot forego our essential commitments abroad, on which America's security and survival depend. Nevertheless, we must take every step to reduce their impact on our balance of payments without endangering our security.

Recently, we have reached important agreements with some of our NATO partners to lessen the balance of payments cost of deploying American forces on the Continent — troops necessarily stationed there for the common defense of all.

Over the past three years, a stringent program has saved billions of dollars in foreign exchange. I am convinced that much more can be done. *I believe we should set as our target avoiding a drain of another $500 million on our balance of payments.*

To this end, I am taking three steps.

*First,* I have directed the Secretary of State to initiate prompt negotiations with our NATO allies to minimize the foreign exchange costs of keeping our troops in Europe. Our allies can help in a number of ways, including:

—The purchase in the U.S. of more of their defense needs.
—Investments in long-term United States securities.

I have also directed the Secretaries of State, Treasury and Defense to find similar ways of dealing with this problem in other parts of the world.

*Second,* I have instructed the Director of the Budget to find ways of reducing the numbers of American civilians working overseas.

*Third,* I have instructed the Secretary of Defense to find ways to reduce further the foreign exchange impact of personal spending by U.S. forces and their dependents in Europe.
Long-Term Measures

5. Export Increases

American exports provide an important source of earnings for our businessmen and jobs for our workers.

They are the cornerstone of our balance of payments position.

Last year we sold abroad $30 billion worth of American goods.

What we now need is a long-range systematic program to stimulate the flow of the products of our factories and farms into overseas markets.

We must begin now.

Some of the steps require legislation:

I shall ask the Congress to support an intensified five year, $200 million Commerce Department program to promote the sale of American goods overseas.

I shall also ask the Congress to earmark $500 million of the Export-Import Bank authorization to:

—Provide better export insurance.
—Expand guarantees for export financing.
—Broaden the scope of Government financing of our exports.

Other measures require no legislation.

I have today directed the Secretary of Commerce to begin a Joint Export Association program. Through these Associations, we will provide direct financial support to American corporations joining together to sell abroad.

And finally, the Export-Import Bank — through a more liberal rediscount system — will encourage banks across the Nation to help firms increase their exports.

6. Nontariff Barriers

In the Kennedy Round, we climaxed three decades of intensive effort to achieve the greatest reduction in tariff barriers in all the history of trade negotiations. Trade liberalization remains the basic policy of the United States.

We must now look beyond the great success of the Kennedy Round to the problems of nontariff barriers that pose a continued threat to the growth of world trade and to our competitive position.

American commerce is at a disadvantage because of the tax systems of some of our trading partners. Some nations give across-the-board tax rebates on exports which leave their ports and impose special border tax charges on our goods entering their country.

International rules govern these special taxes under the General Agreement on Tariffs and Trade. These rules must be adjusted to expand international trade further.

In keeping with the principles of cooperation and consultation on common problems, I have initiated discussions at a high level with our friends abroad on these critical matters — particularly those nations with balance of payments surpluses.

These discussions will examine proposals for prompt cooperative action among all parties to minimize the disadvantages to our trade which arise from differences among national tax systems.

We are also preparing legislative measures in this area whose scope and nature will depend upon the outcome of these consultations.
Through these means we are determined to achieve a substantial improvement in our trade surplus over the coming years. In the year immediately ahead, we expect to realize an improvement of $500 million.

7. Foreign Investment and Travel in U.S.

We can encourage the flow of foreign funds to our shores in two other ways:

—First, by an intensified program to attract greater foreign investment in U.S. Corporate securities, carrying out the principles of the Foreign Investors Tax Act of 1966.

—Second, by a program to attract more visitors to this land. A Special Task Force headed by Robert McKinney of Santa Fe, New Mexico, is already at work on measures to accomplish this. I have directed the Task Force to report within 45 days on the immediate measures that can be taken, and to make its long-term recommendations within 90 days.

Meeting the World's Reserve Needs

Our movement toward balance will curb the flow of dollars into international reserves. It will therefore be vital to speed up plans for the creation of new reserves — the Special Drawing Rights — in the International Monetary Fund. These new reserves will be a welcome companion to gold and dollars, and will strengthen the gold exchange standard. The dollar will remain convertible into gold at $35 an ounce, and our full gold stock will back that commitment.

A Time for Responsibility

The program I have outlined is a program of action.

It is a program which will preserve confidence in the dollar, both at home and abroad.

The U.S. dollar has wrought the greatest economic miracles of modern times.

It stimulated the resurgence of a war-ruined Europe.

It has helped to bring new strength and life to the developing world.

It has underwritten unprecedented prosperity for the American people, who are now in the 83d month of sustained economic growth.

A strong dollar protects and preserves the prosperity of businessman and banker, worker and farmer — here and overseas.

The action program I have outlined in this message will keep the dollar strong. It will fulfill our responsibilities to the American people and to the Free World.

I appeal to all of our citizens to join me in this very necessary and laudable effort to preserve our country's financial strength.
THE PRESIDENT

Executive Order 11387

GOVERNING CERTAIN CAPITAL TRANSFERS ABROAD

By virtue of the authority vested in the President by section 5(b) of the act of October 6, 1917, as amended (12 U.S.C. 95a), and in view of the continued existence of the national emergency declared by Proclamation No. 2914 of December 16, 1950, and the importance of strengthening the balance of payments position of the United States during this national emergency, it is hereby ordered:

1. (a) Any person subject to the jurisdiction of the United States who, alone or together with one or more affiliated persons, owns or acquires as much as a 10% interest in the voting securities, capital or earnings of a foreign business venture is prohibited on or after the effective date of this Order, except as expressly authorized by the Secretary of Commerce, from engaging in any transaction involving a direct or indirect transfer of capital to or within any foreign country or to any national thereof outside the United States.

(b) The Secretary of Commerce is authorized to require, as he determines to be necessary or appropriate to strengthen the balance of payments position of the United States, that any person subject to the jurisdiction of the United States who, alone or together with one or more affiliated persons, owns or acquires as much as a 10% interest in the voting securities, capital or earnings of one or more foreign business ventures shall cause to be repatriated to the United States such part as the Secretary of Commerce may specify of (1) the earnings of such foreign business ventures which are attributable to such person's investments therein and (2) bank deposits and other short term financial assets which are held in foreign countries by or for the account of such person. Any person subject to the jurisdiction of the United States is required on or after the effective date of this Order, to comply with any such requirement of the Secretary of Commerce.

(c) The Secretary of Commerce shall exempt from the provisions of this section 1, to the extent delineated by the Board of Governors of the Federal Reserve System (hereinafter referred to as the Board), banks or financial institutions certified by the Board as being subject to the Federal Reserve Foreign Credit Restraint Programs, or to any program instituted by the Board under section 2 of this Order.

2. The Board is authorized in the event that it determines such action to be necessary or desirable to strengthen the balance of payments position of the United States:

(a) to investigate, regulate or prohibit any transaction by any bank or other financial institution subject to the jurisdiction of the United States involving a direct or indirect transfer of capital to or within any foreign country or to any national thereof outside the United States; and

(b) to require that any bank or financial institution subject to the jurisdiction of the United States shall cause to be repatriated to the United States such part as the Board may specify of the bank deposits and other short term financial assets which are held in foreign countries by or for the account of such bank or financial institution. Any bank or financial institution subject to the jurisdiction of the United States shall comply with any such requirement of the Board on and after its effective date.

3. The Secretary of Commerce and the Board are respectively authorized, under authority delegated to each of them under this Order or otherwise available to them, to carry out the provisions of this Order, and to prescribe such definitions for any terms used herein, to issue such rules and regulations, orders, rulings, licenses and instructions, and to take such other actions, as each of them determines to be necessary or appropriate to carry out the purposes of this Order and
their respective responsibilities hereunder. The Secretary of Commerce and the Board may each redelegate to any agency, instrumentality or official of the United States any authority under this Order, and may, in administering this Order, utilize the services of any other agencies, Federal or State, which are available and appropriate.

4. The Secretary of State shall advise the Secretary of Commerce and the Board with respect to matters under this Order involving foreign policy. The Secretary of Commerce and the Board shall consult as necessary and appropriate with each other and with the Secretary of the Treasury.

5. The delegations of authority in this Order shall not affect the authority of any agency or official pursuant to any other delegation of presidential authority, presently in effect or hereafter made, under section 5(b) of the act of October 6, 1917, as amended (12 U.S.C. 95a).

The White House
10:45 a.m.,
Jan. 1, 1968,
L.B.J. Ranch.

[F.R. Doc. 68–112; Filed, Jan. 1, 1968; 6:05 p.m.]
Title 15 COMMERCE AND FOREIGN TRADE
Chapter X—Office of Foreign Direct Investments, Department of Commerce
PART 1000—FOREIGN DIRECT INVESTMENT REGULATIONS

Foreign Direct Investment by Persons in United States

The regulations set out below implement Executive Order 11387, January 1, 1968, governing foreign direct investments. Since a foreign affairs function of the United States is involved, the requirements of 5 U.S.C. 558 are not applicable. In any event, because of the urgency of the present situation relating to the international balance of payments and the desirability of immediate action by the Government of the United States, it is hereby found that notice and public procedures prior to the promulgation of these regulations are impracticable and contrary to the public interest. For the same reason, it is found that these regulations must be made effective immediately. The reporting and record-keeping requirements provided therein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942, as amended.

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

(1) This part is independent of Title 31 CFR, Chapter V. The prohibitions contained in this part are in addition to the prohibitions contained in said Chapter V. No license contained in or issued pursuant to said Chapter V shall be deemed to authorize any transaction prohibited by this part, nor shall any license or authorization issued pursuant to any other provision of law be deemed to authorize any transaction so prohibited.

(b) No authorization or exemption contained in or issued pursuant to this part shall be deemed to authorize any transaction to the extent that it is prohibited by reason of the provisions of any part of Title 31 CFR.

(c) No authorization or exemption contained in or issued pursuant to Executive Order 11387 is this part.

(d) No authorization or exemption contained in or issued pursuant to this part shall be deemed to authorize any transaction to the extent that it is prohibited by reason of the provisions of any part of Title 31 CFR.

(2) Any transfer of credit; any payment between, by, through, or to any banking institution or banking institutions wheresoever located.

(3) Any transaction in foreign exchange;

(4) Any direct or indirect acquisition of, or any holding, transfer of or dealing in, or any exercise of any right, power or privilege with respect to any property located in a foreign country.

(b) All transactions prohibited by section 1 of Executive Order 11387 which are not prohibited by this part are hereby authorized; provided, however, that any person failing to make timely compliance with the reporting requirements of Subpart F of this part is ineligible thereafter to avail itself of this general authorization.

(c) To the extent that may be delineated from time to time by the Board of Governors of the Federal Reserve System, nothing in this part shall apply to any bank or other financial institution certified by the Board as being subject to the Federal Reserve Bank of New York, Credit Restriction Programs, or to any program instituted by the Board under Section 2 of Executive Order 11387.

§ 1000.201 Transfers of capital to affiliated foreign nationals involving foreign direct investments.

(a) Except as specifically authorized by the Secretary by means of regulations, rulings, instructions, authorizations, licenses, exemptions, waivers, or otherwise, each direct investor is hereby required to transfer, not less often than once a year, from Schedule A countries, or nationals thereof, to an account owned by such direct investor denominated in U.S. dollars at a domestic bank, an amount representing earnings from affiliated foreign nationals in such countries which is not less than the greater of:

(1) The same percentage of total earnings during each year of affiliated foreign nationals in all Schedule A countries attributable to such direct investor's interest therein as the percentage of such total earnings so attributable which was repatriated to the United States during the years 1964, 1965, and 1966, inclusive;

(2) That portion of total earnings during each year of affiliated foreign nationals in all Schedule A countries attributable to such direct investor's interest therein that is not less than the greater of:

(3) The same percentage of total earnings during each year of affiliated foreign nationals in all Schedule A countries attributable to such direct investor's interest therein that is not less than the greater of:

§ 1000.202 Repatriation of direct investment earnings.

(a) Except as specifically authorized by the Secretary by means of regulations, rulings, instructions, authorizations, licenses, exemptions, waivers, or otherwise, each direct investor is hereby required to transfer, not less often than once a year, from Schedule A countries, or nationals thereof, to an account owned by such direct investor denominated in U.S. dollars at a domestic bank, an amount representing earnings from affiliated foreign nationals in such countries which is not less than the greater of:

(1) The same percentage of total earnings during each year of affiliated foreign nationals in all Schedule A countries attributable to such direct investor's interest therein that is not less than the greater of:

(2) That portion of total earnings during each year of affiliated foreign nationals in all Schedule A countries attributable to such direct investor's interest therein that is not less than the greater of:

(3) The same percentage of total earnings during each year of affiliated foreign nationals in all Schedule A countries attributable to such direct investor's interest therein that is not less than the greater of:

§ 1000.203 Liquid foreign balances of direct investments.

Subpart B—Prohibitions

(1) Any transfer of credit;

(2) Any payment between, by, through, or to any banking institution or banking institutions wheresoever located;

(3) Any transaction in foreign exchange;

(4) Any direct or indirect acquisition of, or any holding, transfer of or dealing in, or any exercise of any right, power or privilege with respect to any property located in a foreign country.

(c) To the extent that may be delineated from time to time by the Board of Governors of the Federal Reserve System, nothing in this part shall apply to any bank or other financial institution certified by the Board as being subject to the Federal Reserve Bank of New York, Credit Restriction Programs, or to any program instituted by the Board under Section 2 of Executive Order 11387.

§ 1000.204 Delegations.
RULES AND REGULATIONS

§ 1000.203 Liquid foreign balances of direct investors.

(a) Except as specifically authorized by the Secretary by means of regulations, rulings, instructions, exemptions, li­censes, opinions, waivers, or otherwise, each direct investor is hereby required, on or before June 30, 1968, to reduce the amount of all bank deposits and other short-term financial assets held by or for the account of or for the benefit of such direct investor in all foreign countries designated in each of Schedules A, B, and C by persons other than affiliated foreign nationals to an amount not in excess of the average end-of-month amounts of the same so held by or for the account of or for the benefit of such direct investor during 1965 and 1966 inclusive; or to transfer on or before such date funds resulting from such reductions to an account owned by such direct investor denominated in U.S. dollars at a domestic bank; and, thereafter, to transfer funds to an account owned by such direct investor denominated in U.S. dollars at a domestic bank in amounts sufficient to limit the amount of such deposits and other short-term financial assets at the end of any month to such reduced amount of such bank deposits and other short-term financial assets.

(b) For the purposes of this section the term "short-term financial assets" includes, but not by way of limitation: Negotiable and readily transferable commercial and financial instruments, including obligations of foreign governments.

§ 1000.204 Evasion.

Anything in this part to the contrary notwithstanding, any transaction for the purpose of, or which has the effect of, evading or avoiding any of the provisions set forth in this part may be disregarded in whole or in part for purposes of measuring compliance with the provisions of this part.

Subpart C—General Definitions

§ 1000.301 Foreign country.

The term "foreign country" includes, but not by way of limitation:

(a) The government of any foreign country as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof.

(b) Any other government (including any political subdivision, agency, or instrumentality thereof) to the extent and only to the extent that such government exercises or claims to exercise control, authority, jurisdiction or sovereignty over territory which constitutes such foreign country.

(c) Any person to the extent that such person is, or to the extent that there is reasonable cause to believe that such person is, acting or purporting to act directly or indirectly for the benefit or on behalf of any of the foregoing.

§ 1000.302 Foreign national.

The terms "foreign national" and "national" of a foreign country shall include:

(a) A subject or citizen of, or any person domiciled or resident in, a foreign country.

(b) Any partnership, association, corporation, trust, estate, or other organization outside the United States organized under the laws of, or which has its principal place of business in, a foreign country, or any partnership, association, corporation, trust, estate, or other organization outside the United States which is controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, is owned or controlled by, directly or indirectly, a foreign country or one or more foreign nationals thereof.

(c) Any subsidiary, branch, division, or other subpart outside the United States, regardless of the place or organization, of a person within the United States shall be considered a foreign national if the same is engaged in trade or business in a foreign country.

(d) Any person to the extent that such person is acting or purporting to act directly or indirectly for the benefit or on behalf of any national of a foreign country.

(e) Any other person which there is reasonable cause to believe is a "foreign national" as defined in this section. The Secretary retains full power to determine that any person is or shall be deemed to be a "foreign national" within the meaning of this section, and to specify the foreign country of which such person is or shall be deemed to be a national.

§ 1000.303 Nationals of more than one foreign country.

(a) Any person by virtue of any provision in this part is a national of more than one foreign country shall be deemed to be a national of each of such foreign countries.

§ 1000.304 Direct investor.

The term "direct investor" means any person within the United States who directly or indirectly owns or acquires:

(a) Ten percent or more of the total combined voting power of any foreign national or
to, or otherwise enjoy 10 percent or more of the earnings, receipts, income or profits of any foreign national; or
e) The right or power to receive, control, or otherwise direct the disposition of 10 percent or more of the assets of any foreign national upon the liquidation, termination, or winding up thereof.

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§ 1000.305 Affiliated foreign national.
The term “affiliated foreign national” means any foreign national in which a person within the United States is a direct investor.

§ 1000.306 Direct investment.
The term “direct investment” means:
(a) The act of making a transfer of capital or the capital so transferred; and
(b) A net increase in net interest in, or an increase in net interest in, an affiliated foreign national or the accrual thereof.

§ 1000.307 Person.
The term “person” means an individual, partnership, association, trust, estate, corporation, or other organization. For purposes of § 1000.304 and wherever appropriate in the context, a person within the United States shall mean and include all members of an affiliated or associated group within the United States.

§ 1000.308 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, 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 appointment of any agent, trustee, or other fiduciary; the creation or transfer of any lien; the acquisition of any interest in, or interest or interests therein, present, future, or contingent.

§ 1000.309 Property; property interest.
The terms “property” and “property interest” include any property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 1000.310 Interest.
The term “interest” when used with respect to property shall mean an interest of any nature whatsoever, direct or indirect.

§ 1000.311 Banking institution.
The term “banking institution” shall include any person engaged primarily or incidentally in the business of banking, or granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and seller thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or any branch, or individual, or any person, agent, home office, branch, or correspondent of any person so engaged shall be regarded as a separate “banking institution”.

§ 1000.312 Transfer of capital.
The term “transfer of capital” shall mean a transfer of capital, directly or indirectly, by or on behalf of, or for the benefit of, a direct investor directly or indirectly to or on behalf of, or for the benefit of, a principal, agent, home office, branch, or correspondent of any person so engaged.

§ 1000.313 Reinvested earnings.
The term “reinvested earnings” shall mean the earnings of an affiliated foreign national available at any time for distribution and not so distributed.

§ 1000.314 Authorization and exemption.
Except as otherwise specifically specified, the terms “authorization” and “exemption” shall mean, respectively, any authorization or exemption contained in or issued pursuant to this part.

§ 1000.315 General authorization and exemption.
The terms “general authorization” and “general exemption” mean those authorizations and exemptions that are set forth in this part.

§ 1000.316 Specific authorization and exemption.
The terms “specific authorization” and “specific exemption” mean those authorizations and exemptions issued pursuant to this part but not set forth in this part.

§ 1000.317 Domestic bank.
The term “domestic bank” shall mean any bank or branch office within the United States for purposes of this definition or for the purpose of any or all sections of this part.

§ 1000.318 United States.
The term “United States” means the United States and all areas under the jurisdiction or authority thereof.

§ 1000.319 Schedule A, B, C, countries.
(a) Schedule A countries are all foreign countries designated as less developed countries in the Executive order as from time to time in force, issued under section 916 of the Internal Revenue Code.
(b) Schedule B countries are such other foreign countries as the Secretary may determine to be developed countries in which a high level of capital inflow is essential for the maintenance of economic growth and financial stability, and where those requirements cannot be adequately met from non-U.S. sources. The following countries are hereby determined to fall in this category: Abu Dhabi, Australia, The Bahamas, Bahrain, Bermuda, Canada, Hong Kong, Iran, Iraq, Ireland, Japan, Kuwait, Kuwait-Saudi Arabia Neutral Zone, Libya, New Zealand, Qatar, Saudi Arabia, and the United Kingdom.

§ 1000.320 Effective date.
The term “effective date” means 12:00 noon eastern standard time of January 1, 1968.

§ 1000.321 Year.
Unless otherwise specified, the term “year” or “portion of a year” means a calendar year or a portion thereof.

§ 1000.322 Within the United States.
(a) As applied to any person the term “within the United States”, in cases:
(1) A person, whoseever located, who is a resident of the United States;
(2) A person actually within the United States; and
(3) A corporation organized under the laws of the United States or of any State, territory, possession, District of Columbia, or the Commonwealth of Puerto Rico.
(b) A subsidiary, branch, division or other part of a foreign national which constitutes a permanent establishment within the United States shall be considered a person within the United States for purposes of any part except that nothing herein contained shall limit a bona fide transfer of capital in the ordinary and customary course of business by such subsidiary, branch, division or other subpart to and for the benefit of its parent organization.

Subpart D—Interpretations
§ 1000.101 Reference to amended sections.
Reference to any section of this part or to any regulation, rule, order, interpretation, direction, authorization, license or exemption issued pursuant to

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RULES AND REGULATIONS

§ 1000.402 Effect of amendment of sections of this part or of other orders, etc.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, authorization, license, or exemption issued by or under the direction of the Secretary pursuant to 12 U.S.C. 95a, as amended, shall not unless otherwise specifically provided be deemed to affect any act done or omitted to be done, or any suit or proceeding had or commenced in any civil or criminal case, prior to such amendment, modification, or revocation, and all penalties, forfeitures, and liabilities under any such section, order, regulation, ruling, instruction, authorization, license, or exemption shall continue in effect and may be enforced, as if such amendment, modification, or revocation had not been made.

§ 1000.403 Transactions between principal and agent.

A transaction between any person within the United States and any principal, agent, home office, branch, subsidiary, affiliate, division, subpart, or correspondent outside the United States of such person is a transaction prohibited by § 1000.201 to the same extent as if the transaction had no such relationship.

§ 1000.404 Distribution, apportionment or allocation of earnings.

In any case of two or more organizations, trades or businesses owned or controlled directly or indirectly by the same interests, the Secretary may distribute, apportion or allocate earnings or any component of earnings, if he determines that such distribution, apportionment, or allocation is necessary or appropriate clearly or properly to reflect earnings attributable to an investor's interest in affiliated foreign nationals or otherwise to carry out the purposes of this part.

Subpart E—Authorizations or Exemptions

§ 1000.501 Effect of subsequent authorization or exemption.

No authorization or exemption contained in this part, or issued by or under the direction of the Secretary pursuant to this part, shall be deemed to authorize or validate any transaction effected prior to the issuance thereof, unless such authorization or other exemption specifically so provides.

§ 1000.502 Exclusion from authorization or exemption.

The Secretary reserves the right to exclude from the operation of any authorization or exemption or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, transactions or property or classes thereof. Such section shall be binding upon all persons receiving actual notice or constructive notice thereof.

§ 1000.503 Direct investment not exceeding $100,000.

During any year direct investment by any direct investor in all foreign countries, not amounting in the aggregate to more than $100,000, are hereby authorized.

§ 1000.504 Transfers of capital.

(a) Subject to the provisions of paragraphs (b) and (c) of this section, the following provisions of this section shall apply to aggregate direct investment in excess of $100,000 in any year without regard to the provisions of § 1000.503.

(1) Transfers of capital during any year to any Schedule A country or national thereof are authorized provided that such transfers do not result in direct investment during that year exceeding 110 percent of the average of direct investment by the direct investor in all Schedule A countries, or nationals thereof, during the years 1965 and 1966 inclusive.

(2) Transfers of capital during any year to any Schedule B country or national thereof are authorized provided that such transfers do not result in direct investment during such year exceeding 65 percent of the average of direct investment by the direct investor in all Schedule B countries, or nationals thereof, during the years 1965 and 1966 inclusive.

(3) Except as authorized in this part, a moratorium exists on transfers of capital during any year to any Schedule C country or national thereof. Reinvestment during any year of a direct investor's share of earnings in Schedule C countries is authorized provided that such earnings were expended in such direct investment: (a) The Secretary reserves the right at any time to exclude any direct investor from any or all of the privileges of this section.

§ 1000.601 Records.

Every person subject to the provisions of this part shall keep in the United States a full and accurate record of each transaction engaged in by it which is subject to the provisions of this part, regardless of whether such transaction is effected pursuant to authorization or otherwise, and of every other transaction between such person and an affiliated foreign national. Such records shall be available for examination for at least five years after the date of the transactions to which they relate.

Subpart F—Records and Reports

§ 1000.602 Reports.

(a) Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Secretary, complete information relative to any transaction with respect to which records are required to be kept under this part. The Secretary may require that such reports include the production of any books of account, contract, letters, or other papers, connected with any such transaction or property, in the custody or control of the persons required to make such reports. Complete information with respect to transactions may be required before or after such transactions are completed. The Secretary may, through any person or agency, investigate any such transaction or property or any violation of the provisions of this part, regardless of whether any report has been required or filed in connection therewith.

§ 1000.605 Transfer of capital between foreign countries.

Nothing contained in this part shall prohibit a transfer of capital between foreign nationals outside the United States who are nationals of the same foreign country or of two or more foreign countries in the same Schedule contained in § 1000.319. A transfer of capital between foreign nationals outside the United States who are nationals of countries listed in different Schedules is hereby authorized except that if the transferee or transference foreign national is an affiliated foreign national acting by, or on behalf of or for the benefit of a direct investor:

(a) A transfer from a national of a Schedule C or Schedule B country to a national of a Schedule A country, or from a national of a Schedule C country to a national of a Schedule B country is authorized only to the extent that the amount of the transaction will not exceed $100,000, and such transfers do not result in direct investment during any year exceeding 110 percent of the average of direct investment by the direct investor in all Schedule A countries, or nationals thereof.

(b) A transfer from a national of a Schedule A or B country to a national of a Schedule C country, or from a national of a Schedule A country to a national of a Schedule B country is not authorized.
(b) The following reports are required to be filed by direct investors with the Office of Foreign Direct Investments, Department of Commerce, Washington, D.C. 20230:

(1) Form CDFDI—101, Based Period Report. This report is to be filed by March 15, 1968, or on the date its first quarterly report is due, whichever is earlier.

(2) Form CDFDI—102, Quarterly Report. This report must be filed within 45 days from the close of each quarter of a year.

Subpart G—Penalties

§ 1000.701 Penalties.

(a) Attention is directed to 12 U.S.C. 95a, which provides in part:

Whoever willfully violates any of the provisions of this section or of any license, order, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; 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. As used in this section the term “person” means an individual, partnership, association, or corporation.

This section is applicable to violations of any provision of this part and 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 pursuant to this part or otherwise under such section.

(b) Attention is also directed to 18 U.S.C. 1001, which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

RULES AND REGULATIONS

Subpart H—Procedures

§ 1000.801 Applications for specific authorizations and exemptions.

Transactions subject to the prohibitions contained in this part which are not authorized by general authorization may be effected only under specific authorization. Persons subject to the requirements of this part may be exempted from complying with any particular requirement imposed by this part only through a specific exemption.

(a) General procedure. Applications for specific authorizations to engage in any transaction prohibited, or for specific exemptions to be exempted or to deviate from any particular requirement imposed, by or pursuant to this part, are to be filed in duplicate with the Director, Office of Foreign Direct Investments, Department of Commerce, Washington, D.C. 20230. Any person affected by the provisions contained in this part may file such an application.

(b) Information to be supplied. Applicants must supply all relevant information. Such documents as may be relevant shall be attached to each application as a part thereof, except that documents previously filed with the Director, may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as may be requested by the Director. An applicant or other party in interest may furnish additional information or present views concerning the application at any time before a decision has been rendered. Arrangements for oral presentation should be made with the Director.

(c) Decision. Prompt notice of action taken on an application shall be communicated to the applicant. Whenever an application is denied, such notice shall be accompanied by a simple statement of the grounds therefor. The decision on the application shall constitute final agency action.

(d) Effect of denial. The denial of an application does not preclude the matter from being reopened at the request of the applicant, or the filing of a new application.

(e) Terms and conditions of specific licenses and exemptions. Any specific license or exemption is issued subject to all the terms, conditions and special requirements contained therein.

§ 1000.802 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, exemptions, authorizations, instructions, orders, or forms issued thereunder may be amended, modified, or revoked at any time. In general, the public interest requires that such amendments, modifications, or revocations be made without prior notice.

§ 1000.803 Rules governing availability of information.

(a) The information, records, and other material of the Office of Foreign Direct Investments required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the provisions of Department Order 64 of the Secretary of Commerce (32 F.R. 9649 of July 4, 1967).

(b) Forms CDFDI—101 and 102 and any other forms used in connection with the Foreign Direct Investment Regulations may be obtained in person from or by writing to the Director, Office of Foreign Direct Investments, Department of Commerce, Washington, D.C. 20230.

§ 1000.804 Delegations.

Any function, duty or authority under these regulations may be performed or exercised by the Secretary or by any person, agency or instrumentality designated by him (directly or indirectly by one or more redelegations of authority) and the term "Secretary" as used in these regulations may be performed or exercised in person from or by writing to the Director, Office of Foreign Direct Investments, Department of Commerce, Washington, D.C. 20230.

Signed at Washington, D.C., this 1st day of January 1968.

A. B. Trowbridge,
Secretary of Commerce.

[F.R. Doc. 68-114; Filed, Jan. 1, 1968; 6:44 p.m.]
DEPARTMENT OF COMMERCE
Office of the Secretary

[Department Order 184-A]

ESTABLISHMENT OF OFFICE OF FOREIGN DIRECT INVESTMENTS

SECTION 1. Purpose. The purpose of this order is to establish the Office of Foreign Direct Investments, delegate authority to its Director, and describe the general functions of the Office.

Sec. 2. General—01 The Office of Foreign Direct Investments (hereinafter called the “Office”) is hereby established as a primary operating unit of the Department of Commerce pursuant to the authority vested in the Secretary of Commerce by Executive Order 11387, dated January 1, 1968, and otherwise by law.

02 The Office shall be headed by a Director (hereinafter called the “Director”) who shall report and be responsible to the Secretary of Commerce (hereinafter called the “Secretary”). The Director shall be assisted by a Deputy Director who shall perform the functions of the Director during the latter’s absence, and by such staff as the Director may require to perform the functions and authorities and discharge the responsibilities set forth herein.

Sec. 3. Delegation of authority—01 Pursuant to the authority vested in the Secretary by Executive Order 11387 and otherwise by law, and subject to such policies, limitations and directions as the Secretary may prescribe, the Director is hereby delegated the functions, authorities, and responsibilities given to the Secretary under said Executive order governing certain capital transfers abroad, and under such other Executive orders, laws, regulations, and actions relating thereto as the Secretary shall determine are applicable.

02 The Director may redelegate, as may be necessary in their performance, any functions, authorities, or responsibilities conferred upon him by this order to any other agency, Instrumentality, or official of the United States, subject to such conditions and limitations as the Secretary may deem desirable.

Sec. 4. General functions—01 The Director shall, with respect to the functions, authorities, and responsibilities delegated to him by this order:

a. Provide advice and assistance to the Secretary in such matters.

b. Carry out the provisions of Executive Order 11387, prescribe definitions for any terms used therein, make general or specific exemptions, exceptions, or waivers to the prohibitions thereof, issue such rules and regulations, orders, rulings, licenses, and instructions, and take such other actions, as he determines to be necessary or appropriate to carry out the purposes of said Executive order.

c. Consult and collaborate as necessary and appropriate with other officers and units of the Department, officials of other Federal agencies, including the Secretaries of State and Treasury and the Board of Governors of the Federal Reserve System, and representatives of foreign governments.

d. Administer the regulations issued by the Secretary, and as they may be amended, under Title 15, Code of Federal Regulations, Chapter X, Part 1000.

e. Take such necessary actions as may be necessary to obtain effective compliance with the policies, programs and regulatory system established under this order, to obtain reports and other information, and to conduct investigations to carry them out.

f. Provide a basis for policy formulation of the Department with respect to direct investment abroad and related matters.

g. Utilize the facilities and services of other units of the Department of Commerce, of other Federal or State agencies, and of any of the Federal Reserve Banks, which are available and appropriate.

h. Take such other actions as may be necessary and desirable.

Sec. 5. Effect on other orders. To the extent that this order affects any other orders or regulations of the Department, they are accordingly modified.

Sec. 6. Effective date. This order shall become effective January 2, 1968.

A. B. Trowbridge,
Secretary of Commerce.

[F.R. Doc. 68-113; Filed, Jan. 1, 1968; 6:43 p.m.]
Instructions for Specific Authorizations or Exemptions
Pursuant to Section 1000.801 of Foreign Direct Investment Regulations

Section 1000.801 of the Foreign Direct Investment Regulations provides procedures whereby applications may be made for specific authorizations to engage in otherwise prohibited transactions which are not within the general authorizations set forth in the regulations. Such section also provides for applications for specific exemptions from provisions of the regulations.

All requests for specific authorizations or exemptions should be made in duplicate to the Director, Office of Foreign Direct Investments, U. S. Department of Commerce, Washington, D. C. 20230. While the content of these applications will vary depending upon the particular specific authorization or exemption sought, the application should contain information which would permit the Director to make an informed evaluation of the need for the specific authorization or exemption and its consistency with the overall policy and objective of the program.

With respect to their submission for specific authorizations for foreign direct investments, the following information should be included:

—Brief description of project, program or transaction to which requested authorization relates.
—Amount of foreign direct investment which is sought to be covered by authorization.
—Source and form of the capital for which transfer is sought.
—Proposed use of the capital for which transfer is sought.
—Reasons why capital is not available from foreign sources.
—Statement and data showing why the general authorization provisions of the regulations do not permit the proposed capital transfer to be effected.
—Relationship of specific application to your overall foreign direct investment position and program.
—Estimated amount of, and time period in which specific proposed capital transfer will result in cash or other returns to the United States.
—Pertinent business or economic considerations.
—Pertinent legal commitments or considerations.
—Description of related transactions involving foreign direct investment for which specific authorization application is pending or contemplated.
—Identification of any other transaction by associated or affiliated persons involving foreign direct investment for which specific authorization is pending or contemplated.
—Proposed time schedules for effecting the transfers for which specific authorization is sought.

With respect to applications for specific exemptions from any requirement of the regulation, applicants should state why the specific exemption is appropriate. Include in such application for such exemption any of the foregoing items of information which are relevant to a disposition of the requested exemption.

Any accounting data submitted should be consistent, as far as possible, with the accounting principles applicable to reports required to be submitted under the regulation. Any substantial inconsistencies should be explained.

Any submission should be confined to essential information. If supplemental or explanatory information is necessary, it will be requested by the Director. The application should include the name, address, and telephone number of the person(s) to whom inquiry may be addressed by the Office of Foreign Direct Investments.