cash. Therefore, the transaction satisfies the continuity of interest requirement.

Example 9. Shareholder election. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. On January 2 of Year 1, the value of the P stock and the T stock is $1 per share. Pursuant to the contract, at the shareholders' election, each share of T will be exchanged for cash of $1, or alternatively, P stock. The contract provides that the determination of the number of shares of P stock to be exchanged for a share of T stock is made using the value of the P stock on the last business day before the first date there is a binding contract (i.e., $1 per share). Accordingly, the contract provides for fixed consideration, and the determination of whether the transaction satisfies the continuity of interest requirement is based on the number of shares of P stock the T shareholders receive in the exchange and by reference to the value of the P stock on January 2 of Year 1.

Example 10. Contingent adjustment based on the value of the issuing corporation stock—continuity not preserved. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. On January 2 of Year 1, the value of the P stock is $1 per share. Pursuant to the contract, if the value of the P stock does not decrease after January 2 of Year 1, the T shareholders will receive 40 P shares and $60 of cash in exchange for all of the outstanding stock of T. Furthermore, the contract provides that the T shareholders will receive $.16 of additional P shares and $.24 for every $.01 decrease in the value of one share of P stock after January 2 of Year 1. On June 1 of Year 1, T merges with and into P pursuant to the terms of the contract. On that date, the value of the P stock is $.40 per share. Pursuant to the terms of the contract, the consideration is adjusted so that the T shareholders receive 24 more P shares ((60 × $.16)/$.40) and $14.40 more cash (60 × $.24) than they would absent an adjustment. Accordingly, at closing the T shareholders receive 64 P shares and $74.40 of cash. Because the contract provides that additional P shares and cash will be delivered to the T shareholders if the value of the stock of P decreases after January 2 of Year 1, under paragraph (e)(2)(iii)(B)(*2*) of this section, the contract is not treated as providing for fixed consideration, and therefore whether the transaction satisfies the continuity of interest requirement cannot be determined by reference to the value of the P stock on January 2 of Year 1. For continuity of interest purposes, the T stock is exchanged for $25.60 of P stock (64 × $.40) and $74.40 of cash and the transaction does not preserve a substantial part of the value of the proprietary interest in T. Therefore, the transaction does not satisfy the continuity of interest requirement.

Example 11. Contingent adjustment to boot based on the value of the target corporation stock—continuity not preserved. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. On January 2 of Year 1, T has 100 shares outstanding, and each T share is worth $1. On January 2 of Year 1, each P share is worth $1. Pursuant to the contract, if the value of the T stock does not increase after January 3 of Year 1, the T shareholders will receive 40 P shares and $60 of cash in exchange for all of the outstanding stock of T. Furthermore, the contract provides that the T shareholders will receive $1 of additional cash for every $.01 increase in the value of one share of T stock after January 3 of Year 1. On June 1 of Year 1, the value of the T stock is $1.40 per share and the value of the P stock is $.75 per share. Pursuant to the terms of the contract, the consideration is adjusted so that the T shareholders receive $40 more cash (40 × $1) than they would absent an adjustment. Accordingly, at closing the T shareholders receive 40 P shares and $100 of cash. Because the contract provides the number of shares of P stock and the amount of money to be exchanged for all the proprietary interests in T, and the contingent adjustment to the cash consideration is not based on changes in the value of the P stock, P assets, or any surrogate thereof, after January 2 of Year 1, there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. For continuity of interest purposes, the T stock is exchanged for $40 of P stock (40 × $1) and $100 of cash. Therefore, the transaction does not satisfy the continuity of interest requirement.

Example 12. Contingent adjustment to stock based on the value of the target corporation stock—continuity preserved. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. On that date T has 100 shares outstanding, and each T share is worth $1. On January 2 of Year 1, each P share is worth $1. Pursuant to the contract, if the value of the T stock does not decrease after January 3 of Year 1, the T shareholders will receive 40 P shares and $60 of cash in exchange for all of the outstanding stock of T. Furthermore, the contract provides that the T shareholders will receive $.40 less P stock and $.60 less cash for every $.01 decrease in the value of one share of T stock after January 3 of Year 1. The contract also provides that the number of P shares by which the consideration will be reduced as a result of this adjustment will be determined based on the value of the P stock on January 2 of Year 1. On June 1 of Year 1, T merges with and into P pursuant to the terms of the contract. On that date, the value of the T stock is $.70 per share and the value of the P stock is $.75 per share. Pursuant to the terms of the contract, the consideration is adjusted so that the T shareholders receive 12 fewer P shares ((30 × $.40)/$1) and $18 less cash (30 × $.60) than they would absent an adjustment. Accordingly, at closing the T shareholders receive 28 P shares and $42 of cash. Because the contract provides for the number of shares of P stock and the amount of money to be exchanged for all of the proprietary interests in T, the contract does not provide for contingent adjustments to the consideration based on a change in value of the P stock, P assets, or any surrogate thereof, after January 2 of Year 1, and the adjustment to the number of P shares the T shareholders receive is determined based on the value of the P shares on January 2 of Year 1, there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. For continuity of interest purposes, the T stock is exchanged for $28 of P stock (28 × $1) and $42 of cash. Therefore, the transaction satisfies the continuity of interest requirement.

(e)(3) through (7) [Reserved]. For further guidance, see § 1.368–1(e)(3) through (7).

(8) *Effective dates.* (i) [Reserved]. For further guidance, see § 1.368–1(e)(8)(i).

(ii) *Signing date rule.* Paragraph (e)(2) of this section applies to transactions occurring pursuant to binding contracts entered into after September 16, 2005. For transactions occurring pursuant to binding contracts entered into after September 16, 2005, and on or before March 20, 2007, the parties to the transaction may elect to apply the provisions of § 1.368–1(e)(2) as contained in 26 CFR part 1, revised April 1, 2006, instead of the provisions of this paragraph (e)(2). However, the target corporation, the issuing corporation, the controlling corporation of the acquiring corporation if stock thereof is provided as consideration in the transaction, and any direct or indirect transferee of transferred basis property from any of the foregoing, may not elect to apply the provisions of § 1.368–1(e)(2) as contained in 26 CFR part 1, revised April 1, 2006, unless all such taxpayers elect to apply the provisions of such regulations. This election requirement will be satisfied if none of the specified parties adopts inconsistent treatment. The applicability of this section expires on or before March 19, 2010.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: March 14, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 538 and 560

Sudanese Sanctions Regulations; Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Policy statement.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is issuing this notice to clarify its policy with respect to the process for issuing one-year licenses to export agricultural commodities, medicine, and medical devices to Sudan and Iran pursuant to section 906 of the Trade Sanctions Reform and Export Enhancement Act of 2000, Title IX of Public Law 106–387 (October 28, 2000).

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance Outreach & Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, or Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

Clarification of Policy With Respect to the Process for Issuing One-Year Licenses To Export Agricultural Commodities, Medicine, and Medical Devices to Sudan and Iran

The Trade Sanctions Reform and Export Enhancement Act of 2000, Title IX of Public Law 106–387 (October 28, 2000), as amended (''TSRA''), provides that, with certain exceptions, the President may not impose a unilateral agricultural sanction or unilateral medical sanction against a foreign country or foreign entity unless, at least 60 days before imposing such a sanction, the President submits a report describing the proposed sanction and the reasons for it and Congress enacts a joint resolution approving the report. Section 906 of TSRA, however, requires that the export of agricultural commodities, medicine, and medical devices to Cuba, or to the government of a country that has been determined by the Secretary of State to have repeatedly provided support for acts of international terrorism, or to any entity in such country, shall only be made pursuant to one-year licenses issued by the United States Government. Section 906 also requires that procedures shall be in place to deny licenses for exports to any entity within such country that promotes international terrorism.

Effective July 26, 2001, the Office of Foreign Assets Control (''OFAC'') promulgated amendments to the Sudanese Sanctions Regulations, 31 CFR part 538 (the ''SSR''), and the Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''), to implement section 906 of TSRA. See 66 FR 36683 (July 12, 2001) (the ''rule''). The preamble to the rule described an expedited process for the issuance of the one-year license required by section 906 for all exports and reexports of agricultural commodities, medicine, and medical devices to Sudan or Iran. The expedited process included, when appropriate, referral of the one-year license request to other government agencies for guidance in evaluating the request. If no government agency raised an objection to or concern with the application within nine business days from the date of any such referral, OFAC would issue the one-year license, provided that the request otherwise met the requirements set forth in the rule. Conversely, if any government agency raised an objection to the request within nine business days from the date of referral, OFAC would deny the license request. Finally, if any government agency raised a concern short of an objection with the request within nine business days from the date of referral, OFAC would delay its response to the license request for no more than thirty additional days to allow for further review of the request.

OFAC instituted this expedited licensing process described in the preamble following the rule's publication in July 2001. However, the terrorist attacks of September 11, 2001, magnified concerns about international terrorism and proliferation of weapons of mass destruction. These concerns prompted greater scrutiny on the part of OFAC and other agencies of the U.S. Government of those entities within state sponsors of terrorism to whom agricultural commodities, medicine, and medical devices were being exported. Moreover, the volume of license requests has increased substantially since the inception of the TSRA program, and applications are now much more complicated than earlier ones, often involving dozens and sometimes hundreds of products and parties to the transaction. All of these factors have contributed to longer OFAC and interagency reviews of the applications, and thus longer processing times for the applications, than suggested in the preamble to the rule. This review is often further complicated by the fact that these license requests are evaluated both in terms of whether the foreign entities involved in the transaction ''promote international terrorism,'' as required by section 906 of TSRA, and in terms of whether the products at issue implicate independent export control regimes involving chemical or biological weapons or weapons of mass destruction, as provided in section 904(2)(C) of TSRA. Scrutiny of license applications on the latter ground often results in requests for additional information by the reviewing agencies, which neither the applicant nor OFAC can anticipate, further delaying the review process.

Accordingly, today OFAC is issuing this notice to clarify its policy with respect to the licensing process for TSRA exports. OFAC will continue to conduct a review of all applications for one-year licenses consistent with the requirements of section 906 of TSRA, which may include a referral to other government agencies for guidance, and will respond to such applications upon completion of the review. Please be aware that OFAC's processing of one-year license requests may take longer than the time periods suggested at the inception of the TSRA program. OFAC will continue to respond to such applications in as timely a manner as is possible under the circumstances of each individual license application, consistent with OFAC's obligations under TSRA, the ITR, and the SSR.

Dated: February 9, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–027]

Drawbridge Operation Regulations; Raritan River, Arthur Kill, and Their Tributaries, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the AK Railroad Bridge across Arthur Kill at mile 11.6, between Staten Island, New York and Elizabeth, New Jersey. This temporary deviation requires the AK Railroad Bridge to remain in the open position at all times, except that the draw would close for the passage of trains for two daily one-hour closure periods on a fixed schedule with a one hour adjustment whenever high water occurs during or up to one hour after the applicable closure period. In addition, a number of unscheduled requests for one hour closure periods may be granted by the Coast Guard within one to three hours of receipt of the request. The purpose of this